

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1623 OF 2021**

Karnaram Lumbaji Choudhary,
Age 50 years, Indian Inhabitant
Residing at Flat No. 2701,
Shreepati Areade, August Kranti Marg,
Nana Chowk, Mumbai - 400 007.

....Petitioner

Versus

1. Union of India,
Through Secretary (Revenue),
Ministry of Finance,
Department of Revenue, North Block,

2. Joint Secretary (COFEPOSA)
Government of India,
Ministry of Finance,
Department of Revenue,
Central Economic Intelligence Bureau,
6th Floor, "B" Wing, Janpath Bhawan,
Janpath, New Delhi.

3. State of Maharashtra

... Respondents

Dr.Sujay Kantawala a/w. Mr. Sujit Sahoo, Mr. Aditya Iyer i/b Mr.Ashok Singh for petitioner.

Ms. Ameeta Kuttikrishnan for respondent Nos. 1 and 2.

Mr.J.P. Yagnik, APP for respondent No.3-State.

**CORAM : S.S. SHINDE &
N.J. JAMADAR, JJ.**

Reserved for Judgment on : 11th June 2021.

Judgment Pronounced on : 19th June 2021.

JUDGMENT (PER N.J. JAMADAR, J.)

1. By this petition under Article 226 of the Constitution of India, the petitioner-proposed detenu has assailed the legality and validity of an order of detention, dated 8th March 2018, passed by the Joint Secretary, Government of India, under the provisions of section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ('the COFEPOSA Act').

2. The petitioner has invoked the writ jurisdiction of this Court at a pre-execution stage of the aforesaid detention order in the backdrop of the following facts :

(i) On 27th September 2017, a container was examined at Mumbai Port and it was found that 38 Kg of foreign marked gold valued at Rs.11.71 Crore was illegally smuggled. The persons concerned with M/s. Al Rehman Impex, the Clearing House Agents were arrested. During the course of investigation, it transpired that the petitioner herein was the principal controlling person of M/s. Rajeshwar Bullion Trading, which was involved in smuggling of gold. The petitioner gave an incriminating statement. The petitioner came to be arrested on 25th November 2017. On 22nd January 2018, the petitioner was

ordered to be released on bail.

(ii) Eventually, on 8th March 2018, a detention order came to be passed against the petitioner. It reads as under :

“ORDER

Whereas, I, P.V. Subba Rao, Joint Secretary to the Government of India, specially empowered under Section 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 (as amended), am satisfied with respect to the person known as Shri Karnaram Lumbaji Choudhary, that with a view to preventing him from abetting smuggling of goods and dealing in smuggled goods in future, it is necessary to make the following order :

Now, therefore, in exercise of the powers conferred by Section 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended), I direct that said Shri Karnaram Lumbaji Choudhary, S/o Shri Lumbaji Vanaji Choudhary, R/o Flat No. 2701, Shreepati Arcade, August Kranti Marg, Nana Chowk, Mumbai - 400 007 to be detained and kept in Central Prison facility of Arthur Road, Mumbai.

(P.V. Subba Rao)

Joint Secretary to the Government of India ”

(iii) Gulabidevi, the wife of the petitioner, filed Writ Petition No. 1729 of 2018 in this Court, assailing the legality and validity of the aforesaid detention order. By an order dated 5th July 2018, this Court dismissed the writ petition as withdrawn. Thereafter, the petitioner preferred Writ Petition, being Writ Petition (Criminal) No. 2167 of 2018 before Delhi High Court assailing the very same order of detention. The Delhi High Court was also persuaded to

dismiss the writ petition as withdrawn by order dated 10th October 2019.

(iv) The petitioner has again invoked writ jurisdiction of this Court asserting that the impugned detention order is illegal as it is based on extraneous and irrelevant material and passed for a wrongful purpose and thus falls within clauses (iii) and (iv) of paragraph 30 of the judgment of the Supreme Court in the case of *Additional Secretary to the Government of India and Ors. Vs. Alka Subhash Gadia and Ors.*¹. The principal challenge to the detention order is that in view of the time which has elapsed from the date of the impugned order, the live link between the order of detention and the purpose for which the petitioner is ordered to be detained has since snapped.

(v) The petitioner avers that the respondents were never serious in executing the order of detention. Neither the sponsoring authority nor the concerned police made a genuine effort to trace out the petitioner though the whereabouts of the petitioner were well within the knowledge of the respondents. This deliberate inaction in executing the order of detention has snapped the nexus

1 1992 Supp (1) SCC 496

between the alleged prejudicial conduct and the purpose of detention. Moreover, in the intervening period, the authorities initiated adjudication proceedings against the petitioner and yet no effort was made to execute the impugned order of detention. The petitioner, therefore, asserts that the impugned order of detention deserves to be quashed and set aside.

3. An affidavit in reply is filed on behalf of respondent Nos.1 and 2. The respondents contend that the petitioner has resorted to litigation with a view to delay the execution of the impugned order. The petitioner deliberately made himself scarce. The order could not be executed despite earnest efforts by the respondents. The petitioner was well aware of the detention order dated 8th March 2018. An order under section 7(1)(b) of the COFEPOSA Act was issued on 18th July 2018 and it was published in two local newspapers on 18th August 2018. The proclamation was issued by the learned Magistrate on 7th February 2020. Yet, the petitioner has willfully evaded the execution of the impugned order. In the circumstances, the petitioner cannot be permitted to take benefit of his own wrong.

4. We have heard Dr. Sujay Kantawala, the learned counsel for the petitioner, Ms. Ameeta Kuttikrishnan, the learned counsel for respondent

Nos.1 and 2 and Mr.J.P. Yagnik, the learned APP for the State. With the assistance of the learned counsels for the parties, we have also perused the material on record.

5. Dr. Kantawala would urge that the inordinate delay in execution of the impugned order has rendered the impugned order unworthy of execution, at this belated stage. Elaborating the submission, Dr.Kantawala urged that the very purpose for which the impugned order has been passed, namely with a view to prevent the petitioner from abetting smuggling of goods and dealing in smuggled goods in future, is rendered otiose by the passage of time. If, at this stage, the impugned order is executed, it would serve no useful purpose as there is no material to indicate that, in the intervening period, the petitioner has indulged in proscribed activities. The detention of the petitioner, according to Dr. Kantawala, would therefore be a futile exercise. An endeavour was made by Dr. Kantawala to draw home the point that the authorities were not at all diligent and serious in executing the impugned order despite the petitioner being available at the addresses furnished in the impugned order and at his native place.

6. Evidently, the petitioner has approached the Court at a pre-execution stage. Though an endeavour was made on behalf of the petitioner to assail the impugned order on the ground of its unsustainability, as expounded in

the case of ***Alka Subhash Gadia*** (Supra), yet, in view of the fact that the petitioner had made not one but two unsuccessful attempts to assail the legality and validity of the impugned order, by filing writ petitions before this Court and Delhi High Court, at this juncture, it is simply not open for the petitioner to assail the legality and validity of the impugned order on the basis of the grounds postulated in the case of ***Alka Subhash Gadia*** (Supra). The challenge to the impugned order, thus, gets restricted to the aspect of delay in its execution and, consequently, its continued utility.

7. The judgment of the Supreme Court in the case of ***Alka Subhash Gadia*** (Supra) is, however, required to be consulted as it constitutes the pivot around which the challenge to the detention order, at pre-execution stage, revolves. In the said case, a three Judge Bench enunciated that the writ courts do have the power to entertain a challenge to the legality and validity of a detention order at pre-execution stage. Emphasising that scope of interference at the pre-execution stage is very limited, the Supreme Court elucidated the cases in which the Court may be justified in interfering with a detention order at a pre-execution stage in the following words :

“30 Thirdly, and this is more important, it is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them

at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.”

(emphasis supplied)

8. Dr.Kantawala, the learned counsel for the petitioner canvassed a submission that the aforesaid five grounds on which the detention order can be challenged at a pre-execution stage are not exhaustive. A successful challenge can be laid to a detention order at a pre-execution stage, on any other ground which would render the order legally unsustainable. According to Dr. Kantawala, an inordinate delay in execution of the detention order which has the effect of snapping the live link between order and the purpose for which it is passed, is a ground on which the detention order can be quashed and set aside.

9. In order to lend support to aforesaid submission, Dr. Kantawala placed a very strong reliance on the judgments of the Supreme Court in the cases of *Deepak Bajaj Vs. State of Maharashtra & Anr.*² and *Maqsood Yusuf*

² (2008) 16 SCC 14

Merchant Vs. Union of India & Anr. ³.

10. In the case of ***Maqsood Yusuf Merchant*** (Supra), in the backdrop of the delay of about six years in execution of the detention order, the Supreme Court had quashed and set aside the detention order by observing as under :-

“6. There is no dispute that despite the fact that the order of detention was passed as far back as on 19-3-2002, the same could not be or has not been executed against the appellant till date. The detention order was in respect of the activities indulged in or said to have been indulged in by the appellant as far back as in 2002. In fact, on behalf of the Union of India it has been very fairly submitted on instruction that since the order of detention was passed, the appellant has not indulged in similar activities.

7. Having regard to the above, we are of the view that continuing the order of detention today is an exercise in futility and the same should not, therefore, be given effect to any further. This will not prevent the respondents in future to pass any similar order in the event similar allegations are raised against the appellant.”

(emphasis supplied)

11. In the case of ***Deepak Bajaj*** (Supra), though the Supreme Court noted the submissions canvassed on behalf of the petitioner therein that there was no live link between the alleged prejudicial activities and the purpose of the detention, yet, the Supreme Court had quashed and set aside the detention order therein on a substantive count that the relevant material was not placed before the Detaining Authority when it passed the

³ (2008) 16 SCC 31

detention order. The observations in paragraph 38 to 40 make the aforesaid position abundantly clear. They read as under :

“38 Shri Soli Sorabjee, learned counsel for the petitioner also submitted that the petitioner had stopped his alleged illegal activities in 2006 and hence the detention of the petitioner now would be illegal. He has relied on a decision of this Court in Maqsood Yusuf Merchant vs. Union of India and another Criminal Appeal No. 1337 of 2008 decided on 22.8.2008 by this Bench. In that decision it was observed that the activities of the accused who was said to have indulged in unlawful activities were of the year as far back as 2002, and thereafter the appellant had not indulged in similar activities. Hence it was held that continuing the order of detention today would be an exercise of futility and the same should not be given effect to any further.

39. Shri Soli Sorabjee also relied on a decision of this Court in [Alpesh Navinchandra Shah vs. State of Maharashtra and others](#) 2007(2) SCC 777(vide para 57) etc.

40. Shri Soli Sorabjee, learned counsel, invited our attention to ground 'B' in the Writ Petition in which it has been stated that the petitioner has not done any business after November 2006 when the alleged last consignment was cleared by the petitioner. This averment has not been rebutted in the counter affidavit filed by the respondent. Hence, Shri Sorabjee submitted that there is now no live link between the alleged prejudicial activities and the purpose of detention now. He has also relied upon the decisions of this Court in [T.A. Abdul Rehman vs. State of Kerala and others](#) AIR 1990 SC 225 [State of Maharashtra vs. Bhaurao Punjabrao Gawande](#) AIR 2008 SC 1705 etc. In our opinion, it is not necessary to go into this submission of Shri Soli Sorabjee since we are of the opinion that the petition deserves to be allowed on the first ground, namely, that the relevant material was not placed before the Detaining Authority, and this vitiates the detention order.”

(emphasis supplied)

12. Dr. Kantawala, however, urged that the element of a live link between the prejudicial activities and the purpose of detention is required to be examined while appreciating the aspect of delay. Laying emphasis on the purpose of preventive detention, it was urged, with a degree of vehemence, that in the absence of material to demonstrate that the petitioner has been indulging in prejudicial activities, in the intervening period, the execution of the detention order at such a belated stage would serve no purpose.

13. Ms. Kuttikrishnan, the learned counsel for respondent Nos. 1 and 2 stoutly countered the submissions on behalf of the petitioner. It was submitted that the petitioner left no stone unturned to put hindrances in execution of the impugned order. Initially, writ petition was filed before this Court by the wife of the petitioner. After its dismissal, another writ petition was filed before Delhi High Court. In the said petition, the petitioner obtained an order to the effect that no coercive steps be taken against the petitioner. The said interim order was in force for almost 15 months. After the dismissal of the petition on 10th October 2019, the petitioner again absconded. The Sponsoring Authority has, thus, initiated proceedings against the petitioner under section 7 of the COFEPOSA Act. In the backdrop of these developments, according to Ms. Kuttikrishnan, in view of the judgment of the Supreme Court in the case of *Subhash Papatlal Dave*

Vs. Union of India & Anr. ⁴ (Subhash-II), the petitioner is not entitled to any relief.

14. In order to properly appreciate the aforesaid submissions, it may be advantageous to make a reference to the judgment of the Supreme Court in the case of ***Subhash Popatlal Dave Vs. Union of India & Anr.*** ⁵(Subhash-I). In the said case, a three Judge Bench considered the question as to whether the five grounds enumerated in paragraph 30 of the judgment in the case of ***Alka Subhash Gadia*** (Supra) were exhaustive of the challenge to the detention order at a pre-execution stage. The Supreme Court ruled that ***Alka Subhash Gadia*** (Supra) does not lay down that the challenge can be made on the grounds enumerated in paragraph 30 only. The Court was, however, of the view that the question of challenge to detention at the pre-execution stage on grounds other than those set out in Paragraph 30 of the judgment in ***Alka Subhash Gadia*** (Supra) required further examination. The absence of a live link between the incident and the detention order, and also the ground of it having become stale, were specifically adverted to by the Supreme Court, in paragraph 48, which reads as under :

“48. In such circumstances, while rejecting Mr. Rohatgi's contention regarding the right of a detenu to be provided with the grounds of detention prior to his arrest, we are of the view that the right of a detenu to challenge his detention at the pre-execution stage on grounds other than those set out in para 30 of the judgment in Alka Subhash Gadia case, requires further

4 (2014) 1 SCC 280

5 (2012) 7 SCC 533

examination. There are various pronouncements of the law by this Court, wherein detention orders have been struck down, even without the apprehension of the detenu, on the ground of absence of any live link between the incident for which the detenu was being sought to be detained and the detention order and also on grounds of staleness. These are issues which were not before the Hon'ble Judges deciding Alka Subhash Gadia case."

(emphasis supplied)

15. In the case of *Subhash Popatlal Dave Vs. Union of India* (2014)(1) SCC 280 (**Subhash-II**), the same Bench which had rendered the judgment in **Subhash-I**, considered the question as to whether the proposed detenu having absconded or evaded the execution of the detention order, and, challenged the order of his detention even at the pre-execution stage after a long lapse of time could take advantage of non-execution and challenge the detention order which remained unexecuted. Majority judgments took the view that the detention order cannot be set aside on the ground that it could not be executed especially when the proposed detenu was evading the detention order and indulging in forum shopping. The observations in paragraphs 15, 16, 43 and 46 are material and hence extracted below :-

"15. From the ratio of the aforesaid authoritative pronouncements of the Supreme Court which also includes a Constitution Bench judgment having a bearing and impact on the instant matters, the question which emerges is that if the order of detention is allowed to be challenged on any ground by not keeping it confined to the five conditions enumerated in the case of Alka Subhash Gadia except the fact that there had been sufficient materials and justification for passing the order of detention which

could not be gone into for want of its execution, then whether it is open for the proposed detainee to contend that there is no live link between the order of detention and the purpose for which it had been issued at the relevant time. In the light of ratio of the decisions referred to hereinabove and the law on preventive detention, it is essentially the sufficiency of materials relied upon for passing the order of detention which ought to weigh as to whether the order of detention was fit to be quashed and set aside and merely the length of time and liberty to challenge the same at the pre-execution stage which obviated the execution of the order of preventive detention cannot be the sole consideration for holding that the same is fit to be quashed. When a proposed detainee is allowed to challenge the order of detention at the pre-execution stage on any ground whatsoever contending that the order of detention was legally unsustainable, the Court will have an occasion to examine all grounds except sufficiency of the material relied upon by the detaining authorities in passing the order of detention which legally is the most important aspect of the matter but cannot be gone into by the Court as it has been allowed to be challenged at the pre-execution stage when the grounds of detention has not even been served on him.

16. Thus, if it is held that howsoever the grounds of detention might be weighty and sustainable which persuaded the authorities to pass the order of detention, the same is fit to be quashed merely due to long lapse of time specially when the detainee is allowed to challenge the order of detention even before the order of detention is served on him, he would clearly be offered with a double-edged weapon to use to his advantage circumventing the order of detention. On the one hand, he can challenge the order of detention at the pre-execution stage on any ground, evade the detention in the process and subsequently would be allowed to raise the plea of long pendency of the detention order which could not be served and finally seek its quashing on the plea that it has lost its live link with the order of detention. This, in my view, would render the very purpose of preventive detention laws as redundant and nugatory which cannot be permitted. On the contrary, if the order of detention is allowed to be served on the

proposed detainee even at a later stage, it would be open for the proposed detainee to confront the materials or sufficiency of the material relied upon by the authorities for passing the order of detention so as to contend that at the relevant time when the order of detention was passed, the same was based on non-existent or unsustainable grounds so as to quash the same. But to hold that the same is fit to be quashed merely because the same could not be executed for one reason or the other specially when the proposed detainee was evading the detention order and indulging in forum shopping, the laws of preventive detention would surely be reduced into a hollow piece of legislation which is surely not the purpose and object of the Act.

.....

43 *If a preventive detention order is to be quashed or declared illegal merely on the ground that the order remained unexecuted for a long period without examining the reasons for such non-execution, I am afraid that the legislative intention contained in provisions such as [Section 7\(b\)](#) of the COFEPOSA Act would be rendered wholly nugatory. Parliament declared by such provision that an (recalcitrant) individual against whom an order of preventive detention is issued is under legal obligation to appear before the notified authority once a notification contemplated under [Section 7\(b\)](#) of COFEPOSA Act is issued. We have already noticed that failure to appear without a reasonable excuse would be an offence and render the defaulter liable for a punishment of imprisonment. Holding that the preventive detention orders are themselves rendered illegal, on the basis of the live nexus theory (which, in my opinion, is valid only for examining the legality of the order, viz-a-viz the date on which the order is passed) would not only exonerate the person from the preventive detention order but also result in granting impunity to such person from the subsequent offence committed by him under the provisions such as [Section 7\(b\)](#) of the COFEPOSA Act.*

.....

46 *Therefore, I am of the opinion that those who have evaded the process of law shall not be heard by*

this Court to say that their fundamental rights are in jeopardy. At least, in all those cases, where proceedings such as the one contemplated under Section 7 of the COFEPOSA Act were initiated consequent upon absconding of the proposed detenu, the challenge to the detention orders on the live nexus theory is impermissible. Permitting such an argument would amount to enabling the law breaker to take advantage of his own conduct which is contrary to law.”

(emphasis supplied)

16. The position which thus emerges is that in the light of the purpose of preventive detention, undoubtedly, there must be a live and proximate link between the prejudicial activities, as reflected in the grounds of detention, and the stated purpose of detention, namely prevention of those prejudicial activities. An inordinate delay has the tendency to snap the link between the detention order and its purpose. However, the mere fact that a detention order could not be executed for a certain period is not by itself a justifiable ground to quash and set aside the detention order, irrespective of the circumstances which attend its non-execution. The cause for delay is as important as its length. In fact, the cause for delay assumes critical significance. Whether the delay is properly accounted for or remains unexplained? To whom the delay is attributable? Whether the authorities were indolent and did not take effective steps to execute the order? Was the detenu instrumental in evading the execution? These are some of the questions which crop up for consideration. If the delay is attributable to the

acts and conduct on the part of the proposed detenu, it would amount to allowing the detenu to take benefit of his own wrong. Such a view, especially where the delay is clearly attributable to the proposed detenu, would frustrate the very purpose of preventive detention as the person who evades the order of detention with impunity gets a long leash to the prejudice of the interest of society.

17. On the aforesaid touchstone, reverting to the facts of the case, there are two crucial aspects which warrant consideration. First and foremost, the endeavour on the part of the petitioner to avoid the execution of the detention order by resorting to proceedings. As indicated above, the petitioner's wife initially approached this Court. The effort did not succeed as the petition came to be dismissed on 5th July 2018. Within a fortnight, the petitioner approached Delhi High Court by filing Writ Petition (Criminal) No.2167 of 2018. In the said petition, on 23rd July 2018, an ad-interim relief was obtained. The said relief was in operation till the dismissal of the writ petition on 10th October 2019. Thus, ad-interim relief in the nature of 'not to take coercive action against the petitioner' was in force from 23rd July 2018 to 10th October 2019. It is plain that the petitioner cannot be permitted to count the said period, while the respondents were restrained from executing the order.

18. A useful reference in this context can be made to a judgment of the Supreme Court in the case of *Union of India & Ors. Vs. Arvind Shergill & Anr.*⁶, wherein also an interim order not to execute the order of detention was obtained and thereafter a submission was canvassed that, in view of the lapse of time, the live link was snapped. In that context, the Supreme Court observed as under :

“6.....The husband of the respondent evaded arrest as is obvious and obtained an interim order from the High Court which was in force till the disposal of the writ petition and thereafter on quashing of the detention order, question of detention made did not arise now. Therefore, we do not think that it would be appropriate to state that merely by passage of time the nexus between the object for which the husband of the respondent is sought to be detained and the circumstances in which he was ordered to be detained has snapped.....”

(emphasis supplied)

19. A profitable reference can also be made to the judgment of the Supreme Court in the case of *Hare Ram Pandey Vs. State of Bihar and Others*⁷. In the said case also, the petitioner therein had made all possible efforts to avoid the execution of the detention order. In that backdrop, the Supreme Court repelled the challenge on the score of delay. The observations in paragraph No.4 resemble the facts of the case to a greater extent. They read as under :

6 (2000) 7 SCC 601

7 (2004) 3 SCC 289

“4 The case at hand shows how the appellant has tried his best in taking various dilatory tactics to deflect the course of justice. There is no doubt that personal liberty is sacrosanct and has to be protected, but a person who tries to draw red herrings to deflect the course of justice and tries to take advantage of his own wrongs has to be sternly dealt with. It is relevant to note that the appellant had filed the Crl.W.J.C. No. 702 of 1995 before the Patna High Court which was dismissed on 16.2.1996. He filed SLP (Crl.) No. 941 of 1996 before this Court which was withdrawn on 15.4.1996. The second writ petition Crl.W.J.C. 369 of 1996 was filed and the same was dismissed on 26.6.1996. The appellant was declared as absconder in terms of Section 16 of the Act by order dated 12.1.1997. Thereafter writ petition to which this case relates was filed on 21.2.1997 which came to be dismissed by the impugned judgment dated 4.3.1997.”

(emphasis supplied)

20. The second aspect which bears upon the controversy is the actions on the part of the respondents. We are afraid to accede to the submission on behalf of the petitioner that the respondents did not make diligent and serious efforts to execute the impugned order. The material on record indicates that after the dismissal of the writ petition by the Delhi High Court, the respondents promptly moved the jurisdictional Magistrate for issue of proclamation. The petitioner was declared absconder and a proclamation was issued on 7th February 2020. The fact that for a period of about 15 months, an ad-interim order was operating against the respondents, cannot thus be lost sight of. It would be rather hazardous to draw an inference that the respondents made no effort to execute the impugned order.

21. It would be contextually relevant to make a reference to a judgment

of the Supreme Court in the case of ***Bhawarlal Ganeshmalji Vs. State of Tamil Nadu and Anr.***⁸, wherein in the backdrop of the lapse of time, a submission of absence of “live and proximate link” between the grounds of detention and the purpose of detention was canvassed. There was a delay of about three years in executing the order of detention. Repelling the challenge, the Supreme Court observed as under :

“6 It is true that the purpose of detention under the COFEPOSA is not punitive but preventive. The purpose is to prevent organised smuggling activities and to conserve and augment Foreign Exchange. It is true that the maximum period for which a person may be detained under the COFEPOSA is one year. It is further true that there must be a 'live and proximate link' between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is 'snapped' if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the 'link' not snapped but strengthened. That, precisely, is the state of affairs before us. The order of detention was made on 19th December, 1974. The detenu was found to be absconding. Action was taken pursuant to [Section 7](#) of the COFEPOSA and he was proclaimed as a person absconding under [Section 82](#) of the Criminal Procedure Code. The proclamation was published in several leading English and local language daily newspapers. His photograph was exhibited in Cinema halls A reward of Rs. 5,000/- was also announced for his apprehension. Despite all this effort he could not be arrested until he surrendered on 1st February, 1978. We do not have any hesitation in over- ruling the

8 (1979) 1 SCC 465

submission of Shri Jethmalani based on the delay in the execution of the order of detention.”

(emphasis supplied)

22. In the light of aforesaid enunciation of legal position, we are of the view that the submission on behalf of the petitioner that the live link between the prejudicial activities and the purpose of detention is snapped on account of lapse of time does not merit countenance. The material on record, on the other hand, indicates that the petitioner resorted to litigative strategy to evade the execution of the detention order. The very same order was impugned before this Court as well as Delhi High Court. For a considerable period, a restraint order was in force. No sooner the writ petition was dismissed by the Delhi High Court, the respondents initiated the proceedings under section 7 of the COFEPOSA Act before the jurisdictional Magistrate. In this backdrop, if the petitioner is allowed to urge the ground of delay, as a factor which snapped live link, it would amount to putting a premium on the disingenuity on the part of the petitioner.

23. The submission on behalf of the petitioner that, in the intervening period, no prejudicial activity has been attributed to the petitioner does not advance the cause of the petitioner. The Competent Authority has passed the detention order on the premise that the petitioner was the prime character in the smuggling of the gold. Obviously, the petitioner has made

himself scarce and is lying low. The live link between the prejudicial activity and the purpose of detention, therefore, cannot be said to have been lost.

24. The reliance placed by Dr. Kantawala on the judgment of *Maqsood Yusuf Merchant* (Supra) also appears to be of little assistance to the petitioner. In the said case, the matter was settled by an order passed by the Settlement Authority. Taking note of the said fact, the Supreme Court had granted relief to the petitioner therein in the light of the delay of about six years. The pronouncement in the case of *Maqsood Yusuf Merchant* (Supra) is thus clearly distinguishable.

25. For the foregoing reasons, we are not inclined to interfere with the impugned order on the premise that now there is no live link between the prejudicial activities and the purpose of detention. Resultantly, the petition deserves to be dismissed. Hence, the following order :

O R D E R

The petition stands dismissed.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)