#J-1

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 09.07.2020
Judgment Pronounced On: 23.07.2020

W.P.(CRL) 474/2020

SUSHMEET KAUR ..... Petitioner

versus

UNION OF INDIA & ANR .....Respondents

Advocates who appeared in this case:
For the Petitioner : Mr. Ramkant Gaur, Advocate
For the Respondents : Mr. Ajay Digpaul, CGSC for UOI

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. MR. JUSTICE TALWANT SINGH

J U D G M E N T

SIDDHARTH MRIDUL, J *(via Video Conferencing)*

1. The present writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, has been instituted by Sushmeet Kaur, the petitioner herein, who is the wife of Shri Greeshm Sharma (hereinafter referred to as 'the Detenue'), and essentially prays for a writ in the nature of habeas corpus seeking quashing of the Detention order bearing No.PD-12002/ 11/2019-COFEPOSA dated 19.07.2019 (for short 'Detention Order') issued by the Joint Secretary to Government of India, Respondent No.2 herein (hereinafter referred to as the 'Detaining Authority'), directing the Detenue's detention under section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'COFEPOSA').

2. The factual matrix as is relevant and germane for the adjudication of the present proceeding, is adumbrated as follows:

i. On receipt of specific intelligence, a passenger namely, Shri Raju Singh Sachdeva (for short 'Shri Sachdeva'), resident of SF/2 Prerna Apartment, New Gandhi Nagar, Ghaziabad, U.P.-201001, holder of Indian Passport No. R3111421, issued at Ghaziabad, was intercepted near the Exit Gate of the Arrival Hall, Terminal-I, IGI airport, New Delhi on 16.05.2019. Shri Sachdeva had arrived from Bangkok to Varanasi by flight No. 6E 98 dated 16.5.2019 and from

Varanasi to New Delhi by flight No. 6E 6635 on the said date. Shri Sachdeva was carrying one checked-in baggage and two hand bags. Upon being asked by the Customs Authorities whether he was carrying any dutiable or prohibited goods, Shri Sachdeva replied in the negative. However, not being convinced by his reply and in view of the specific intelligence received, Shri Sachdeva was brought to the Arrival Hall, Terminal 3 of the IGI Airport, New Delhi for further examination. Thereafter, in the presence of independent Panchas and after due service of notice under Section 102 of the Customs Act, 1962 (hereinafter referred to as 'said Act') dated 17.05.2019, a search of Shri Sachdeva's person as well as his baggage was conducted by the Customs Officers, leading to the recovery of the following items:

a) On personal and baggage search, following were recovered:

(i) 232 (Two Hundred Thirty Two) silver colour coated metal rings, having collective weight 2001 grams, suspected to be made of Gold, concealed as buckle rings in 29 sling bags;

(ii) 29 sling Bags used for concealment of item at SL. No.1;

(iii) Two used mobiles (One Gionee and one MI-6) and four mobile numbers, i.e., +919582152838 (Indian), +66619280350 (Bangkok), +919958079595 (Indian) and +918700702083 (Indian);

(iv) One Acer Brand E-1-470 P series Laptop, Model No. MS2376 Serial No. 33505064466;

(v) Baggage Tag No.6E 0312 782736;

(vi) Indian Passport No. R3111421 issued at Ghaziabad on 09.10.2017;

(vii) Indian Currency Rs. 18,000/-;

(viii) Personal effects - Old and Used.

b) All items, except items at serial Nos. 1 to 5 above, were returned to Shri Sachdeva on the spot. A copy of Shri Sachdeva's Passport was also retained for further investigation.

c) During the course of proceedings, the Jewellery Appraiser was called who appraised the weight value and purity of the recovered 232 (Two Hundred Thirty Two) Silver colour coated metal rings and gave his Appraisement

Report dated 17.05.2019 which is summarized as under:

Sl. No	Description of Gold Articles	Weight in Grams	Purity	Value Apprised (In Rs.)
1	232 (Two hundred Thirty Two) Gold rings	2001	995	59,51,114/-
	Total	2001	995	59,51,114/-

Rate of Gold as per Notification No. 36/2019-Customs (N. T) dated 15.05.2019 in US $ 418 per 10 Grams Exchange Rate of US$ as per notification No. 372019-Customs (N.T) dated 16.05.2019 is Rs.71.15. As per the above said notifications, total tariff value of the recovered Gold comes to Rs.59,51,114/- (Rupees Fifty Nine Lakhs Fifty One Thousand One Hundred Fourteen only). The market value of the recovered Gold as per rate taken from the printout of The Economic Times dated 17.05.2019 through Internet is Rs.31,993/- per 10 gram and worked out to be Rs.64,01,799/- (Rupees Sixty Four Lakhs One Thousand

Seven Hundred Ninety Nine only).

d) The entire proceedings above was recorded under Panchnama dated 17.05.2019. Shri Sachdeva was asked to produce documents/evidences, if any, regarding legal possession of the recovered Gold, but he failed to produce any such documents. Since Shri Sachdeva failed to produce any documents regarding his legal possession of the recovered Gold, the same was seized vide Seizure Memo dated 17.05.2019 and placed inside a transparent plastic container, wrapped with transparent adhesive tape and sealed with Customs Seal bearing "Customs PC-IGI" on one side and 'Ashoka Stambh' on another side over a paper slip bearing the dated signatures of two independent Panchas, Shri Sachdeva and the Customs Officers. A Detention Receipt No.35301 dated 17.05.2019 was also issued in respect of above said seized Gold. Further, all concealing material viz. 29 sling bags were also placed in a bag and sealed with Customs Seal bearing "Customs PC-IGl" on one side and 'Ashoka Stambh' on another side over a paper slip bearing the dated signatures of the independent Panchas, Shri Sachdeva and the Customs Officers. A Detention Receipt No.35302 dated 17.05.2019 was also issued against it.

ii. During investigation of the case, the statement of Shri. Sachdeva was recorded under section 108 of the said Act on 17.05.2019, wherein, he *inter alia* stated that, he could read, write, speak and understand English and Hindi language; that his family apart from him consisted of his wife and two children who stay with him; that his wife was housewife and his son and daughter were studying in 10th standard and graduation respectively; that he was born and brought up in Ghaziabad and that he was a law graduate from Meerut University; that he was using two mobile phones (One Gionee and one Ml-6) and four mobile numbers, i.e., +919582152838 (Indian), +66619280350 (Bangkok), +919958079595 (Indian) and +918700702083 (Indian); that in the year 2010, he started working as a property dealer at Ghaziabad; that he did not have any office and operated from his home; that he also worked as a commission agent in providing loans to customers. Shri Sachdeva further stated that on 16.05.2019 he had arrived in Varanasi from Bangkok by flight No. 6E 98 and that he thereafter took a domestic flight from Varanasi to New Delhi viz. flight No. 6E 6635. Shri Sachdeva also stated that he had with him one trolley bag as his checked-in-baggage bearing tag No. 6E 0132782736 and that he was also carrying two hand bags with him. Shri Sachdeva furthermore stated that in his checked-in-baggage he was carrying 29 sling bags and that as soon as he reached Arrival Hall of Domestic Airport (Terminal-I), New Delhi he was intercepted by the Customs Officers; that having reached the Arrival Hall, Terminal-3, IGI Airport, New Delhi, his personal and baggage search was conducted in the presence of two independent Panchas; that thereafter thorough consensual examination of his baggage resulted in the recovery of 232 Gold rings collectively weighing 2001 grams, which were found concealed as buckle rings in the said 29 sling bags carried by him in his checked-in-baggage. Shri Sachdeva further stated that towards the end of the year 2018, he was introduced by the Detenue to one of his associates namely, Ms. Neha (Mobile No.+918307986755), and that he was persuaded by the Detenue and said Ms. Neha, *inter alia* to smuggle gold with the same *modus operandi* that he had employed during the current visit.

iii. Shri Sachdeva further stated that, he used to be contacted by one unknown person at his Hotel room in Bangkok who used to deliver to him the bags of readymade shirts and bags containing concealed gold, which he used to deliver to the Detenue or the latter's associates at a chosen place.

iv. Shri Sachdeva further admitted that on each of his total nine visits to Bangkok, he had smuggled same quantity of gold, employing the same *modus operandi*.

v. Shri Sachdeva unequivocally stated that, the recovered gold belonged to the Detenue and Ms. Neha and, that the funds for the purchase thereof were transferred by the Detenue to one Shri Avtar, an associate of the Detenue, who also paid amounts for his tickets, boarding and lodging.

vi. Lastly, Shri Sachdeva stated that upon his exit from the airport Terminal he was to be contacted by the Detenue or his associate, at a place chosen for the delivery of the subject gold and he has also admitted to have illegally imported gold weighing 14 Kilograms in total during his seven previous visits, valued at Rs.4,16,57,798/-, thus bringing the total value of the smuggled gold in the past and during the current visit to a sum of Rs.4,76,08,912/-.

vii. In view of the afore-extracted depositions of Shri Sachdeva, in relation to the Detenue's role and involvement in the business of smuggling of gold hidden in garments, brought from the Detenue's associates in Bangkok, surveillance was kept on the latter's activities and his travel history and thereafter the Detenue was finally apprehended on 30.06.2019. In the Detenue's statement recorded on 30.06.2019, under Section 108 of the said Act, it was stated by the Detenue that, he was born and brought up in Delhi and after completing his schooling from Ravindra Public

School, Pitampura he started doing choreography for wedding events and also engaged himself in the business of Event Management as a freelancer. The Detenue further stated that he was facing acute financial crisis, he sought assistance from his childhood friend namely, Tarun Jain in the year 2014-15; who offered the Detenue to join his business of trading of Gold by bringing the same from Bangkok and selling it in Delhi for profit; and that the Detenue was paid Rs.7,000/- per trip in addition to all expenses of air travel and stay at Bangkok. It was further deposed by the Detenue that after two trips, he temporarily stopped smuggling Gold in this manner from 2014-15 till November 2018. However, it was categorically admitted by the Detenue that since November 2018 till May 2019, he had made a total of 29 trips to Bangkok, out of which approximately 18 to 20 trips were made exclusively at the said Tarun Jain's behest to smuggle Gold and in between he also made other trips in connection with his own choreography business, resulting in total smuggling of Gold in the afore-stated visits to 8350 grams approximately. The details of Detenue's Bangkok trips and the purpose of his visits as per his said statement under Section 108 of the said Act have been enumerated as under:-

S.No.	Date of Departure from India	Cash carried on Departure	Date of Arrival in India	Qty of Gold and its form
1.	20.11.18	Packet of Un-quantified currency given by Tarun to handover to Avtar at Bangkok	22.11.18 via Lucknow	Wire Ring 200gms approx
2.	24.11.18	Packet of Un-quantified currency given by Tarun to handover to Avtar at Bangkok	25.11.18 via Lucknow	Wire ring 200gms approx
3.	27.11.18	Packet of Un-quantified currency given by Tarun to handover to Avtar at Bangkok	28.11.18 via Lucknow	Wire ring 200gms approx
4.	04.12.18	Personal trips, for choreography, Rs.2,00,000	06.12.18 via Mumbai	Event choreography
5.	08.12.18	Un-quantified currency	08.12.18 via Lucknow	250 gms approx

6.	10.12.18	Event purpose	12.12.18 via Mumbai	Event choreography
7.	19.12.18	Un-quantified currency	20.12.18 via Mumbai	Shirt Button250 gms approx
8.	24.12.18	Un-quantified currency	26.12.18 Delhi	Shirt Button 250gms approx.
9.	27.12.18	Event purpose	28.12.18 Delhi	Event choreography
10.	09.01.19	Un-quantified currency	09.01.19 via Lucknow	500 gms approx.
11.	12.01.19	Event purpose	15.01.19 Delhi	Event purpose
12.	24.01.19	Un-quantified currency	26.01.19 via Varanasi	450 gms approx
13.	28.01.19	Un-quantified currency	30.01.19 via Varanasi	400 gms approx
14.	04.02.19	Un-quantified currency	06.02.19 via Varanasi	450 gms approx
15.	11.02.19	Un-quantified currency	12.02.19 via Varanasi	300 gms approx
16.	24.02.19	Un-quantified currency	26.02.19 via Varanasi	500 gms approx

17.	27.02.19	Un-quantified currency	02.03.19 via Varanasi	250gms approx
18.	05.03.19	Un-quantified currency	07.05.19 via Varanasi	450 gms approx
19.	12.03.19	Un-quantified currency	14.03.19 via Varanasi	400gms approx
20.	17.03.19	Event purpose	20.03.19 via Lucknow	Event purpose
21.	21.03.19	Un-quantified currency	23.03.19 via Lucknow	450 gms approx
22.	29.03.19	Un-quantified currency	03.04.19 via Lucknow	350 gms approx
23.	05.04.19	Un-quantified currency	07.04.19 via Lucknow	400 gms approx
24.	09.04.19	Un-quantified currency	12.04.19 via Lucknow	500 gms approx
25.	18.04.19	Un-quantified currency	19.04.19 via Lucknow	500 gms approx
26.	22.04.19	Un-quantified currency	24.04.19 via Lucknow	400 gms approx
27.	27.04.19	Un-quantified	29.04.19 via	350 gms

		currency	Varanasi	approx
28.	30.04.19	Event purpose	03.05.19	Event purpose
29.	08.05.19	Un-quantified currency	09.05.19	300 gms approx

Therefore, the total Gold smuggled by the Detenue in his admitted trips to Bangkok aggregates to 8350 grams approximately.

viii. Another statement under Section 108 of the said Act of the Detenue was recorded on 01.07.2019. On being questioned about the role of Shri Avtar in the smuggling of gold under the guise of the readymade garments; the Detenue stated that, the former operates an electronic shop in the name of Gulati Electronics, Patunam, Bangkok, Thailand and that Shri Avtar used to deal with the persons carrying currency from India by receiving the packet containing cash, which was arguably counted by the said Shri Tarun Jain before sending the same and used to be communicated to said Shri Avtar in advance. Shri Avtar seldom counted the cash carried by Detenue or other such persons. Shri Avtar would visit the Detenue's hotel for a brief period to deliver readymade garments or any other goods wherein gold was concealed in exchange for the packet of the currency sent by the said Shri Tarun Jain. Shri Avtar lived in Bangkok along with his family and is stated to be a citizen of Thailand.

ix. Further, upon being asked about the role of Ms. Neha Sharma and whether she used to act as a handler, it was revealed that she used to plan smuggling of gold and illegal export of foreign exchange to Thailand in connivance with her husband Shri Tarun Jain and that she used to direct the Detenue and other persons doing the same task on how to go about the process of carrying cash and carrying foreign currency and smuggling back gold. It was further stated by the Detenue that Ms. Neha Sharma used to oversee the financing, ticketing and hotel booking for the persons doing the job; in addition to handing over foreign currency to the outgoing persons, as well as receiving the smuggled Gold on their return. On being asked about the role of Shri Sanjay

Basoya and Shri Raj Kumar, it was stated that they were also carrying currency and gold like the Detenue on the directions of Shri Tarun Jain and Ms. Neha Sharma. Further, on being asked about the approximate currency carried at the time of departure, it was revealed by the Detenu that the same would be equivalent to gold brought from Thailand. On being further asked, Detenue had disclosed of bringing the abovementioned quantity of gold in India on the direction of Shri Tarun Jain whose mobile number saved as "T007" in the phone of Detenue. It was further disclosed by him that the mobile no. of Ms. Neha Sharma was 8929607849, who had guided the Detenue in all the above visits. Predicated on the Detenue's deposition and categorical admission in relation to smuggling of foreign currency and at least 8350 gms Gold, he was arrested under section 104 of the said Act on 01.07.2019 vide Arrest Memo dated 01.07.2019. On being produced before learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi, Detenue was forwarded to judicial custody till 15.07.2019 vide Order dated 01.07.2019 by learned CMM. The judicial custody was further extended up to 29.07.2019.

x. That on 19.07.2019, the impugned Detention Order was passed and served on the Detenu along with the grounds of detention, admittedly on the 21.07.2019, whilst he was already in judicial custody and lodged at Tihar Jail, Delhi.

xi. The Detenu filed his representation dated 24.08.2019, under Article 22(5) of the Constitution of India read with Section 3(3) of the COFEPOSA, addressed to the Detaining Authority, against the impugned detention order through the jail authorities.

xii. The afore-stated detention order was confirmed by the Advisory Board vide its order dated 09.10.2019, which affirmed and ordained the detention of the Detenu for period of one year from the date of his detention.

3. Mr. Ramkant Gaur, learned Counsel appearing on behalf of the petitioner assails the Detention Order, firstly, on the ground that, the Sponsoring Authority did not place the vital documents including the Detenue's 'Letter Of Extrication' dated the 03.07.2019 before the

Detaining Authority, thereby vitiating the subjective satisfaction of the latter and rendering the Detention Order invalid and illegal.

4. Mr. Ramakant Gaur, Advocate would then urge that the Detention Order is also vitiated, since the Detaining Authority considered his inculpatory statements dated 30.06.2019 and 01.07.2019, which were alleged to be in Detenue's handwriting, but was prevented by the Sponsoring Authority from due consideration of the 'Letter of Extrication' dated 03.07.2019, which was the only document asserted by him to be in his handwriting and the consideration of which in juxtaposition with his inculpatory statements dated 30.06.2019 and 01.07.2019, would have clearly established that the Detenue had not authored the latter.

5. Mr. Ramakant Gaur, Advocate would also urge that the Detention Order is unsustainable in the light of the non-placement of the Sponsoring Authority of other relevant documents, namely, the alleged summons, issued to him, as well as, the non-production of the 'No-Recovery Panchnama', in relation to the raid conducted at his residence on the 30.06.2019, before the Detaining Authority. It is, therefore, urged on behalf of the Detenue that, vital and exonerating material was withheld by the Sponsoring Authority from the scrutiny of the Detaining Authority, thereby vitiating the Detention Order.

6. In order to buttress his submissions, Mr. Ramkant Gaur, Advocate has placed reliance on the decision of the Hon'ble Supreme Court in ***Asha Devi, w/o Gopal Gherman Mehta (Detenu)* vs. *K. Shivraj, Addl. Chief Secretary to the Government of Gujarat)*** reported as **1979 (1) SCC 222.**

7. On the other hand, Mr. Ajay Digpaul, the Central Government Standing Counsel, appearing on behalf of the Union of India invited our attention to the circumstance that the Detaining Authority could not consider the 'Letter of Extrication', dated 03.07.2019, since the same was supplied by the Detenue to the Sponsoring Authority, through proper channels, only after the issuance of the subject Detention Order and therefore, this plea has been taken by the petitioner only with a motive to mislead this Hon'ble Court. Insofar as, the non-consideration of the 'Summons' and 'No Recovery Panchnama' is concerned, it was pointed out that the same were not documents relied upon by the Sponsoring Authority, since the same were not relevant or germane for determining the gravity of the offences alleged to have been committed by the Detenue, to the satisfaction of the Detaining Authority. It was also urged on behalf of the official respondent that the assertion made by the Detenue that his voluntary statements, recorded under Section 108 of the said Act, were not in his handwriting, as the same purportedly did not match with his handwriting in the 'Letter of Extrication' dated the 03.07.2019, is false to the knowledge of the Detenue, since the same was also duly considered by the Advisory Board during its hearing and outrightly rejected.

8. Lastly, Mr. Ajay Digpaul, learned CGSC would invite our attention to the grounds of detention and in particular paragraphs 1(xii), (xiii), (xiv), (xvi), (xviii), 2,5,6 and 7, which are extracted hereinbelow:

> " (1) xii. In view of the depositions of Shri Raju Singh Sachdeva about involvement of you i.e. Shri Greeshm Shanna, surveillance was kept on you and you were apprehended on 30.06.2019. Statement of you i.e. Shri Greeshm Shanna were recorded under section 108 of the Customs Act, 1962 on 30.06.2019 wherein you, inter-alia, stated that you were born and brought up in Delhi; that you did your schooling from Ravindra Public School, Pitampura and completed your studies upto 12th standard in Commerce stream with Maths in 2007; that after passing your school, you started doing choreography for wedding events and also engaged himself in the business

of Event Management as a freelancer. On being asked whether you knew Shri Monish and Shri Vikas Kumar, you admitted that you had met them at Rohini Metro Station through Shri Tarun, Jain, who happened to be your neighbour at Shakti Apartment, Sec-9, Rohini, New Delhi-110085, in October 2018.

a) On being asked about your relationship with Shri Tarun Jain, you stated that he (Tarun Jain) happened to be your neighbour and they were acquainted with each as friends since your childhood days but you were not aware about his profession after they grew up. Since your business of event management was not going well, you were facing acute financial crisis and he (Tarun Jain) was doing well in life and was well off. Therefore, you asked him to find a job for you where you could earn around Rupees 50 to 60 thousand per month so as to live a comfortable life. In 2014-15 he (Tarun Jain) offered you to join his business of trading of Gold by bringing it from Bangkok and sell it in Delhi on profit. You agreed to his proposal and made two trips to Bangkok for transporting Gold on his advice for which he (Tarun Jain) promised you to pay Rs.7,000/- per trip in addition to all expenses of air travel and stay at Bangkok. You admitted that in these 2 trips, you had brought Gold in the form of buttons of ready made shirts wherein you used to conceal Gold rings in the buttons of shirt. These two trips were made from Bangkok to Delhi via Calcutta and then from Calcutta to Delhi by domestic flights for which all expenses were paid by Shri Tarun Jain. You i.e. Greeshm Sharma admitted that you used to handover the Gold brought clandestinely to Shri Tarun Jain but you were not aware as to how he was disposing it off. You further deposed that after these 2 trips, you found this job non-remunerative and stopped doing that from 2014-15 till November 2018.

b) On being asked, you i.e. Shri Greeshm Sharma further deposed that once again you came in contact with Shri Tarun Jain in 2018 when he persuaded you to restart bringing the Gold using the same modus operandi; as in June, 18 you visited Bangkok for your own choreography business. Shri Tarun Jain told you that when you were going to Bangkok for your own business, why did not you restart bringing Gold for him (Tarun Jain) on return and he (Tarun Jain) promised you to take care of all your air travel and lodging expenses for Bangkok trips. You i.e. Shri Greeshm Sharma categorically admitted that since November, 2018 till May, 2019, you had made total 29 trips to Bangkok, out of which approximately 18 to 20 trips were made exclusively on Tarun Jain's behest and in between other trips were made in connection with your own choreography business. You provided the following details of his Bangkok trips and the purpose of his visits:-

S.No.	Date of Departure from India	Cash carried on Departure	Date of Arrival in India	Qty of Gold and its form
1.	20.11.18	Packet of Un-quantified currency given by Tarun to handover to Avtar at Bangkok	22.11.18 via Lucknow	Wire Ring 200gms approx
2.	24.11.18	Packet of Un-quantified currency given by Tarun to handover to Avtar at Bangkok	25.11.18 via Lucknow	Wire ring 200gms approx
3.	27.11.18	Packet of Un-quantified currency given by Tarun to handover to Avtar at Bangkok	28.11.18 via Lucknow	Wire ring 200gms approx
4.	04.12.18	Personal trips, for	06.12.18 via	Event choreography

		choreography,Rs.2,00,000	Mumbai	
5.	08.12.18	Un-quantified currency	08.12.18 via Lucknow	250 gms approx
6.	10.12.18	Event purpose	12.12.18 via Mumbai	Event choreography
7.	19.12.18	Un-quantified currency	20.12.18 via Mumbai	Shirt Button250 gms approx
8.	24.12.18	Un-quantified currency	26.12.18 Delhi	Shirt Button 250gms approx.
9.	27.12.18	Event purpose	28.12.18 Delhi	Event choreography
10.	09.01.19	Un-quantified currency	09.01.19 via Lucknow	500 gms approx.
11.	12.01.19	Event purpose	15.01.19 Delhi	Event purpose
12.	24.01.19	Un-quantified currency	26.01.19 via Varanasi	450 gms approx
13.	28.01.19	Un-quantified currency	30.01.19 via Varanasi	400 gms approx
14.	04.02.19	Un-quantified currency	06.02.19 via Varanasi	450 gms approx
15.	11.02.19	Un-quantified currency	12.02.19 via	300gms approx

			Varanasi	
16.	24.02.19	Un-quantified currency	26.02.19 via Varanasi	500 gms approx
17.	27.02.19	Un-quantified currency	02.03.19 via Varanasi	250gms approx
18.	05.03.19	Un-quantified currency	07.05.19 via Varanasi	450 gms approx
19.	12.03.19	Un-quantified currency	14.03.19 via Varanasi	400gms approx
20.	17.03.19	Event purpose	20.03.19 via Lucknow	Event purpose
21.	21.03.19	Un-quantified currency	23.03.19 via Lucknow	450 gms approx
22.	29.03.19	Un-quantified currency	03.04.19 via Lucknow	350 gms approx
23.	05.04.19	Un-quantified currency	07.04.19 via Lucknow	400 gms approx
24.	09.04.19	Un-quantified currency	12.04.19 via Lucknow	500 gms approx
25.	18.04.19	Un-quantified currency	19.04.19 via Lucknow	500 gms approx

26.	22.04.19	Un-quantified currency	24.04.19 via Lucknow	400 gms approx
27.	27.04.19	Un-quantified currency	29.04.19 via Varanasi	350 gms approx
28.	30.04.19	Event purpose	03.05.19	Event purpose
29.	08.05.19	Un-quantified currency	09.05.19	300 gms approx

Total Gold smuggled in the above visits is 8350 gms approx.

c) On being further asked since you are a resident of Delhi, why you had been routing through other Airports of India while returning from Bangkok, you i.e. Shri Greeshm Sharma stated that Varanasi Airport, there was virtually no checking by Customs or very little checking by them. You admitted that this route was suggested by Shri Tarun Jain and you were following the same route. Thereafter, you used to catch domestic flight of Indigo Airlines to Delhi which used to usually land at T-1, IGI Airport, New Delhi, where there was no presence of Customs.

d) On being shown a group photograph and asked to identify the persons therein, you identified all the four persons as Shri Tarun Jain, Shri Vikrant, Shri Sanjay Basoya and Shri Monish Kumar respectively. On being shown a photograph of a person in Blue Jersey and asked to identify him, you identified him as Vikas Kumar.

xiii. Statement of you i.e. Shri Greeshm Sharma were again recorded under section 108 of the Customs Act, 1962 on 01.07.2019; On being asked about the role of Shri Avtar in the smuggling of Gold under guise of readymade garments, you stated that he is running an electronic shop Gulati Electronics, Patunam, Bangkok, Thailand and he used to deal with the persons carrying currency from India by taking the packet containing cash which was presumably counted by Shri Tarun Jain before sending and used to be communicated to Shri Avtar. He (Avtar) seldom counted the cash carried by you or other such person. He (Avtar) used to visit his hotel for a brief period to deliver readymade garments or any other goods where gold were concealed in exchange of the packet. Shri Avtar lived m Bangkok along with his family and has acquired citizenship of Thailand.

a) On-being asked about the role of Ms. Neha Sharma and whether she used to act as a handler, you disclosed that she used to plan smuggling of Gold and illegal export of foreign exchange to Thailand in connivance with her husband Shri Tarun Jain and she used to direct you and other persons doing the same job how to go about the process of carrying cash and carrying foreign currency and bringing back Gold. She used to oversee the financing, ticketing and hotel booking for the persons doing the job. Several times, she had handed over foreign currency to the outgoing persons and had received Gold on return.

(b) On being asked about the role of Shri Sanjay Basoya and Shri Raj Kumar, you stated that they were also carrying currency and Gold like you on the direction of Shri Tarun Jain and Ms. Neha Sharma. On being asked about the approximate currency carried at the time of departure, you admitted that you used to carry cash which would be equivalent to Gold brought from Thailand. On being further asked, you admitted that you had brought the abovementioned quantity of Gold in India on the direction of Shri Tarun Jain. You had his mobile number in your mobile phone saved as "T007". You further disclosed the mobile No. of Ms. Neha Sharma as 8929607849 who had guided you in all the above visits.

c) In view of the depositions and categorical admission with regard to smuggling of foreign currency and atleast 8350 gms Gold, you i.e. Shri Greeshm

Sharma were arrested under section 104 of the Customs Act, 1962 on 01.07.2019 vide Arrest Memo dated 01.07.2019 and produced before the Hon'ble Chief Metropolitan Magistrate, Patiala House Courts, New Delhi, after your medical examination conducted, at RML Hospital, New Delhi. You i.e. Shri Greeshm Sharma was forwarded to judicial custody till 15.07.2019 vide Order dated 01.07.2019 of the Hon'ble Chief Metropolitan Magistrate, Patiala House Courts, New Delhi. The judicial custody has been further extended up to 29.07.2019. You i.e. Shri Greeshm Sharma have filed a bail application on 15.07.2019 (through your advocate) before the Hon'ble Court of CMM, Patiala House, New Delhi, which is fixed for hearing on 22.07.2019. In the said bail application you i.e. Shri Greeshm Sharma have alleged that you were asked to sign the pre narrated statements and blank papers under force and coercion and you were also beaten up to admit your involvement in the same gold case. You i.e. Shri Greeshm Sharma have also alleged that you were falsely implicated in the said case.

xiv. During investigation of the case, forensic examination of the Pen Drive resumed from the residence of Shri Tarun Jain and Ms. Neha Sharma, Mobile Phone of M/s Travel in Style, Mobile Phone of Shri Greeshm Sharma i.e. you and Laptop of Shri Raju Singh Sachdeva was conducted in the-presence of two independent witnesses under Panchnama dated 08/09.07.2019. However; no data relevant to the investigation was found stored therein.

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xvi. Further, Shri Raju Singh Sachdeva has admitted that he came in contact with Ms. Neha Sharma through Shri Greeshm Sharma i.e. you (one of his relatives, who is husband of his niece Ms. Ginni) and Ms. Neha Sharma and Shri Greeshm Sharma i.e. you persuaded him to visit to Bangkok and smuggle Gold concealed in readymade denim shirts as buttons and buckle rings in sling bags alongwith him. He further, admitted in his statement recorded under section 108 of the Customs Act, 1962 that

Shri Avtar used to receive foreign currency from Shri Greeshm Sharma i.e. you at Bangkok and paid him some amount for his expenses there. As in his 9th visit, Shri Greeshm Sharma i.e. you paid USD 90,000/- (USD 89500+500) to Shri Avtar and he got some amount from Shri Avtar for his expenses. The details of money received and paid was found scribbled on a note on the backside of a top-up bill of Bangkok Mobile number, said to be used by Shri Raju Singh Sachdeva, during his visit from 13.05.2019 to 16.05.2019.

xvii. During investigation of the case, so far, a reference has been made to the FRRO, Ministry of External Affairs, RK Puram, New Delhi vide letter dated 13.06.2019 to provide the travel details of Shri Raju Singh Sachdeva, Ms. Neha Sharma, Shri Tarun Jain and Shri Greeshm Sharma i.e. you for further investigation From the statements dated 17.05.2019 and 9.06.2019 of Shri Raju Singh Sachdeva recorded under Section 108 of the Customs Act, 1962; forensic data recovered from his mobile phones, documents recovered from travel agency M/s Travel in Style and other corroborative evidences, as aforesaid, it is evident that Shri Raju Singh Sachdeva is deeply involved in organised smuggling of Gold into India being a part of syndicate run by Ms. Neha Sharma and Shri Tarun Jain actively aided and abetted by Shri Greeshm Sharma i.e. you. His involvement appears to be deep rooted which is amply manifested by the unique modus operandi, number of persons involved, scale of operation, his contacts and dealings with other members of the syndicate, viz., Shri Monish Kumar and Shri Vikas Kumar with a well thought out plan. Evidences collected, so far, clearly indicate that the smuggling network is being run and operated by common mastermind Shri Tarun Jain, Ms. Neha Sharma and Shri Greeshm Sharma i.e. you.

2. In view of the facts, circumstances, findings, corroborative evidences and your role in the whole operation, I am satisfied that you i.e. Shri Greeshm Sharma are an important part of a well organised smuggling syndicate involved in smuggling of foreign origin gold and foreign currency. You along with other associates are in the habit of regularly smuggling goods

into India from abroad without declaring the same before the Customs Authorities and paying applicable duty which amounts to "smuggling" in terms of Section 2 of the Customs Act, 1962. The underlying common threat is your propensity to smuggle goods for making illicit profit and putting the national economy into danger which needs to be curbed and yon need to be prevented from indulging in such activities further.

xxxx xxxx xxxx xxxx xxxx

5. In view of the facts and circumstances explained above, I have no hesitation in concluding that you i.e. Shri Greeshm Shanna played a vital role in smuggling of foreign origin gold and foreign currency along with other accomplices. You i.e. Shri Greeshm Sharma have also designed plan in an organised and repeated manner in the act of smuggling. Investigations done by Commissionerate of Customs, IGI Airport, New Delhi clearly establish your continued propensity and inclination to indulge in acts of smuggling in a planned manner to the detriment of the economic security of the country and that unless prevented you i.e. Shri Greeshm Shanna will continue to do so. Further considering the nature and gravity of offence in an organized manner in which you i.e. Shri Greeshm Sharma have engaged yourself in such prejudicial activities and your role therein, all of which reflect your high potentiality and propensity to indulge in such prejudicial activities in future, I am satisfied that there is a need to prevent you i.e. Shri Greeshm Sharma from smuggling goods. Hence, you i.e. Shri Greeshm Sharma ought to be detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act,1974 with a view to preventing you from smuggling goods, abetting the smuggling of goods and engaging in transporting or concealing or keeping smuggled goods in terms of Section 3(1) of the COFEPOSA Act, 1974.

6. I am aware that prosecution under Section 135may be launched against you i.e. Shri Greeshm Sharma and adjudication proceedings are also likely to be initiated soon, which are however, punitive in nature and independent of the preventive detention provided under

the COFEPOSA Act, 1974. However, considering your i.e. Shri Greeshm Sharma's high propensity to indulge in the prejudicial activities, I am satisfied that in the meantime you should be immobilised by detention under the COFEPOSA Act, 1974 with a view to prevent you from smuggling goods, abetting the smuggling of goods and engaging in transporting or concealing or keeping smuggled goods in future.

7. As regards retraction of you i.e. Shri Greeshm Sharma vide your bail application dated 15.07.2019,1 have noted that your house was searched on 30.06.2019 where you i.e. Shri Greeshm Sharma were found and as per the Summons issued to you, you visited the IGI airport and your statements were recorded under section 108 of the Customs Act, 1962 on 30.06.2019 and 1.07.2019 in total 12 pages of your own handwriting. So your allegation of signing of pre narrated statements and blank papers is nothing but an afterthought. Further, all retraction towards your voluntary statements recorded on 30.06.2019 and 1.07.2019 under section 108 of Customs Act, 1962 are after a lapse of nearly 15 days which itself justifies that your retraction is just an afterthought to mislead the investigation. I have also taken note of documentary evidences, corroborative statement and available records relating to your involvement in the syndicate of smuggling of gold and foreign currency and hence, I am satisfied that, your retraction of statements is devoid of merits."

9. In view of the foregoing, it would be submitted by Mr. Ajay Digpaul, learned CGSC that the Detaining Authority has passed a well-reasoned and legally sustainable Detention Order, after considering all the relevant facts of the case and after minutely examining the material available against the Detenu. Mr. Ajay Digpaul, learned CGSC places reliance on the recent decision of the

Hon'ble Supreme Court in ***Union of India (UOI) and Ors. v. Dimple Happy Dhakad*** reported as **AIR 2019 SC 3428**, which was affirmed in ***Union of India (UOI) v. Ankit Ashok Jalan*** reported as **265 (2019) DLT 53**, to urge that the Court must be conscious that the satisfaction of the Detaining Authority is "subjective" in nature and the court cannot substitute its opinion for the subjective satisfaction of the Detaining Authority and interfere with the order of detention.

10. Having heard learned counsel appearing on behalf of the parties and perused the material on record and in particular the impugned Detention Order, we observe that the subjective satisfaction requisite on the part of the Detaining Authority, the formation of which is a condition precedent to the passing of the Detention Order, gets vitiated only if material or vital documents, which could have a bearing on the issue and would influence the mind of the Detaining Authority, one way or the other, are not placed by the Sponsoring Authority before the Detaining Authority.

11. In the present case, it is however, observed that the 'Letter of Extrication' dated 03.07.2019, which was strongly relied upon, on behalf of the petitioner, was received by the Sponsoring Authority only on the 20.07.2019, viz a day after the impugned Detention Order had been passed and thus could not have been placed before the Detaining Authority for consideration. Even otherwise, the connected assertion made on behalf of the Detenue that a perusal of the said 'Letter of Extrication' could establish that the incriminatory statements made under Section 108 of the said Act by him were not in his handwriting, are not tenable and has already been considered and rejected by the Advisory Board, comprising three Judges of this Hon'ble Court. Consequently, the said 'Letter of Extrication' cannot be said to be a vital or relevant document, the non-consideration of which by the Detaining Authority, would result in vitiating the Detention Order. Similar is the position *qua* the 'Summons' and the 'Non-Recovery Panchnama', referred to vigorously on behalf of the Detenue. Insofar as, the 'Summons' dated 30.06.2019 is concerned, the same was duly received by the Detenue, who put his signatures on the face of it, as token of receipt of the same and voluntarily went to the IGI Airport, in compliance thereto. Therefore, the assertion of the Detenue that, the said 'Summons' were not relied upon by the Sponsoring Authority or placed before the Detaining Authority does not vitiate the 'subjective satisfaction' recorded by the Detaining Authority, since the same was not relevant for the formation of the 'subjective satisfaction' of the Detaining Authority. Further, the Detenue's assertion that he was not even supplied with a copy of the said 'Summons' is factually incorrect and does not further his case. Coming to the submission qua the 'Non-Recovery Panchnama', the Sponsoring Authority did not rely upon that document, since the search proceedings did not result in the recovery of any incriminating documents, other than some personal documents of the Detenue, such as PAN Card, Aadhaar Card and Driving License. Therefore, the Panchnama, in our view, cannot be said to be material, the non-placement of which would render the Detention Order illegal. In this view of the matter, the decision in ***Asha Devi*** *(supra)* pressed into service on behalf of the petitioner, does not come to the aid of the Detenue.

12. The Hon'ble Supreme Court of India was pleased to delineate precisely qua the subjective satisfaction of the Detaining Authority in ***Dimple Happy Dhakad*** *(supra)*, which was affirmed by the Hon'ble 3-Judges in that Bench in ***Union of India (UOI) v. Ankit Ashok Jalan***

(supra), as follows:-

> " **42.** Considering the scope of preventive detention and observing that it is aimed to protect the safety and interest of the society, in *State of Maharashtra and Ors. v. Bhaurao Punjabrao Gawande* (2008) 3 SCC 613, it was held as under:
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> > 36**.** Liberty of an individual has to be subordinated, within reasonable bounds, to the good of the people. The framers of the Constitution were conscious of the practical need of preventive detention with a view to striking a just and delicate balance between need and necessity to preserve individual liberty and personal freedom on the one hand and security and safety of the country and interest of the society on the other hand. Security of State, maintenance of public order and services essential to the community, prevention of smuggling and black marketing activities, etc. demand effective safeguards in the larger interests of sustenance of a peaceful democratic way of life.
> >
> > 37**.** In considering and interpreting preventive detention laws, courts ought to show greatest concern and solitude in upholding and safeguarding the fundamental right of liberty of the citizen, however, without forgetting the historical background in which the necessity-an unhappy necessity-was felt by the makers of the Constitution in incorporating provisions of preventive detention in the Constitution itself. While no doubt it is the duty of the court to safeguard against any encroachment on the life and liberty of individuals, at the same time the authorities who have the responsibility to discharge the functions vested in them under the law of the country should not be impeded or interfered with without justification.
>
> **43.** The court must be conscious that the satisfaction of the Detaining Authority is "subjective" in nature and the court cannot substitute its opinion for the subjective satisfaction of the Detaining Authority and interfere with the order of detention. It does not mean that the subjective satisfaction of the Detaining Authority is immune from judicial reviewability. By various decisions, the Supreme Court has

carved out areas within which the validity of subjective satisfaction can be tested."

13. On a conspectus of the decisions of the Hon'ble Supreme Court in ***Dimple Happy Dhakad*** *(supra)* and ***Ankit Ashok Jalan*** *(supra)*, it is axiomatic that, though procedural safeguards are required to be rigorously adhered to and that although the courts must lean in favour of personal liberty of the citizens and remain conscious and zealous in upholding the personal liberties of citizens but in appropriate cases the liberty of an individual has to be subordinated within reasonable bounds to the good of the people. It is observed that an order of detention is clearly and unequivocally a preventive measure devised to afford protection to the society and particularly where the preventive detention is aimed to protect the security and safety of the nation, the Courts must strike a balance between the liberty of an individual and the needs of the society.

14. In the present case, it is observed that huge volumes of gold had been smuggled into the country, illegally and unabatedly for the last five years and that about 8350 grams of gold has been brought into India during the period from November 2018 to May 2019 by the

Detenue camouflaging the same as accessories of garments and buckle rings of bags. It is further observed that the Detaining Authority was justifiably satisfied, founded on the relevant material placed before it by the Sponsoring Authority, that the Detenue demonstrably has the propensity to indulge in the same acts of smuggling, if not prevented by way of the Detention Order from so doing. It is trite to state that the order of preventive detention is a preventive measure and that predicated on the admissible voluntary statements of the Detenue, which clearly bring out the role of the Detenue in the smuggling of Gold, as well as, other materials placed before the Detaining Authority, the subjective satisfaction of the Detaining Authority, recorded in the Detention Order qua the continued propensity and inclination of the Detenue to continue to indulge into acts of smuggling in a planned manner, to the detriment of the economic security of the country, cannot be faulted and does not warrant interference of this Court in exercising its extraordinary jurisdiction.

15. In view of the foregoing discussion, we are of the considered view that the present writ petition is devoid of merit and the same is accordingly dismissed.

16. A copy of this Judgment be provided to the learned counsel appearing on behalf of the parties electronically and be also uploaded on the website of this Court forthwith.

SIDDHARTH MRIDUL
JUDGE

TALWANT SINGH
JUDGE

JULY 23, 2020
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