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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on 14.10.2020
Judgment pronounced on: 20.11.2020

+ **W.P.(CRL.) 780/2020& CM APPL. 5786/2020, 6704/2020 & 7107/2020**

**MUNNA GOYAL @ B.K. GOYAL @
BHIMENDRA KUMAR GOYAL** Petitioner
Through: Ms. Ria Khanna, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Amit Mahajan, CGSC with Mr.
Dhruv Pande, Advocate for R-1 and
R-2.
Mr.Satish Aggarwala, Senior
standing counsel with Mr. Vineet
Sharma and Mr.Jasmeet Jolly,
Advocates for DRI.

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

J U D G M E N T

TALWANT SINGH, J.

1. The writ petition has been filed by the petitioner challenging the order of detention dated 30th December, 2015 at the post-detention stage on the following grounds:

- (i) As per the petitioner, there has been a hopeless delay in the execution of the detention order as he had surrendered before a Court at Vishakhapatnam on 9th September, 2019 and this information was immediately conveyed to DRI, Detaining Authority and Commissioner of Police, Delhi. He remained in custody for a period of more than two months and was released on 11th November, 2019. During this period, no order of detention was executed.
- (ii) It has been further submitted that original order of detention is not traceable and it was imperative that the original order ought to have been served on the petitioner.
- (iii) Further ground taken by the petitioner challenging the detention order is that while issuing the impugned detention order, reliance was placed on the previous detention orders and the said reliance has vitiated the impugned detention order.
- (iv) Moreover, this detention order has been issued in the teeth of the submission made by counsel for DRI before the Hon'ble Court in Writ Petition (Crl.) No.1898/2015, that no coercive action would be taken against the petitioner.

- (v) Another ground taken by the petitioner is that there was a delay of about 14 months between the alleged prejudicial activity and passing of the detention order.
- (vi) There is a gross variance in the subjective satisfaction mentioned in the impugned detention order and the grounds of detention and it has led to confusion in the mind of the detenue and deprived him of making an effective representation against his detention.
- (vii) The vital and relevant material/documents were not placed before the Detaining Authority, consequently, those documents were not considered by the Authority and copies were not supplied to the petitioner. There was gross non-application of mind by the Detaining Authority and the order was passed at the instance of the Sponsoring Authority (DRI).
- (viii) Request of the petitioner for supply of documents made through representation dated 20th February, 2020 was rejected in mechanical manner on 6th March, 2020.
- (ix) The prayer of the petitioner for his temporary release under Section 12 of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (hereinafter referred to as “COFEPOSA Act”) in view of the pandemic was also rejected on extraneous grounds.

2. The brief history as mentioned in the writ petition is that the petitioner was arrested by DRI, Kolkata on 23rd July, 2015 in respect to certain enquiries under the Customs Act, 1962 and he was bailed out on 5th August, 2015. The petitioner was again arrested by DRI officers from Delhi

Zone on 9th August, 2015 for certain investigations. The petitioner approached this Court by filing Writ Petition (Criminal) No.1898/2015 and as directed, he applied for bail before the learned CMM, New Delhi and he was granted bail on 23rd September, 2015 by that court. The petitioner came to know that a proposal dated 6th October, 2015 was sponsored by DRI officials for his detention under Section 3(1) of the COFEPOSA Act. The wife of the petitioner approached this Court by filing Writ Petition (Criminal) No.3106/2015, praying for quashing of the proposal of the detention of the petitioner, if any. The said petition was disposed of on 23rd December, 2015 as it was filed at premature stage. Soon thereafter, the impugned detention order dated 30th December, 2015 was issued against the petitioner. It has been submitted that during the pendency of the Writ Petition (Criminal) No.1898/2015 before this Court, DRI had given an oral undertaking that no coercive action would be taken against the petitioner and an order to this effect was also passed on 11th January, 2016 by this Court and vide order dated 20th January, 2016, the interim order dated 11th January, 2016 was extended till further orders. A writ petition filed by the wife of the petitioner challenging the order of detention at pre-execution stage, being Writ Petition (Criminal) No.548/2016 was withdrawn to challenge the detention order after its execution. The petitioner also filed a Writ Petition (Criminal) No.40/2019 before Hon'ble Supreme Court, challenging the order of detention at pre-execution stage, which was ultimately withdrawn to avail appropriate remedies in law.

3. The petitioner has submitted that he came to know that a case was registered against him under Section 120B, 420, 467, 468, 471 read with Section 34 of Indian Penal Code at Vishakhapatnam and he chose to

surrender before the Court of learned CMM, Vishakhapatnam on 9th September, 2019 and thereafter, he was sent to judicial custody. As mentioned above, intimation was sent to the Detaining Authority, Executing Authority and the Sponsoring Authority by the petitioner through his nephew on 11th September, 2019/18th September, 2019. An application dated 12th September, 2019 was also moved before learned CMM, Patiala House Courts, New Delhi for cancellation of warrants of arrest and closure of proceedings under Section 7 of COFEPOSA Act and as such the Sponsoring Authority (DRI) became aware of the petitioner being in jail at Vishakhapatnam. The writ petition before the Hon'ble Supreme Court was withdrawn on 12th September, 2019 as the petitioner had surrendered.

4. It has been further mentioned that DRI had filed an application before learned CMM, Vishakhapatnam for production of the petitioner but the said application was returned with objections vide order dated 20th September, 2019. On 23rd September, 2019, the application pending before learned CMM, Patiala House Courts, New Delhi under Section 70(2) Cr.P.C. was dismissed. On 30th September, 2019, an application was moved before learned CMM, Patiala House Courts, New Delhi by DRI for issuance of production warrants and directions to Jail Superintendent, Vishakhapatnam to produce the petitioner and accordingly the production warrant was issued on 1st October, 2019 for 23rd October, 2019. Since, the petitioner was not produced by the Jail Superintendent, Vishakhapatnam before the learned CMM, Patiala House Courts, New Delhi, hence a fresh production warrant was issued, directing his production on 26th November, 2019. In the meantime, on 11th November, 2019, the petitioner was

admitted to default bail in terms of Section 167(2) of Cr.P.C. by the Court of Additional Metropolitan Sessions Judge, Vishakhapatnam, as no charge sheet was filed against him within a period of 60 days. The petitioner further states that although he was informed by the jail authorities that there was some production warrant against him but since there was no one to execute the said warrant, the petitioner was set free.

5. The wife of the petitioner had filed a Writ Petition (Criminal) bearing No.2554/2018 for quashing of the attachment proceedings of her properties and she had also prayed for quashing of the detention order against the petitioner. On 22nd November, 2019, the Division Bench of this Court called upon the Detaining Authority to file a personal affidavit explaining the lapse in execution of the detention order. On 26th November, 2019, DRI filed an application before learned CMM, Patiala House Courts, New Delhi for initiating proceedings under Contempt of Courts Act against the Jailer, Central Prison, Vishakhapatnam. In the meantime, the prayer of quashing of detention order pending in the writ petition filed by the wife of the petitioner was allowed to be withdrawn on the ground that the petitioner would take recourse to his own remedies. Thereafter, the petitioner approached the Hon'ble Supreme Court, vide Writ Petition (Criminal) No.344/2019, which was permitted to be withdrawn with liberty to approach this Court.

6. In the writ petition filed by the wife of the petitioner, being Writ Petition (Criminal) No.2554/2018, an additional affidavit dated 13th December, 2019 was filed by the Joint Secretary of COFEPOSA, in which certain startling revelations were made and flimsy excuses were given for delay in execution of the detention order. The detainee approached this Court by filing Writ Petition (Criminal) No.3538/2019 challenging the

detention order at pre-execution stage and on 19th December, 2019, notice was issued for 24th February, 2020 but the detention order was executed on 4th February, 2020 and the petitioner was sent to Tihar Jail. He was served with grounds of detention and relied upon documents running into about 600 pages on 5th of February, 2020 and remaining relied upon documents were served upon him on 6th February, 2020. A request for supply of certain relied upon documents/material for enabling him to make an effective representation to Government and the Advisory Board was submitted on 20th February, 2020. The Writ Petition (Criminal) No.3538/2019 was rendered infructuous and it was disposed of on 24th February, 2020. The petitioner again approached Hon'ble Supreme Court by filing Writ Petition (Criminal) No.53/2020, seeking directions to allow presence of his counsel during interrogation by Enforcement Directorate (ED) and as the detention order was executed, he also placed additional grounds to challenge the detention order. The said petition was disposed of on 24th February, 2020 to enable the petitioner to file a fresh petition and accordingly the petitioner filed a fresh petition bearing Writ Petition (Criminal) No.88/2020 before the Hon'ble Supreme Court on which notice was issued on 6th March, 2020, returnable after 2 weeks. On 12th March, 2020, the petitioner received a communication from Deputy Secretary, Government of India, informing him that his representation for supply of relied upon documents/material dated 20th February, 2020 was rejected.

7. As per petitioner, his wife also made a representation dated 29th March, 2020 to the High-Powered Committee of this Court praying for release of the petitioner on account of outbreak of COVID-19, but no response was received. Even request of under Section 12 of COFEPOSA Act made by wife of the petitioner for his temporary release on account of

outbreak of COVID-19 was made to the relevant authority but without any positive outcome. The writ petition pending before the Hon'ble Supreme Court was dismissed as withdrawn on 7th April, 2020 with liberty to approach this Court. The representation for temporary release of the petitioner was rejected on 8th April, 2020 and thereafter, the present writ petition has been filed.

8. Notice was issued to the respondents on 13th April, 2020 and the matter was adjourned to 29th April, 2020. Counter affidavit has been filed by the official respondents to which a rejoinder and thereafter a sur-rejoinder were also filed. Written synopses have been filed by both the sides. An application was moved by the petitioner for issuing directions to place on record certain documents which was allowed vide order dated 13th August, 2020. On 1st September, 2020, Union of India and DRI were directed to produce the relevant original files in relation to issuance and execution of detention order dated 30th December, 2015 qua the petitioner for perusal of the Court. The said record was produced during physical hearing on 14th September, 2020 by the officials of the respondents but it was observed that the record is voluminous. Hence, on specific request of the learned Senior Advocate appearing on behalf of the petitioner regarding certain communications as detailed in the order dated 14th September, 2020 were ordered to be handed over to the Court Master of this Court for perusal by this Court. This direction was complied with.

9. In counter affidavit filed on behalf of the respondents, it has been submitted that a case was booked by DRI, Delhi Zone in October, 2014 wherein a large number of LED TVs/Electronic goods, Red Sanders, Vitamin C, Fabric, etc. were seized from the godown/container belonging

to certain persons and during investigation it was found that those goods were smuggled through various ports by the detainee. Son of the detainee, namely Sh. Rahul Goyal, was also found to be accomplice, who used to distribute smuggled goods in the local market and all these godowns were controlled/operated by the said Shri Rahul Goyal, along with the detainee. Repeated summons were issued from November, 2014 to July, 2015 but the detainee neither responded nor joined the investigation. He was arrested by DRI, Kolkata on 23rd July, 2015 and later on bailed out on 6th August, 2015 vide orders of the learned CMM, Kolkata. Detainee was further arrested by officials of DRI, Delhi Zone on 9th August, 2015 and thereafter, he was remanded to judicial custody on 10th August, 2015 by learned CMM, Patiala House Courts, New Delhi. He was released on bail on 23rd September, 2015 on the conditions that he shall not leave the country without the permission of the Court; he shall not induce/threaten the witness or tamper with the evidence; he shall join the investigation as and when required and he shall surrender his passport.

10. It has been further mentioned in the counter affidavit that on the basis of the investigation and evidence on record, a proposal dated 6th October, 2015 for preventive detention of the detainee under COFEPOSA Act, 1974 was forwarded by DRI to CEIB, Ministry of Finance. The Central Screening Committee, after receiving further inputs on the proposal, passed the detention order dated 30th December, 2015 under Section 3(1) of the COFEPOSA Act, 1974 against the detainee and the said order was forwarded to Executing Authority, i.e., Commissioner of Police, Delhi Police and it is evident that there is no delay between the prejudicial activity and passing of the detention order. Thereafter, the petitioner absconded for approximately 4 years and the impugned detention order

was finally executed on 4th February, 2020 and he was sent to Central Jail, Tihar on 5th February, 2020. The grounds of detention with annexures were supplied to the detainee on 5th February, 2020 and 6th February, 2020.

11. As far as the para wise reply on merits is concerned, it has been submitted that after surrender of the detainee before the Court of CMM, Vishakhapatnam, a letter dated 11th September, 2019 was received on 12th September, 2019 by the Detaining Authority from one Mr. Sunny Kanodia, nephew of the detainee, informing about the surrender in a separate case and the petitioner being in judicial custody in Vishakhapatnam Central Jail. The letter was accordingly sent to the Commissioner of Police, Delhi Police with an endorsement to SHO, Prashant Vihar, New Delhi informing about surrender of the detainee and his consequent arrest at Vishakhapatnam. A joint application by respondent No. 3 and Delhi Police was filed on 20th September, 2019 before learned CMM, Vishakhapatnam, seeking permission to execute the original detention order dated 30th December, 2015 on the petitioner in Central Jail, Vishakhapatnam and with a subsequent direction to the Jail Superintendent, Vishakhapatnam to shift the petitioner to Central Jail, Tihar, Delhi. This application was returned by the learned CMM, Vishakhapatnam with the objections that a prisoner transit warrant was to be obtained by the applicants from the concerned Court, how the Court at Vishakhapatnam was competent to transfer the prisoner from Central Jail, Vishakhapatnam to Tihar Jail, New Delhi and how the Court at Vishakhapatnam had jurisdiction as the detainee had filed a Writ Petition No. 1898/2015 before the High Court of Delhi and some of the documents mentioned in the application were not filed along with the application and as to whether the petitioner has been

declared proclaimed offender by learned CMM, Patiala House Courts, New Delhi and the said documents be furnished. These proceedings were informed to the answering respondents and Delhi Police on 26th September, 2019 and thereafter, an application was moved on 1st October, 2019 by respondent No.2 before learned CMM, Patiala House Court, New Delhi with a prayer to direct Jail Superintendent, Vishakhapatnam to produce the detenue before the said Court and accordingly a production warrant was issued against the detenue with direction to produce him on 23rd October, 2019. It was addressed to the officer in charge of Vishakhapatnam, Central Jail. The said order was delivered to the concerned Jailer at Vishakhapatnam on 3rd October, 2019. On 23rd October, 2019, the Delhi Police officials appeared before the Court of learned CMM, Patiala House Courts, New Delhi to execute the detention order but neither the detenue was produced nor any report was submitted by Vishakhapatnam Jail Authorities. Another production warrant was issued on 24th October, 2019 by learned CMM, Patiala House Courts, New Delhi directing the Jailer to produce the detenue on 26th November, 2019 and the said production warrant was duly served upon the Jailer, Central Jail, Vishakhapatnam. In both these production warrants, the Jail Superintendent, Vishakhapatnam was directed to produce the detenue before learned CMM, Patiala House Courts, New Delhi but neither the detenue was produced, nor any report was filed by Vishakhapatnam Central Jail Authorities. Moreover, the Jail Authorities did not inform the Court Authorities at Vishakhapatnam and Patiala House Courts before releasing Shri B.K. Goyal.

12. On 27th November, 2019, learned CMM at Patiala House Courts, New Delhi observed that a reply was sent by Jail Superintendent, Vishakhapatnam that accused had been released from jail on furnishing a bond that he will appear on the date of production before the Court of the learned CMM, Patiala House Courts, New Delhi. A notice was issued to Jail Superintendent, Vishakhapatnam to explain as to why accused was released despite directions and he was directed to appear. Despite many hearings, the Superintendent, Central Prison, Vishakhapatnam did not appear in person before the CMM, Patiala House Courts, New Delhi. On the basis of reply of the Jail Superintendent, Vishakhapatnam, it appeared that the Court was being misled by the Jail Authorities. Moreover, the detainee has not disclosed that he had executed a bond undertaking that he will appear on the date of production i.e. 26.11.2019 before the learned CMM, Patiala House Courts, New Delhi. The detainee did not appear on 26th November, 2019 and as such he has defaulted on the bond furnished by him on 11th November, 2019 at the time of his release from Vishakhapatnam Jail.

13. As per the respondents, the detention order under COFEPOSA Act, 1974 is a prohibitory/preventive order and it remains alive until it is executed upon the detainee. It is submitted that Deputy Commissioner of Police, Rohini District, Delhi informed DRI vide his letter dated 7th October, 2019 that the detention order dated 30th December, 2015 in respect to the detainee was not traceable and it was requested to issue a fresh detention order. In reply, it was informed to Delhi Police on 18th October, 2019 that the original detention order was issued from the office of CEIB and officials of Delhi Police were requested to approach the

COFEPOSA Wing of CEIB in this regard. The COFEPOSA Wing of CEIB informed DRI and Commissioner of Police as well as DCP, Rohini, Delhi that request for issuing a detention order afresh can only be considered after a report/FIR is registered regarding missing of the said detention order with the concerned police station. Vide letter dated 22nd October, 2019, SHO, Prashant Vihar, New Delhi informed the COFEPOSA Wing of CEIB under intimation to DRI that missing report of original detention order dated 30th December, 2015 had been lodged and it was requested to issue a fresh detention order. In response thereto, the COFEPOSA Wing of CEIB vide letter dated 22nd October, 2019 forwarded the scanned photocopy of the original detention order along with instructions to the Executing Authority under intimation to DRI.

14. It is further submitted by respondents that the impugned detention order was passed by Detaining Authority on the basis of facts, evidence and materials available after arriving at subjective satisfaction regarding propensity and potentiality of the petitioner to engage further in prejudicial activities and his previous involvement only shows the antecedent of the detainee. The statement made by respondent No.3 regarding no coercive actions to be taken has no relevance to the independent proceedings vide order dated 30th December, 2015 for preventive detention being undertaken by the Ministry under COFEPOSA Act, 1974. Reference has been made to order dated 22nd August, 2016 in Writ Petition No. 548/2016 where it was noted that it was open to the respondents to take all measures as per law to execute the detention order under COFEPOSA Act. So, in view of the above, the statement dated 11th January, 2016 has no bearing on the impugned detention order. The Customs Act, 1962 is a special Act having

provisions with regard to summons, search, seizure and arrest. Registration of FIR is not necessary before arrest under the Customs Act, 1962. It has been submitted that the order of detention and the grounds for detention have been issued strictly in terms of provisions of Section 3 of COFEPOSA Act, 1974 and after due application of mind based on the material facts available on record and the propensity and potentiality of the petitioner to indulge in such activities. All material facts were placed before the Detaining Authority, which was considered while issuing the impugned detention order against the petitioner. The representation dated 20th February, 2020 was disposed of and detainee was informed on 6th March, 2020 accordingly.

15. Counter Affidavit of respondents further asserts that the Hon'ble Supreme Court in *suo moto* order passed in W.P.(C) No.01/2020 dated 23rd March, 2020 directed for constitution of a High Powered Committee to determine which class of criminals can be released on parole or on interim bail and the minutes of the said committee constituted in Delhi demonstrate that it was resolved that the undertrial prisoners in cases investigated by CBI/DA/NIA/Special Cell/ Police and terror related cases shall not be considered. The jail authorities have taken considerable measures for protection of health of the prisoners. Since, the detainee has been held under the COFEPOSA Act, he does not fall in the category of the UTPs to be released on interim bail as per the recommendations of the High Power Committee. The application for interim release under Section 12 of COFEPOSA Act, 1974 was rejected by the Competent Authority as the detainee is a habitual offender and he does not fall in any of the criteria for consideration of the interim bail. The detainee was always aware of the

impugned order. However, even after lapse of more than 3½ years, he never presented himself before the Detaining Authority, Sponsoring Authority or Executing Authority. He surrendered before learned CMM, Vishakhapatnam in a different case rather than surrendering before the answering respondents and even after his release from the Vishakhapatnam Jail, he did not surrender before the respondents but further absconded. It has been denied that DRI received an intimation about surrender of the detainee before the Court of Vishakhapatnam. The application of the detainee for closure of proceedings initiated under Section 7 of the COFEPOSA Act was rejected by learned CMM, Patiala House Courts, New Delhi on 23rd September, 2019 on the ground that he was already declared a PO and his mere arrest under provisions of IPC is no ground for recalling of proceedings under Section 7 of COFEPOSA Act.

16. As per respondents, in Writ Petition (Criminal) No.40/2019 filed before the Hon'ble Supreme Court, it was suppressed that the detainee and his son were declared as proclaimed offenders by the Court of learned CMM, Patiala House Courts, New Delhi. An affidavit dated 31st January, 2019 was filed with Notarial Services Attorney in Thailand and as such the petitioner had defaulted the bail condition under which bail was granted to him on 23rd September, 2015 as he had neither informed the Court nor the Investigating Officer. In Writ Petition (Criminal) No.2554/2018, the Hon'ble High Court vide order dated 22nd November, 2019 directed the Joint Secretary, Ministry of Finance to file a personal affidavit explaining the reason for not serving the detention order and an affidavit to this effect was taken on record on 16th December, 2019 and the said writ petition was dismissed as not pressed. The representation dated 1st April, 2020 was

rejected on 8th April, 2020 after due consideration and application was filed keeping in view the fact that detainee was held under COFEPOSA Act and does not fall in any of the criteria for consideration of interim bail. In past, he had defaulted on the conditional bail granted to him on 23rd September, 2015 and was absconding for about 4 years and he had also defaulted on the bond for appearing before learned CMM, Patiala House Courts, New Delhi on 26th November, 2019 and as such the application for temporary release under Section 12 of the COFEPOSA Act filed through the wife of the detainee was rejected.

17. The stand of the respondents is that the Deputy Commissioner of Police, Rohini, Delhi informed the respondents vide his letter dated 3rd March, 2016 that several visits were made at the address of the petitioner in Rohini to execute the detention order but no one could be found. So, detention orders could not be executed and sent back unexecuted. The DRI returned the unexecuted detention orders to Commissioner of Police, Delhi Police requesting to make continuous efforts till the orders are executed by them. Several reminders were also sent to Delhi Police. Sincere efforts were made for execution of the detention order but the detainee had absconded or he was concealing himself so that the detention order could not be executed. The Ministry of Finance issued an order dated 27th April, 2016, published in the Gazette of India on 28th April, 2016 directing the petitioner to appear before Commissioner of Police, New Delhi within 7 days of the said publication. The said order was also given wide publicity through newspapers but the petitioner did not surrender and remained absconding. The petitioner had executed a bond at the time of his release from Central Jail,

Vishakhapatnam undertaking to be present before learned CMM, Patiala House Courts, New Delhi on 26th November, 2019 but he defaulted the bond and did not appear. By no stretch of imagination, it can be said that the detenue has been unable to make an effective representation to the Advisory Board. It is not his case that the detention order served on him is not the correct order, and therefore, he was unable to make effective representation. The petitioner is a habitual offender and, in the past also COFEPOSA proceedings were initiated against him 3 times in the years 2004, 2007 and 2009. As per his statement dated 23rd July, 2015 recorded by DRI, Kolkata, the petitioner had remained in jail for about 8-9 months under COFEPOSA proceedings in the year 2004-05. He was again booked under COFEPOSA in 2007 and remained in jail for about 5 months. Further he was booked under COFEPOSA in 2009 and remained in jail for 6-7 months.

18. It is stated by respondents that mere reference to previous detention orders could not vitiate a fresh detention order. The present detention order is based on the facts which came to the light subsequently and it is not based on the earlier detention orders, although their reference was given. The order of detention and the grounds for detention have been issued strictly as prescribed under Section 3 of COFEPOSA Act by due application of mind based on the material facts available on records and after due consideration thereof, keeping in view the circumstances of the case, the nature of activities, the material collected, the propensity and potentiality of the petitioner to indulge in such activities and subjective satisfaction of the Detaining Authority is elaborated in the grounds of detention. The petitioner did not cooperate with DRI during investigation by evading appearance even after issuance of repeated summons. There is

no irregularity and infirmity in the grounds of detention. The petitioner was declared as a proclaimed offender as he was absconding for a period of 4 years. The detenue was served with all the relied upon documents in respect for grounds of detention as prescribed under law. The present detention does not have any relevance with detention of the detenue in the past cases and the present detention order is based on subjective satisfaction of the Detaining Authority. It has been denied that Sponsoring Authority had suppressed the material facts and vital documents from the Detaining Authority by not producing some additional documents. All essential facts along with the documents have been duly received by the Detaining Authority and the grounds for detention with relied upon documents have been strictly issued as per the provisions of COFEPOSA Act. The documents related to previous activities are not the relied upon documents in the grounds of detention in the present case. The detention order dated 30th December, 2015 demonstrates the role of detenue in the smuggling syndicate and satisfaction of the Detaining Authority was recorded as to detenue's propensity and likelihood of indulging in the smuggling activity.

19. The petitioner has filed a detailed rejoinder to the counter affidavit in which the stand of the petitioner has been reiterated that there was a hopeless inexplicable delay in execution of the detention order and original order of detention is not traceable. Next ground reiterated is delay in passing the detention order. The petitioner has further pointed out that no prosecution has been lodged against him till date in this case and in the detention order there is a reference to his past conduct in earlier cases and previous detention orders. As per the petitioner, the non-placement of vital

documents by the Sponsoring Authority before the Detaining Authority and/or non-consideration thereof, by the Detaining Authority and non-supply of the said vital documents to the detainee renders his detention as vitiated. It has been also pointed out that certain mis-conceived arguments were made by DRI during the hearing before the Hon'ble Advisory Board in order to create undue prejudice. There was an oral undertaking given by DRI before this Court of not taking any coercive action under the Customs Act, 1962 even before passing of the detention order. The conduct of DRI is deplorable and even this Court was not informed that the detention order was passed against the detainee. It is submitted that alleged past absconsions of the detainee cannot obviate the respondents to justify the legality of the detention order when it was passed and the lapses in execution thereof. The petitioner has also pointed out towards present circumstances on account of COVID-19 pandemic and medical condition of the detainee.

20. In response thereto, permission was sought by the respondents and the same was granted to place on record a sur-rejoinder in which stand of the respondents has been reiterated. It has been pointed out that although production warrants were issued by learned CMM, Patiala House Courts, New Delhi, which were delivered to Superintendent/Jailer, Vishakhapatnam who failed to ensure the presence of the detainee before the Court at New Delhi. The statement dated 11th January, 2016 given by the counsel for DRI could not have been considered in respect of proceedings under the COFEPOSA Act as in the entire writ petition there was no reference of the COFEPOSA Act. In the order dated 22nd August, 2016 in Writ Petition (Criminal) No.548/2016, respondents were given liberty to take all measures as per law to execute the detention order under

COFEPOSA Act. It has been submitted that the prosecution under Customs Act, 1962 has nothing to do with preventive detention and department is yet to make enquiries under Section 108 of the Customs Act, 1962 from Rahul Goyal, son of the detainee, who has been declared as proclaimed offender and he has not joined the enquiry till date. The petitioner was also declared absconder by the Competent Court on 3rd January, 2017, who had also fled from India without informing and he had been indulging in committing economic offences despite knowing very well that there was a detention order against him and Enforcement Director is already investigating into the matter.

21. An application was moved on behalf of the petitioner to call upon the respondents to produce certain documents and in response thereto, certain documents have been produced. The personal bond furnished by the petitioner before Jailer, Central Prison, Vishakhapatnam was also produced on record, which is dated 11th November, 2019, the day when the detainee was released from Central Jail, Vishakhapatnam. The said personal bond is reproduced hereunder:

“PERSONAL BOND AND BAIL AFTER ARREST
UNDER A PRODUCTION WARRANT DATED:
26.11.2019 IN THE COURT OF HON’BLE CHIEF
METROPOLITAN MAGISTRATE, PATIALA HOUSE
COURT, NEW DELHI

CASE No. Union of India Vs. Bhimendra Kumar Goyal
U/Sec 7 of COFEPOSA Act.

*I Bhimendra Kumar Goyal @ Munna Goyal @ B.K.
Goyal @ V.K. Goyal S/o (L) Babulal, Aged: 59 years being
required to surrendered before the Hon’ble Chief
Metropolitan Magistrate, Patiala House Court, New Delhi
under a Warrant issued do hereby bind myself to attend*

before the Hon'ble Chief Metropolitan Magistrate, Patiala House Court, New Delhi as and when required by the orders of the Hon'ble Court otherwise forfeit to the Government a sum of Rs. 20,000/- (Rupees Twenty Thousand Only) in case of my making default herein. Further, if I fail to attend before the Hon'ble court as and when required by the judicial authority, I bind myself to obey the consequences of the Legal Authority."

22. The copies of the communications the Prison Department, Government of Andhra Pradesh, copies of production warrants, official memorandum of the Court of Chief Metropolitan Magistrate at Vishakhapatnam and the letters written by DRI to the Jail Superintendent, Vishakhapatnam have been also produced on record.

23. Lengthy arguments were addressed by both the sides and the written submissions were submitted. The learned senior counsel Mr. Vikram Chaudhary, appearing for the detenu has submitted that there had been a grave lapse in execution of the detention order from 11th September, 2019 till 11th November, 2019 and moreover, the original order of detention was not traceable as the same was lost since March, 2016. He submitted that petitioner had voluntarily surrendered before CMM, Vishakhapatnam on 9th September, 2019 and on 11th September, 2019, Detaining Authority was informed about his surrender at Vishakhapatnam with specific particulars. On 12th September, an application was moved before CMM for closure of proceedings under Section 7 of COFEPOSA Act. **On service of the said application on DRI, it came in the notice of the Sponsoring Agency.** On 12th September 2020 itself, the Detaining Authority had informed DRI to execute the detention order. On 18th September, 2019 information was sent

to Commissioner of Police regarding surrender by the detainee. On 20th September, 2019, joint application was moved by DRI and Police before learned CMM, Vishakhapatnam, praying for execution of the original detention order dated 30th December, 2015 but the said application was returned on the same date with certain objections and certain documents mentioned in this application were not filed and it was desired that prisoner transit warrant be obtained from the concerned Court. On 23rd September, 2019, the application of the detainee for closure of Section 7 COFEPOSA proceedings was dismissed by learned CMM, Patiala House Courts, New Delhi. On 26th September, 2019 DRI informed DA and Police about the order of Vishakhapatnam Court and on the application of Sponsoring Authority, learned CMM, Patiala House Courts, New Delhi issued production warrant against the detainee for 23rd October, 2019. The said warrants were delivered to Jailer, Vishakhapatnam on 3rd October, 2019. Immediately, thereafter, on 7th October, 2019, ACP, Rohini informed DRI that original detention order was lost and not traceable and he requested for issuance of fresh detention order. On 18th October, 2019, DRI asked DCP, Delhi to approach the office of CEIB for issuance of fresh detention order. On 21st October, 2019 DRI endorsed the communication with Delhi Police to CEIB, who in turn informed DRI with intimation to CP and DCP to lodge an FIR/missing report of the detention order. This report was accordingly lodged by SHO, Prashant Vihar, New Delhi on 22nd October, 2019 and he informed CEIB in this regard. SHO further requested for issuance of a fresh detention order. On the same date, COFEPOSA Wing of CEIB forwarded scanned photocopies of the original detention order along with copy of instructions to the Police and Jail Authorities. On the next date, i.e. 23rd October, 2019, CMM, Patiala House Courts, New Delhi

issued fresh production warrants of the detainee for 26th November, 2019 from Vishakhapatnam Central Jail, which was delivered on 2nd November, 2019. As per the learned counsel for the petitioner, DRI was in knowledge for the proceedings of his bail application before the Vishakhapatnam Court, where his application for bail under Section 167(2) Cr.P.C. was pending. Detenue was admitted to default bail on 11th November, 2019. Superintendent of Jail, Vishakhapatnam had contacted the Intelligence Inspector, DRI, Vishakhapatnam on 11th November 2019 over phone and discussed the release of detainee. No officer of DA, DRI or Police was present to execute the detention order. However, detainee had executed a personal bond to appear before CMM, Patiala House Courts, New Delhi as and when required. The detainee took various legal steps to approach different Courts, however, on 4th February, 2020, scanned photocopy of the detention order was executed and detainee was sent to Tihar Jail. Mr. Vikram Chaudhary learned Senior Advocate has submitted that the Detaining Authority was aware that the petitioner had surrendered on 11th September, 2019 itself. However, after 8 days, a sham application was moved before the Court of CMM, Vishakhapatnam, which was an eyewash, but on that date no one was in possession of the original detention order. The application was returned on 20th September, 2019 itself, raising various objections but nothing was done to meet the objections of the CMM, Vishakhapatnam even after procurement of production warrants from New Delhi Court. After about 27 days from 11th September, 2019, DCP Rohini informed that detention order was not traceable and he requested for issuance of fresh detention order. In the meantime, production warrants were procured from the Court of learned CMM, Patiala House Courts, New Delhi on 1st October, 2019. Missing report in

respect of the original detention order was registered on 22nd October, 2019 and the scanned photocopy came into existence only on the said date as forwarded by the COFEPOSA Wing of CEIB. Even after issuance of fresh production warrants, no team went for its execution and no one had approached the Court at Vishakhapatnam. It has not been brought on record by the respondents as to when, where and how was the original detention order was lost and became untraceable. No attempt was made to execute the detention order but on 23rd September, 2019, application for recall of proclamation proceedings was being opposed before the concerned Court.

24. It is further submitted by Mr. Chaudhary that a Division Bench of this Court in W.P.(Criminal) No.2554/2018 called upon the Detaining Authority to explain the lapses in delay in execution of the detention order and, thereafter, immediately an application was moved on 26th November, 2019 before learned CMM, New Delhi to take action against the jail authorities at Vishakhapatnam, which is merely a coverup exercise. It has been submitted that lethargy of the respondents in executing the detention order is violative of their own instructions. The detention order was not executed as a warrant under Section 4 of the COFEPOSA Act and relevant provisions of applicable laws were not complied with.

25. In response to this argument, it has been submitted on behalf of the respondents that prior to the surrender before the learned CMM, Vishakhapatnam on 9th September 2019, the petitioner had been absconding and evading arrest for more than 4 years and consequently, the impugned detention order could only be executed on 4th February, 2020. It

has been submitted that all necessary steps were taken to execute the impugned detention order after the respondents came to know about surrender of the detainee in Vishakhapatnam. An application in this regard was filed on 20th September, 2019 seeking permission to execute the impugned detention order. However, certain objections were raised by learned CMM, Vishakhapatnam and respondents were directed to obtain production warrants from the appropriate Court in New Delhi. An application was accordingly moved before learned CMM, Patiala House Courts, New Delhi. Vide order dated 1st October, 2019, a production warrant against the detainee was issued for 23rd October, 2019, but he was not produced despite service of the production warrant on the Jailer of the Central Prison at Vishakhapatnam. Fresh production warrant was issued on 23rd October, 2019, which was delivered to Jailer, Central Prison, Vishakhapatnam on 2nd November, 2019. The date fixed for production of detainee was 26th November, 2019 but, in the meantime, the petitioner was released on default bail on 11th November, 2019. As per the respondents, it is the admitted position that the petitioner was not only aware of the production warrant for 26th November, 2019 but he had also executed a bond before Superintendent of Central Jail, Vishakhapatnam undertaking to produce himself before the learned CMM, Patiala House Courts, New Delhi on 26th November, 2019. But the petitioner failed to appear before the concerned Court on 26th November, 2019. The respondents had taken steps against the Jailer, Central Prison, Vishakhapatnam before the concerned Court. They have taken all possible steps in accordance with law without any delay and pursued the matter with utmost diligence to serve the petitioner with detention order. These steps offer reasonable explanation of delay in serving the detention order. The argument that the

application before CMM, Vishakhapatnam mentioned about the original detention order which was already lost, is felicitous and it does not take away the fact that all efforts were made to serve the detention order. Since, the petitioner was in custody, the only mode to serve the detention order and to obtain custody was through the process of Court.

26. Ld. Counsel for respondents has further submitted that the petitioner was aware of the detention order for the last more than 5 years and all efforts were being made to execute the detention order but he did not bother to surrender despite giving a bond in this regard to the Jail Superintendent, Vishakhapatnam and he cannot be allowed to take advantage of his own wrong. A notification under Section 7 of the COFEPOSA Act was issued on 27th April, 2016 and detenu was declared a proclaimed offender on 3rd January, 2017. The petitioner was absconding during this period and indulging in illegal activities for which FIR No.181/2017 dated 11th May, 2017 was registered at Vishakhapatnam. The petitioner employed all dilatory tactics to avoid execution of the impugned detention order. He was very well aware of the existence of the impugned detention order as he had challenged it three times before this Court at pre-execution stage but he chose not to surrender in Delhi but before learned CMM, Vishakhapatnam. Prompt action was taken by the respondents to execute the impugned detention order. An order was obtained by the petitioner at the back of the learned counsel of the answering respondents on 22nd November, 2019 for filing of affidavit regarding steps taken to execute detention order. However, the affidavit was duly filed explaining the steps being taken and explaining as to how the submissions made on behalf of the petitioner were factually incorrect. All steps have been taken

in accordance with the provisions of the Act. The argument as to how and why the police returned the order to the Detaining Authority unexecuted and how the detention order was sent back to DRI and DRI in turn sent back to police, are not relevant for deciding the execution of the detention order.

27. It is an admitted fact that the detention order is dated 30th December, 2015. The petitioner was aware about the steps being taken to issue the detention order even before the stage when the said order was issued. The submission of proposal dated 6th October, 2015 by DRI before the Detaining Authority was well within his knowledge and through his wife, he approached this Court by filing Writ Petition (Criminal) No.3106/2015 for quashing of the said proposal of detention. The said petition was disposed of as having been filed at pre-mature stage. Thereafter, again the petitioner had approached this Court for quashing of the detention order at pre-execution stage but he never took any steps to surrender before the respondents or the Court concerned in Delhi. It is pertinent to mention here that earlier the detenu was arrested by DRI, Kolkata on 23rd July, 2015 in a different case. He was granted bail on 5th August, 2015 and subsequently, he was arrested by respondent No. 3 on 9th August, 2015 and he was granted bail on 23rd September, 2015 on certain conditions, one of which was that he shall not leave the country. It has not been denied that the petitioner did not comply with the said condition and as a consequence thereto, he was declared a proclaimed offender on 3rd January, 2017. In the meantime, an FIR bearing No. 181/2017 dated 11th May, 2017 was registered at Vishakhapatnam city against the petitioner and others for fabricating documents, for making foreign outward remittances to various

foreign companies in Hong Kong, China and Singapore. For the next more than 2 years, the petitioner did not surrender either before the Delhi Court or before the Vishakhapatnam Court. However, out of the blue on 9th September, 2019, the petitioner surrendered before the Court of learned CMM, Vishakhapatnam from where he was sent to judicial custody to be detained at Central Jail, Vishakhapatnam. It is not denied that the intimation regarding the surrender was received by the Detaining Authority on 11th September, 2019/12th September, 2019. Immediately thereafter, the respondents started taking steps for execution of the detention order. A team reached Vishakhapatnam and moved an application on 20th September, 2019 seeking permission to execute the detention order but the said application was returned on the same date with the following objections:

“(a) The Petitioner has to obtain Prisoner Transit (PT) Warrant from the courts where the accused is charged with other offences if any;

(b) How can this court competent to transit the accused from Central Jail, Vishakhapatnam to Tihar Jail, under COFEPOSA Act, 1974;

(c) It may also be mentioned in para-5 of the application filed by the petitioner that Bhimendra Kumar Goyal had filed a writ petition No. 1898/2015 before the Hon'ble High Court of New Delhi which is going to be listed on 04.11.2019 without any interim order in the said writ petition. How can this court have jurisdiction to entertain this petition;

(d) Some of the documents mentioned in the petition are not filed along with this petition for perusal of the entire record whether the petitioner has obtained any orders of the Learned CMM, New Delhi, with regard to declaring the accused proclaimed offender, as mentioned in para 3 of the petition shall be furnished.”

28. On 26th September, 2019, i.e. in next 6 days, DRI informed the Detaining Authority and Police about the Vishakhapatnam Court and within next 5 days, i.e. on 1st October, 2019, DRI moved an application before CMM for issuance of production warrants, which were accordingly issued against the detinue for 23rd October, 2019. These production warrants were promptly delivered to Jailer at Vishakhapatnam on 3rd October, 2019 but the detinue was not produced before the Court of learned CMM, Patiala House Courts, New Delhi on 23rd October, 2019 by the Superintendent of Central Jail, Vishakhapatnam. On the said date, the CMM, Patiala House Courts, New Delhi again issued fresh production warrants for producing the detinue on 26th November, 2019. The said production warrant was delivered to the Jail Superintendent, Central Prison, Vishakhapatnam on 2nd November, 2019. However, the petitioner was admitted to default bail on 11th November, 2019 as no charge sheet was filed against him at Vishakhapatnam within the prescribed 60 days period in terms of Section 167(2) Cr.P.C. The grudge of the petitioner is that no Officer of DRI or Delhi Police was present at the jail gate to serve him with the detention order. However, there is no explanation of the petitioner as to why he failed to appear before the Court of CMM, Patiala House Courts, New Delhi on 26th November, 2019 despite executing a personal bond giving undertaking to do so. Copy of the said personal bond was filed on record by respondents and the same has been reproduced in the preceding paragraphs. During arguments, a lame excuse was offered by the learned Senior Advocate appearing for the petitioner, when specifically asked by this Court as to why the petitioner did not appear before the Court of learned CMM, Patiala House Courts, New Delhi on 26th November, 2019, by submitting that the advocate for the petitioner was present in

Court on 26th November, 2019. When attention of the learned Senior Advocate for the petitioner was drawn to the fact that it is not a summary or a summons case where accused is at liberty to appear in person or through counsel, rather the Court of learned CMM, Patiala House Courts, New Delhi issued a production warrant and in terms of the undertaking given by the petitioner on 11th November, 2019 in the form of personal bond executed before Jail Superintendent, Vishakhapatnam, he had to produce himself in person, so as to enable the authorities to serve the detention order and for the Court to pass an order directing his detention in jail, no specific reply was given. The petitioner himself is responsible for delay in execution of the detention order dated 30th December, 2015 throughout the period of more than 5 years; he was well aware about the passing of the detention order and he unsuccessfully knocked at the doors of various Courts to get the said detention order quashed and when he failed to do so, instead of surrendering before the respondents or the concerned Court in New Delhi, he chose to surrender before the Court in Vishakhapatnam. In our view, immediately on coming to know about surrender of the petitioner in Vishakhapatnam, the respondents took all reasonable steps to ensure that the detention order is served upon the petitioner and in consequence thereto, he is detained in prison. It was not as if the respondents were sitting idle during the period from 11th September, 2019 to 4th February, 2020, when they were finally able to serve the detention order on the petitioner. In our considered view, the respondents had taken all possible steps to execute the detention order during this period.

29. When on 20th September, 2019, objections were raised by the learned CMM, Vishakhapatnam to granting permission to execute the

detention order, the respondents approached the CMM Court in New Delhi, which issued production warrants for 23rd October, 2019 but the Superintendent of Jail, Vishakhapatnam failed to produce the petitioner before the Court of learned CMM, Patiala House Courts, New Delhi and accordingly another warrant of production was issued for 26th November, 2019. As mentioned earlier, the petitioner was released from jail on 11th November, 2019 and he failed to honor his undertaking to appear before the Court of learned CMM on 26th November, 2019. Hence, the blame lies at the door of the petitioner for causing all possible delay in execution of the detention order and this burden can not be shifted to the respondents.

30. In support of the main ground taken by learned senior Advocate appearing for the petitioner that there was an inordinate delay in execution of the detention order, he has relied upon the judgment of Hon'ble Supreme Court, in the matter of ***Saeed Zakir Hussain Malik v. State of Maharashtra & Ors. (2012) 8 SCC 233*** wherein it was held that if there is unreasonable delay in execution of the detention order, the same vitiates the order of detention. The Detaining Authority must explain satisfactorily the inordinate delay in executing the detention order, otherwise, the subjective satisfaction gets vitiated. In ***Saud Nihal Siddiqui v. Union of India & Anr. 2011 SCC Online Del 1128***, it was held that where a detention order served after a delay of 10 months and 10 days but there was no explanation for unreasonable delay; under those circumstances, the detention order was set aside. In ***A. Mohammed Farook v. Joint Secretary to GOI (2000) 2 SCC 360***, it was noted that where there was a delay of 40 days in execution of the detention order. Although the detenue was present in the Court of petitioner Chief Metropolitan Magistrate on 25th February,

1999 as well as on 25th March, 1999 but neither the Detaining Authority nor the Executing Agency nor the Sponsoring Authority were diligent enough to serve the detention order upon the detainee at the earliest and no report was filed by the Executing Agency to show the steps taken to serve the detention order and no satisfactory explanation was coming forward. Under those circumstances, the subjective satisfaction of the Detaining Authority in issuing the detention order was vitiated by reason of non-execution of the detention order within a reasonable time.

31. On the other hand, learned counsel appearing for the respondents, has relied upon the judgment of the full bench of the Hon'ble Supreme Court in the matter of ***Subhash Popatlal Dave v. Union of India & Anr. (2014)1 SCC 280*** wherein it was held that the detention order cannot be quashed merely because there is a long delay in execution of detention order. Although, preventive detention order is not punitive and in case of long delay, a fresh application of mind by the Detaining Authority is normally required as the live proximate link is snapped due to such delay but where the delay is adequately explained and is result of the conduct of the proposed detainees in evading arrest, the detention order cannot be quashed. Further reliance has been placed by learned counsel for the respondent on the judgment titled ***Licil Antony v. State of Kerala (2014) 11 SCC 326*** in which the Hon'ble Supreme Court has again held that where the delay has been explained, the detention order cannot be quashed on the ground of delay if the live link between prejudicial activity and order of detention is not snapped due to delay in service of the detention order. Learned counsel for the respondent has also relied upon the judgment in the matter of ***T.A. Abdul Rehman v. State of Kerala (1989) 4 SCC 741***.

Here again, the Hon'ble Supreme Court has held that the non-explanation of the delay throws considerable doubt on the genuineness of the subjective satisfaction of the Detaining Authority vitiating the validity of the order of detention but no hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. However, when there is undue and long delay, the Court has to scrutinize whether the Detaining Authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation. In the present case, in our view, since the detainee himself had avoided the service of the detention order and he was not traceable during the relevant period, and after securing the bail from the Court of the learned CMM, Patiala House Courts, New Delhi and in violation of the conditions set therein, the detainee had left the country for considerable period and he continued to indulge in the unlawful activities resulting in registration of another case at Vishakhapatnam and the act of his surrendering before the Court at Vishakhapatnam instead of surrendering before the concerned Authorities or before learned CMM, Patiala House Courts, New Delhi, where the detention order was to be executed, clearly shows that the detainee himself is responsible for causing considerable delay in execution of the detention order, although he was well aware of the issuance of the said order and in the meantime he had thrice knocked at the doors of the Courts for getting the said detention order quashed. Moreover, despite giving undertaking before the Jail Superintendent on 11th November, 2019 to appear before the Court of learned CMM, Patiala House Courts, New Delhi, the detainee intentionally avoided the service of the detention order and did not present himself before the Court of learned CMM, Patiala House Courts, New

Delhi, which Court had issued a production warrant against him and prior thereto, he was declared a proclaimed offender. The Hon'ble High Court had directed the respondents to file a detailed affidavit explaining the delay in execution of the detention order and accordingly a detailed affidavit was filed and taken on record by the Hon'ble High Court in a pending writ. So, in our view, the delay in execution of the detention order has been satisfactorily explained by the respondents and the said detention order is not liable to be quashed on this ground.

32. The next ground taken by the petitioner, in support of his request to quash the detention order, is that the original detention order was lost and the same is not traceable and as such his detention is not legal as the said detention order was to be served as a Warrant of Arrest as per Section 70 of the Cr.P.C. In our view, mere loss of the original detention order cannot be a ground to quash the same as the scanned photocopy of the warrant was made available to the Executing Agency being Delhi Police as soon as a missing report in this regard was lodged. It is to be noted here that even in Court cases where either the original files or specific order sheets are lost or become non traceable, the record is always re-constructed. When the Court record or the order sheets can be re-constructed on the basis of its copies, there is no bar in executing the scanned photocopy of the original detention order, which was not traceable or lost in transit among the different agencies and a missing report in this regard is made. Learned Senior Advocate for petitioner has relied upon a judgment titled ***Pangir v. State 1960 SCC Online Raj. 240*** in which it was held that where the seal of the Magistrate was absent on the warrant, the said warrant of arrest is illegal. This judgment is not applicable to the facts of the case. It is

nowhere the case of the petitioner that the detention order was not bearing the requisite signature or seal of the Detaining Authority. Rather, the case of the petitioner is that the original detention order was lost and he could not have been served with a scanned photocopy of the detention order. As mentioned earlier, there are instances where either the Court files or certain order sheets of the Court might have got misplaced and under those circumstances, even the Court records are re-constructed on the basis of photocopies. Similarly, in the present case, when it was reported along with a missing report that the original detention order was not traceable, the Detaining Authority had issued a scanned photocopy of the said order to the Executing Agency which had executed the said detention order and it cannot be a case that once the original detention order is lost, the detainee cannot be detained.

33. Learned senior Advocate for the petitioner has further argued that repeated reliance was placed upon the previous detention orders and the said reliance has vitiated the present detention order dated 30th December, 2015. In this regard, reliance has been placed upon 2 petitions filed by the wife of the detainee, titled *Shashi Goyal v. Union of India & Ors.* 2008 (101) DRJ 696 (DB) and *Shashi Goyal v. Union of India* being SLP (Crl.) No. 1792/2008 dated 11th March, 2008 which was converted into Criminal Appeal No. 645/2009, the same being disposed of on 23rd January, 2018. Learned counsel for the respondent has submitted that there is no dispute to the legal position that if a detention order is based upon earlier detention orders, the same is liable to be quashed. However, a detention order can always be issued on fresh grounds, which was done in this case and mere reference to certain past facts would not make the said new detention order

an illegal one and the present impugned detention order has been issued on fresh facts and grounds. We agree with the submission made on behalf of the learned counsel for the respondents that the impugned detention order dated 30th December, 2015, if read along with the grounds of detention as a whole, is based upon new facts and circumstances, although, the fact regarding earlier detention orders has been also mentioned in it but the present detention order is not based upon the earlier detention orders. Hence, the present detention order is not liable to be quashed.

34. As per the petitioner, there is a blatant malice in issuance of the detention order. On the other hand, the submission of the learned counsel for the respondents is that the Detaining Authority has considered all the facts before passing the detention order and had carefully considered the facts and circumstances of the case, the nature of activities, the material collected, the propensity and potentiality of the petitioner to indulge in such activities and after his subjective satisfaction, the present detention order was issued as the Detaining Authority was convinced, keeping in view the magnitude of offences committed by the detainee with utter disregard to the law of land. In this regard, learned Senior Advocate for the petitioner has relied upon the judgment dated *Sama Aruna v. State of Telangana (2018) 12 SCC 150* wherein it was held that if the exercise of discretion was made for improper purpose and the subjective satisfaction was arrived on the basis of irrelevant or extraneous facts in utter disregard to purpose and procedure of preventive detention law, under those circumstances, the Court has duty to enquire whether the decision of the Authority is based on the relevant materials laid down by the statute. Reliance has been also placed on the judgment in

KamlaKanyalalKhusalini v. State of Maharashtra(1981) 1 SCC 748, wherein it was held that all the necessary safeguards laid down by the Constitution under Article 21 and Article 22(5) should be complied with fully and strictly and any departure from any of the safeguards would make order of detention as void. The procedure has to be just and reasonable and a real and meaningful opportunity has to be granted to the detenu to explain his case to the Detaining Authority in his representation. On the other hand, Learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the matter of ***Radhakrishnan Prabhakaran v. State of Tamil Nadu (2000) 9 SCC 170*** in support of his contention that it is not for the Court to substitute its satisfaction to that of the Detaining Authority but only a scrutiny is to be made to ascertain whether the Detaining Authority had really arrived at the satisfaction that the detenu has to be detained in public interest. Similar reliance has been placed on the judgment of Hon'ble Supreme Court in the matter of ***Dimple Happy Dhakad v. Union of India 2019 SCC Online SC 875***. In our view, there was sufficient material before the Detaining Authority submitted by the Sponsoring Authority and the Detaining Authority had applied its mind, and thereafter, the detention order dated 30th December, 2015 was passed and the subjective satisfaction of the Detaining Authority is paramount and this Court cannot enter that field and scrutinize each and every document to reach at its own subjective satisfaction. The basic criteria laid down by the above judgments, that the material placed before the Detaining Authority should be sufficient and the Detaining Authority ought to have scrutinized the same to reach a reasonable conclusion by due application of mind, so as to find grounds for issuing the preventive detention order stands satisfied in the present case and we do not find any

blatant malice in issuance of the subject detention order dated 30th December, 2015.

35. The next ground to challenge the impugned detention order is that there has been a long delay of 14 months in passing the detention order. In this regard, learned Senior Advocate Shri Vikram Chaudhary, appearing for the petitioner, has relied upon a judgment in the matter of ***Rajinder Arora v. Union of India (2006)4 SCC 796***, wherein it was held that if there is a long delay of about 10 months from the date of the raid to issuance of the detention order but there was no explanation for such long delay, that will result in quashing of the detention order. On the other hand, learned counsel for the respondents has submitted that the delay in issuance of the detention order was duly explained and it is not a case where the test mentioned in the matter of ***Addl. Secretary v. Alka Subhash Gadia(1992) Suppl. (1) SCC 496*** will be applicable as reiterated in the matter of ***Rajinder Arora*** (supra). The authorities have acted on the basis of the material placed before them and right from the time of search and seizure operations in October, 2014 onwards, steps were taken to record the statements of the concerned persons under Section 108 of the Customs Act from October to March, 2015. Show-cause notice was issued to the detainee on 2nd April, 2015 and in response thereto, he had deposited certain amounts in June, 2015. The petitioner was arrested by the officials of DRI, Kolkata on 23rd July, 2015 from where he was bailed out on 5th August, 2015. He was again arrested on 9th August, 2015 by the officials of DRI, Delhi Zone and after collection of the entire material and after going through the statements and documents available with DRI, the proposal for his detention was forwarded by DRI on 6th October, 2016. The said

proposal was considered by the Central Screening Committee on 27th October, 2015, which was again held on 5th November, 2015 and certain inputs were called for from DRI. The said inputs were supplied and accordingly impugned detention order dated 30th December, 2015 was passed. It is pertinent to mention here that the link between the illegal and detrimental activities of the detainee and the detention order did not break at that stage as he never deterred from indulging in the said activities even after passing of the said detention order and in being full knowledge of the same. Hence, the live link remains always active and the respondents have been able to satisfactorily explain that there was no inordinate delay in passing of the detention order which might have resulted in snapping the link between the illegal and detrimental activities of the detainee and the detention order.

36. The next ground agitated on behalf of the petitioner is that there is variance in the subjective satisfaction of the Detaining Authority and reliance has been placed on the judgment of *Vijay Kumar Dharna v. Union of India (1990) 1 SCC 606* wherein it was held that if the variance exist between the statements in detention order and grounds for detention as also between the English version and the regional language version of the order and the grounds, which caused confusion in the mind of the detainee and he was unable to make effective representation, resulting in denial of his right under Article 22(5) of the Constitution, the said detention order is liable to be quashed. In our view, no such confusion has arisen in the mind of the petitioner/detainee in the present case. As per the respondents, there is no variance so as to confuse the detainee. All the grounds which lead to issuance of impugned detention order have been

specifically laid down in the grounds of detention served upon the petitioner. Learned counsel for the respondent has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of ***Gautam Jain v. Union of India &Anr. (2017) 3 SCC 133*** to bring home the point that each basic fact would constitute a ground and particulars in supports thereof or the details of the subsidiary facts or further particulars of the said basic facts, will be integral parts of the grounds. Moreover, different instances would be treated as different grounds. In view of this and the details given in the grounds of detention, there cannot be any confusion in the mind of the petitioner/detenu, which might have deprived him of his legal right to submit his detailed representation.

37. The next ground raised on behalf of the petitioner/detenu is that vital documents were not placed before the Detaining Authority. Reliance in this regard has been placed upon ***Mehrunisa v. State of Maharashtra (1981) 2 SCC 709*** and ***Union of India v. Ranu Bhandari (2008) 17 SCC 348***. On the other hand, learned counsel for the respondents has submitted that all the relevant documents were placed before the Detaining Authority. The documents on which reliance was placed were supplied to the detenu and mere reference to certain instances for the purpose of completion of narration would not entitle the detenu to the copies of the same as the said documents were not relied upon. Reference in this regard has been made to the judgment in the matter of ***Madan Lal Anand v. UOI &Anr. (1990) 1 SCC 81*** and the same judgment as relied upon by the learned counsel for the petitioner namely ***Kamarunnissa v. UOI&Anr. (supra)***. In our view, the relevant documents which were required for subjective satisfaction of the Detaining Authority were duly placed before

the Detaining Authority for consideration and on the basis of those documents, the Detaining Authority came to a conclusion that the detention order is necessary to be issued for preventive detention of the petitioner, so as to ensure that he does not indulge in illegal and detrimental activities and copies of the said documents have been supplied to the petitioner running into more than 600 pages as stated by the learned counsel for the respondent. However, each and every document referred to but not relied upon by the Detaining Authority to reach to its subjective satisfaction is not required to be supplied to the petitioner/detenué.

38. Learned counsel for the petitioner has also argued that there was mechanical rejection of his representation dated 20th February, 2020 whereas the contention of the learned counsel for the respondent is that the said representation made to Detaining Authority was duly considered and rejected as the said documents were neither relied upon nor there was a basis of the subjective satisfaction of the Detaining Authority. In our view, when the documents asked for by the petitioner/detenué were not relied upon or are not the basis of the subjective satisfaction of the Detaining Authority, the detention order cannot be quashed on the ground that the said documents were not supplied and the representation for the supply of the said documents was rejected.

39. Learned counsel for the petitioner has also argued that till date no prosecution has been launched in the case in hand, so his detention is vitiated. Learned counsel for the respondent has submitted that launching of the prosecution has been intentionally delayed by the acts of the petitioner/detenué and his family members as initially he was not traceable

for a period of more than four years and now his son, who is a co-accused, is not traceable and all steps are being taken to ensure his presence before the authorities so that his statement may be recorded and case may be launched. In our view, where the petitioner/detenué himself has absconded for a considerable number of years and his son, who is a co-accused, is not traceable even on date, mere fact that the hearings in the case has not started, cannot be a ground for quashing of the preventive detention order which has got no direct connection with the proceedings to be launched by DRI before Court.

40. As far as the ground of oral undertaking by DRI of not taking any coercive action under Customs Act, 1962 is concerned, we are of a view that the present detention order was not passed under the Customs Act, 1962. Hence, that oral undertaking has no bearing on passing or validity of the present detention order under COFEPOSA Act. Learned counsel for the petitioner has also argued that if in the past, the petitioner has absconded, it cannot obviate the respondents to justify the legality of the detention order. Reliance has been placed upon the judgment in the matter of *Binod Singh v. District Magistrate, Dhanbad, Bihar & Ors. (1986) 4 SCC 416* to support the contention that once the detenué is in custody, purpose of detention ceases to exist. Further it is submitted that the proclamation proceedings end as soon as a person surrenders or is arrested as held by Punjab & Haryana High Court in *Diksha Puri v. State of Haryana CRM-M 359/2012* decided on 16th October, 2012. As per the petitioner, he had not violated the spirit of purported self-bond as he had moved an application for recall of the warrants. We do not agree with the learned counsel for the petitioner as mere moving an application for recall

of the warrant cannot be a substitute of his personal presence before the Court on the basis of the bond executed by him before the Jail Superintendent at Vishakhapatnam. It is reiterated that the detenue has not surrendered before a Court in Delhi, where he was declared as a proclaimed offender and he failed to appear despite his undertaking, so these judgments are of no help to his cause.

41. Although, the petitioner has referred to procedural infractions, gravity of allegations having no meaning and delay in disposal of representation and counter affidavit not recognized in law showing *mala fide* of the respondents; these grounds, merely by mentioning the same without substantiating the allegations therein are of no help to the petitioner. In our view, there was no undue delay in disposal of his representation as its consideration requires some time.

42. One last ground taken is that due to the pandemic and deteriorating medical condition of the detenue, he being a senior citizen and patient of diabetes and hypertension, he may be ordered to be released by this Court. In this regard, it is to be noted that although, the petitioner had made a representation before the High-Power Committee appointed by the High Court of Delhi for his release and has taken other steps before the Authorities, but it was not found to be a fit case for his interim release. Similar is our considered view.

43. In view of the above, this Court arrives at a considered conclusion that the preventive detention order bearing number F.No.673/35/2015-CUS.VIII dated 30th December, 2015 passed by the Joint Secretary,

COFEPOSA under Section 3 (1) of COFEPOSA does not suffer from any illegality and is not liable to be quashed. Hence, the habeas corpus writ petition filed by the petitioner is liable to be dismissed and is accordingly dismissed. The pending applications also stand disposed of.

**TALWANT SINGH
(JUDGE)**

**SIDDHARTH MRIDUL
(JUDGE)**

NOVEMBER 20, 2020
pa