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

+ **W.P.(CRL) 2528/2019**

MEHULBHAI RASIKBHAI BHIMANI

..... Petitioner

Through: Mr.P.S. Narsimha, Sr. Advocate with
Mr.Abhishek Singh, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Anil Soni, CGSC with Ms.Nidhi Raman,
G.P. for R-1 and 2.

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Date of Decision: 05th February, 2020

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J:- (Oral)

1. Present writ petition has been filed challenging the detention order dated 2nd August, 2019 bearing F. No. PD-12002/18/2019-COFEPOSA.
2. Mr. P.S. Narsimha, learned senior counsel for the petitioner submits that the detention order is punitive in nature and was passed by the Detaining Authority without arriving at any subjective satisfaction. He submits that there is no nexus or live link between the alleged illegal activity and purported claim of the Detaining Authority as the alleged illegal activity had been committed between January, 2014 and July, 2015 while the

impugned order had been passed on 2nd August, 2019.

3. Mr. Narsimha, learned senior counsel for the petitioner points out that the Supreme Court in the ***Pramodgiri Premgiri Goswami Vs. Union of India & Ors., W.P. (Crl.) No. 359/2019*** decided on 27th January, 2020 has quashed a similar detention order arising out of the same smuggling activities on the ground that there was no proximate link between the alleged events and the detention order. The aforesaid order dated 27th January, 2020 passed by the Supreme Court is reproduced hereinbelow:-

The petitioner has knocked at the doors of this Court under Article 32 of the Constitution of India challenging an order dated 15.11.2019 made under the COFEPOSA Act, 1974. In the grounds of detention it is clearly stated that the petitioner appears to be part of a ring of smugglers, and between March, 2013 and March, 2015 731.705 Kgs. of gold were seized, which trace themselves back to this ring, worth around Rs. 204.60 Crores. The petitioner's statement was also recorded on 24/25.09.2019 which, however, was retracted on 27.09.2019.

After hearing Mr. Saurav Kirpal, learned Advocate for the petitioner and Mr. K.M. Nataraj, learned Additional Solicitor General for the Union of India, this petition is being disposed of on the ground that there is no proximate link between the events of March, 2013 and March, 2015 and the detention order, which is over four years later. On this ground alone, this writ petition is allowed. The detenue be released immediately.

4. Mr. Anil Soni, learned counsel for Union of India states that the petitioner conspired with his associates and smuggled about 185 Kgs. of gold valued at Rs. 52.35 crores.

5. He submits that the 'satisfaction' of the detaining authority is 'subjective' in nature and the Court cannot interfere with the order of detention by substituting its opinion for the subjective satisfaction of the

Detaining Authority. In support of his submission, he relies upon the judgment of the Apex Court in ***Union of India and Anr. Vs. Dimple Happy Dhakad, 2019 SCC OnLine SC 875.***

6. Having heard learned counsel for the parties as well as having perused the paper book this Court finds that the impugned detention order is based upon an alleged admission by the petitioner that he had financed smuggling of 185 Kgs. of gold valued at Rs. 52.35 crores between January, 2014 and July, 2015. The relevant portion of the impugned detention order is reproduced hereinbelow:-

“You i.e. Shri Mehul Rasikbhai Bhimani have abetted in smuggling of gold as admitted by you that you along with Shri Jitendra Rokad had invested money with Shri Rutugna Trivedi which was used for financing smuggling of gold into India and that your had received 33% profit share. You i.e. Shri Mehul Rasikbhai Bhmani have admitted that during the period from January, 2014 to July, 2015, 185 kgs of Gold valued at Rs.52.35 crores was smuggled into india which was financed by you and Shri Jitendra Rokad and that they had received their share of the profits from the sale of the smuggled gold. These facts were also confirmed by Shri Jitendra Rokad in his statement recorded on 29.06.2019.

(emphasis supplied)

7. Keeping in view the aforesaid ground of detention, this Court is of the view that the order of the Apex Court in ***Pramodgiri Premgiri Goswami Vs. Union of India & Ors.*** (supra) applies to the present case on all fours as there is no proximate link between the events of January, 2014 to July, 2015 and the impugned detention order – which is nearly four years later. Consequently, present writ petition is allowed and the petitioner-detenu is directed to be released forthwith, if not wanted in any other case.

CRL.M.(Bail) No. 1592/2019

In view of the order passed today in W.P.(Crl.) No. 2528/2019, the present application has become infructuous and it accordingly stands disposed of.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 05, 2020
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