

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1823 OF 2024**

Arun Mahajan] .. Petitioner

vs.

State of Maharashtra] .. Respondent

Mr.Rajiv Chavan, Senior Advocate a/w Zain Shroff, Suryansh Vaishnav
i/b YNA Legal for the Petitioner.

Mr.J.P. Yagnik, APP for the State.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 14th DECEMBER, 2024.

JUDGMENT (PER, BHARATI DANGRE, J) :-

1. Being aggrieved by the order dated 25/01/2012 passed by the Principal Secretary (Appeals and Security), Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai, in exercise of the powers conferred under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, (for short 'COFEPOSA'), thereby directing his detention in Nashik Road Central Prison, Nashik, the Petitioner Arun Mahajan has preferred the present Petition and pray for quashment and setting aside of the same.

The impugned order of detention is annexed at Exhibit A to the Petition.

2. We have heard the learned senior counsel Mr.Rajeev Chavhan alongwith Mr. Zain Shroff for the Petitioner, whereas the learned APP Mr.J.P. Yagnik has represented the Respondent-State.

Placing before us the chronology of the events, Mr. Chavan would submit that, according to DRI intelligence was gathered that several syndicates of crane importers were involved in evasion of customs duty by undervaluing the imports and the import invoices were prepared by working out the value of the crane at the rate of Rs.40/- per k.g. as against its actual transaction value and this mode was adopted to evade the payment of duty on the freight component.

The Petitioner imported 7 second hand cranes in India between 2007 to 2010 and DRI, Mumbai Zonal Unit detained 5 of these cranes.

Pursuant to the summons issued, on 02/11/2010, the Petitioner was arrested on his visit to the DRI Office, Mumbai and his statement was recorded under Section 108 of the Customs Act, on distinct dates. He was produced before the Additional Chief Metropolitan Magistrate, Esplanade Court on 03/11/2010 and the remand was sought, which was extended upto 14/11/2010.

The Petitioner retracted the statements recorded by the DRI by filing Application before the Magistrate and when he filed the Bail Application before the Sessions Court, on 14/11/2010, he was enlarged on bail by imposing a condition to attend the DRI Office till filing of the charge-sheet.

3. The Screening Committee of the State of Maharashtra granted approval to the detention of 6 out of 100 people, including the Petitioner on 19/04/2011 paving its way for detention under the CAFEPASA.

On 26/04/2011 , the wife of the Petitioner proposed a detail representation to the Principal Secretary and Detaining Authority under Section 3 of the Act against the proposal for detention sponsored by DRI,Mumbai Zonal Unit.

The Petitioner approached the Apex Court raising a challenge to the action of the Screening Committee granting approval to the detention order and on 19/08/2011, the Petition was dismissed by recording that it it premature, as the detention order was not yet issued.

On 25/01/2012 the impugned order of detention was issued, subject to the conditions laid down in the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Maharashtra Conditions of Detention) Order 1974.

4. Being aggrieved by the order of detention, the Petitioner filed Writ Petition No.340/2012 before the Punjab & Haryana High Court and was successful in getting an interim relief on 29/02/2012 when the Court granted stay to the implementation of the impugned order.

It is only on 23/08/2017, the Punjab & Haryana High Court dismissed the Writ Petition on the ground of lack of jurisdiction, which constrained the Petitioner to file a Letters Patent Appeal before the same High Court, but all the while, the stay to the implementation of the order continued.

It is only on 15/11/2023, the Petitioner withdrew the LPA before the Punjab & Haryana High Court, as the impugned order was passed by Authorities at Mumbai and, therefore, determination of the legality or otherwise of the impugned order shall be determined by the High Court having jurisdiction over the said Authority i.e. the High Court of Judicature at Bombay.

As a result, the present Writ Petition is filed by the Petitioner, on 12/03/2024.

Upon its listing on 03/07/2024, we directed the State to file its Affidavit in Reply within a period of three weeks, expecting the State to act expeditiously since liberty of the citizen was involved. On 01/08/2024, till the necessary instructions were obtained by the learned APP, we directed that no action shall be taken against the Petitioner under the impugned order till the next date of hearing and that is where the Petition stand as on today.

5. Mr.Rajeev Chavan, pressed into service various grounds for raising a challenge to the order of detention, by submitting that recourse to the draconian power of preventive detention is not justified when the provisions of the ordinary law are sufficient to deal with a particular situation and according to him, if the DRI had reasons to believe that the Petitioner is guilty of the offence punishable under Section 135 of the Customs Act, 1962, a show cause notice was issued and the Petitioner would face the consequences under the said statute. According to him, there is a procedure prescribed under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to deal with the situation in hand and the resort to the issuance of detention order is, therefore, illegal and stand vitiated.

Reliance is placed upon the observations of the Apex Court in the case of ***Rekha vs. State of Tamilnadu***¹, in support of his submission that preventive detention is only an exception to Article 21 of the Constitution of India and it has to be invoked in rare and exceptional cases and no such exceptional case has been made out.

Apart from this, it is also his submission that the impugned order

1 2011(4)RCR(Cri)21

of detention cannot be legitimized on supposition of propensity of the proposed detenu to indulge in prejudicial activities in immediate future and since preventive detention is based on a reasonable prognosis of future behaviour of a person based on his past conduct in light of the surrounding circumstances, it being the basic requirement of law to pass an order of detention, the said element is absolutely lacking in the present case. According to him, neither the past action nor the present action of the Petitioner is such, which would warrant passing of or continuation of the detention order under COFEPOSA and particularly when show cause notice issued do not have any whisper of any subsequent import or the future apprehension of any prejudicial activity on part of the Petitioner.

One more significant ground which Mr. Chavan has pressed into service, is the gross delay in passing the impugned order of detention resulting in it being vitiated. According to him, from the allegations which have been levelled by the Sponsoring Authority, they revolve around the alleged evasion of duty etc. of Imports in the year 2010, the searches regarding which were made on 21/10/2010. Thereafter, there is no evidence of business of import of the cranes allegedly transacted by the Petitioner and, therefore, according to him, no material has been brought on record subsequent to the date of the imports clearly implying that the impugned order has been passed after a gap of more than 15 months and this delay is fatal, as it fails to answer the necessity to detain him.

It is a specific ground raised in the Petition that the live and proximate link between the alleged prejudicial activity and the passing of detention order has been snapped and, especially in view of the fact that the maximum period of detention which is of one year has lapsed after the date of import.

Reliance is placed upon the decision of the Apex Court in case of ***T.A. Abdul Rahman vs. State of Kerala & Ors.***², where it is specifically held as under :-

“ The conspectus of the above decision can be summarized thus : The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. 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. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner.”

In addition, non placement of relevant and material documents by Sponsoring Authority leading to consequent non-consideration thereof by the Detaining Authority is also the ground raised in the Petition, apart from a ground of non consideration of the representation is also pressed into service, as it is contended that if a vital piece of evidence which is likely to influence the subjective satisfaction of Detaining Authority is not placed before him, then the order would be vitiated on the vice of non application of mind.

Reliance is placed upon the decision in case of ***Deepak Bajaj vs. State of Maharashtra***³ and also the decision in case of ***Additional***

2 AIR 1990 SC 225
3AIR 2009 SC 628

Secretary to the Government of India & Ors. vs. Smt. Alka Subhash Gadia & Anr.⁴

6. Contesting the said contention, the learned APP Mr. Yagnik has raised an objection about the propriety in entertaining the petition, particularly when the detention order is not yet executed. He has relied upon the Affidavit filed by the Principal Secretary (Appeals and Security) Government of Maharashtra, where it is specifically pleaded that the Detaining Authority is not duty bound to give a detail reply, in view of the admitted fact that the Petition filed is at the stage of pre-execution and not on merits and, therefore, the exact ground of detention cannot be disclosed.

The Affidavit aver that in terms of the decision of the Apex Court in case of **Smt. Alka Subhash Gadia** (*supra*), where it is held that the interference is warranted at pre-execution stage only in the five contingencies set out therein viz.

- i] Impugned order is not passed under the Act which is purported to have been passed;
 - ii] That it is sought to be executed against a wrong person;
 - iii] It is passed for a wrong purpose;
 - iv] It is passed on vague extraneous and irrelevant grounds or;
 - v] The Authority which passed it had no authority to do so.
- It is specifically contended that none of the grounds are made out in the present case.

7. Responding to the ground of delay, the Affidavit state as below :-

⁴1992 Supp (1) SCC 496

“6. With reference to Para 5 (B) of the petition, it is respectfully submitted that the claim of gross delay in passing the detention order is unfounded and lacks merit. As at present the detention order is not executed/ served upon the Detenue. Hence, the reply with all details and particular is not filed. Now also it's admitted fact that the then Detaining Authority (DA) has subjectively satisfied and passed Detention Order against the Petitioner. Hence, it is further submitted that during the course of the investigation, various statements of the Petitioner were recorded on multiple dates, with the last statement recorded on 18.10.2011. The investigation also involved the seizure and analysis of voluminous documents. Given the complexity and breadth of the investigation, it is imperative to note that the passage of time from the initial apprehension of the Petitioner to the issuance of the detention order was necessitated by the need for a thorough and comprehensive examination of all relevant facts and circumstances. This process ensured that the order was based on a complete and accurate understanding of the situation, which is essential in matters of such gravity. The delay was not due to any laxity or negligence on the part of the investigating agencies. Instead, it was a result of diligent and meticulous work required to ensure that justice is served appropriately. It is crucial to underscore that there has been no infraction of the constitutional provisions laid down under sub-Article (5) of Article 22 of the Constitution. This sub-article mandates the communication of grounds of detention to the person detained as soon as possible, which was adhered to in this case. In light of the above, the submission that there was undue and unreasonable delay in passing the detention order is without force. The detention order was passed following a detained and exhaustive investigation, and all procedural requirements have been duly complied with, ensuring that the rights of the Petitioner have been respected throughout the process.”

Responding to Para 5(c), the Affidavit state as below :-

“7. With reference to Para 5 (C) of the petition, it is respectfully submitted that the assertion that the detention order cannot be legitimized based on the proposed detenue's propensity to indulge in prejudicial activities in the immediate future is unfounded. The Petitioner has a documented history of engaging in similar prejudicial activities, as evidenced by investigations by the Special Investigation and Intelligence Branch (SIIB) at New Customs House, Mumbai, which revealed repeated involvement in undervaluing the import of cranes. This established pattern of unlawful conduct indicates a high likelihood of recurrence, making preventive detention a necessary measure. The financial impact of the Petitioner's activities was severe, amounting to crores of Rupees. Underscoring the necessity of the detention order to prevent further significant economic harm. The then Detaining Authority, after thorough consideration of all relevant facts, concluded that ordinary legal measures would be insufficient to curb the Petitioner's propensity for such activities. Therefore, the order of detention was lawfully and justifiably issued to preclude the Petitioner from continuing harmful activities that posed a serious threat to the economic integrity of the nation, ensuring the protection of public interest and national security.”

8. Mr. Yagnik has also placed reliance upon the additional affidavit filed by the Detaining Authority on 11/12/2012, where explanation for delay is offered to the following effect :-

“(b) With reference to Ground B, I say that during the course of investigation, various statements of the Petitioner were recorded on various dates, the last statement recorded on 18.10.2011. Voluminous documents were seized and analyzed. Therefore, there is no force in the submission that there was undue and unreasonable delay in passing the order of detention. The passage of time from the date of initial apprehension of the Petitioner and the passing of the order of detention was a result of full and detailed consideration of the facts and circumstances of the case.”

One more Affidavit is filed by the Detaining Authority on 27/09/2024, pursuant to our direction, where the following statement is made :-

“4. With respect to order dated 01.08.2024 passed by this Hon’ble Court, I say and submit that, the delay in execution of the detention order is mainly due to the judicial proceedings and the relief granted by the Punjab and Haryana High Court in Criminal Writ Petition No.340/2012. The grounds for detention under the COFEPOSA Act were serious and related to activities that threatened the economic stability of the nation. These activities have long-lasting implications, and the necessity for preventive detention to safeguard public interest cannot be negated by mere passage of time. The seriousness of the offence justified the continued relevance and enforcement of the detention order, despite the delay.

5. Further, the order of detention cannot be quashed and set aside merely due to a long lapse of time and for lack of a live link between the order of detention and the subsequent situation especially when the orders of detention have been challenged even at the pre-execution stage on any ground. It is, therefore, legally appropriate to serve the order of detention on the proposed detainee leaving it open to him to challenge the same after the grounds are served on him so as to appreciate whether there are sufficient materials before the detaining authorities to pass the orders of detention which were existing at the relevant time and then approve or disapprove the same.”

9. We have considered the rival contentions advanced.

By this time, it is well settled position in law that a challenge to the order of detention can be entertained at pre-execution stage as in Additional Secretary to the Government of India & Ors. vs. **Smt. Alka**

Subhash Gadia (*supra*), this very issue was focussed upon and it was held that Article 22(5) is not the sole repository of detenu's right as his rights are governed by other fundamental rights particularly enshrined in Article 14, 19 and 21 of the Constitution of India, and the question for consideration was formulated thus :

"5.The next question of law that falls for consideration is whether the detenu or anyone on his behalf is entitled to challenge the detention order without the detenu submitting or surrendering to it. As a corollary to this question, the incidental question that has to be answered is whether the detenu or the petitioner on his behalf, as the case may be, is entitled to the detention order and the grounds on which the detention order is made before the detenu submits to the order."

Answering the above question, it is categorically held that the jurisdiction of the High Court and Supreme Court under Article 226 and 32 respectively of the Constitution of India, can be exercised despite its self imposed limitations and by way of illustration the interference of the Court was found to be justified, and it is observed as below :-

"12.....(v) the Court may also intervene where (a) the authority acting under the concerned law does not have the requisite authority or the order which is purported to have been passed under the law is not warranted or is in breach of the provisions of the concerned law or the person against whom the action is taken is not the person against whom the order is directed; or (b) where the authority has exceeded its powers or jurisdiction or has failed or refused to exercise jurisdiction vested in it; (c) where the authority has not applied its mind at all or has exercised its power dishonestly or for an improper purpose."

Recording that in Para 30 of the said Law report, exercise of the power at pre-execution stage was justified in following circumstances

"30. As regards his last contention, viz., that to deny a right to the proposed detenu to challenge the order of detention and the grounds on which it is made before he is taken in custody is to deny him the remedy of judicial review of the impugned order which right is a part of the basic structure of the Constitution, we find that this argument is also not well merited based as it is on absolute assumptions. Firstly, as pointed out by the authorities discussed above, there is a difference between the existence of power and

its exercise. Neither the Constitution including the provisions of Article 22 thereof nor the Act in question places any restriction on the powers of the High Court and this Court to review judicially the order of detention. The powers under Articles 226 and 32 are wide, and are untrammelled by any external restrictions, and can reach any executive order resulting in civil or criminal consequences. However, the courts have over the years evolved certain self-restraints for exercising these powers. They have done so in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-imposed restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions made under all laws. It is in pursuance of this self-evolved judicial policy and in conformity with the self-imposed internal restrictions that the courts insist that the aggrieved person first allow the due operation and implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this Court to invoke their discretionary extraordinary and equitable jurisdiction under Articles 226 and 32 respectively. That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. We have while discussing the relevant authorities earlier dealt in detail with the circumstances under which these extraordinary powers are used and are declined to be used by the courts. To accept Shri Jain's present contention would mean that the courts should disregard all these time-honoured and well-tested judicial self-restraints and norms and exercise their said powers, in every case before the detention order is executed. Secondly, as has been rightly pointed out by Shri Sibal for the appellants, as far as detention orders are concerned if in every case a detenu is permitted to challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law under which it is made will be frustrated since such orders are in operation only for a limited period. Thirdly, and this is more important, it is not correct to say that the courts have power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they have used it in a 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."

In para 32, it was further held as under :

"32. This still leaves open the question as to whether the detenu is entitled to the order of detention prior to its execution at least to verify whether it can be

challenged at its pre-execution stage on the limited grounds available. In view of the discussion aforesaid, the answer to this question has to be firmly in the negative for various reasons. In the first instance, as stated earlier, the Constitution and the valid law made thereunder do not make any provision for the same. On the other hand, they permit the arrest and detention of a person without furnishing to the detenu the order and the grounds thereof in advance. Secondly, when the order and the grounds are served and the detenu is in a position to make out prima facie the limited grounds on which they can be successfully challenged, the courts, as pointed out earlier, have power even to grant bail to the detenu pending the final hearing of his petition. Alternatively, as stated earlier, the Court can and does hear such petition expeditiously to give the necessary relief to the detenu. Thirdly, in the rare cases where the detenu, before being served with them, learns of the a detention order and the grounds on which it is made, and satisfies the Court of their existence by proper affirmation, the Court does not decline to entertain the writ petition even at the pre-execution stage, of course, on the very limited grounds stated above. The Court no doubt even in such cases is not obliged to interfere with the impugned order at that stage and may insist that the detenu should first submit to it. It will, however, depend on the facts of each case. The decisions and the orders cited above show that in some genuine cases, the courts have exercised their powers at the pre-execution stage, though such cases have been rare. This only emphasises the fact that the courts have power to interfere with the detention orders even at the pre-execution stage but they are not obliged to do so nor will it be proper for them to do so save in exceptional cases. Much less can a detenu claim such exercise of power as a matter of right. The discretion is of the Court and it has to be exercised judicially on well settled principles.”

10. The aforesaid decision received further elaboration in ***Subhash Popatlal Dave vs. Union of India & Anr.***⁵ by clearly stating that nowhere in ***Alka Subhash Gadia***, it has been indicated that challenge to the detention order at pre execution stage can be made only in five exceptions, as they were not to be construed as exhaustive.

“47. With due respect to the Hon'ble Judges in Sayed Taher Bawamiya case, we have not been able to read into the judgment in *Alka Subhash Gadia* case any intention on the part of the Hon'ble Judges, who rendered the decision in that case, that challenge at the pre-execution stage would have to be confined to the five exceptions only and not in any other case. Both the State and the Hon'ble Judges relied on the decision in Sayed Taher Bawamiya case. As submitted by Mr Rohatgi, to accept that it was the intention of the Hon'ble Judges in *Alka Subhash Gadia* case to confine the challenge to a detention at the pre-execution stage, only on the five exceptions mentioned therein, would amount to imposing restrictions on the powers of judicial review vested in the High Courts and the Supreme Court

5(2012) 7 SCC 533

under Articles 226 and 32 of the Constitution. The exercise of powers vested in the superior courts in judicially reviewing executive decisions and orders cannot be subjected to any restrictions by an order of the court of law. Such powers are untrammelled and vested in the superior courts to protect all citizens and even non-citizens, under the Constitution, and may require further examination.”

11. In an comparatively latest decision in ***Sushant Kumar Banik vs. State of Tripura & Ors.***⁶ the Apex Court reiterated as below :-

“28. The preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and, therefore, in prevention detention jurisprudence whatever little safeguards the Constitution and the enactments authorizing such detention provide assume utmost importance and must be strictly adhered to.”

In the wake of aforesaid pronouncement of law, we see no legal impediment in entertaining the present Petition despite the fact that impugned order of detention is not yet executed upon the Petitioner.

12. Dealing with the specific contention of Mr.Chavan about the delay in passing the order of detention, we have noted that the allegations of evasion of duty against the Petitioner were made on 21/10/2010, when the DRI issued summons to the Petitioner alleging that he had imported the cranes in India by evading the duty and the Petitioner was arrested on 02/11/2010. His statement was recorded under Customs Act which he subsequently retracted. On applying, the Petitioner was directed to be released on bail and he moved a representation to the Custom Authorities for release of his cranes detained in Mumbai.

He even filed a Petition for releasing of the cranes seized by the Custom Authorities and on 25/07/2011, the writ was granted in his favour.

⁶ (2022) 13 SCR 484

The whole process adopted by the Custom Authorities having come to a full circle the detention order was issued on 25/01/2012, which according to the Petitioner suffer from gross delay as the live link between his activities and passing of the order of detention and the necessity of detaining the Petitioner has been snapped.

13. We find substance in the said contention, as while preventively detaining the detenu, a person, without taking recourse to the normal procedure prescribed in law, the delay assume significance as preventive detention is a serious invasion of personal liberty, where the person sought to be detained is denied an opportunity to disprove the charge or to prove his innocence at trial. The object of preventive detention is not to punish a man for having done something, but to prevent him before he does or indulge in a prejudicial act, so as to prevent him from doing so. It is, therefore, very necessary to have a “live and proximate link” between the grounds available for detention and the avowed purpose of his detention. The Detaining Authority must be subjectively satisfied that the activity of the detenu is of such a nature that it is necessary to immediately stall his further action and if he is left free to carry on his activities, he would cause great harm to the public at large or to its exchequer.

14. In ***Suresh Mahato vs. District Magistrate, Burdwan & Ors.***⁷, while focusing upon the aspect of delay of the arrest of the detenu in absence of a genuine satisfaction being recorded as regards the necessity of detention, the Apex Court observed thus :

“Now, there can be no doubt – and the law on this point must be regarded as well settled by these two decisions – that if there is unreasonable delay between the date of the order of detention and the date

7(1975) 3 SCC 554

of arrest of the detenu, such delay, unless satisfactorily explained would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate and it would be a legitimate inference to draw that the District Magistrate was not really and genuinely satisfied as regards the necessity for detaining a person.”

Justice Chinnappa Reddy speaking for the Bench in ***Bhawarlal Ganeshmalji vs. State of Tamilnadu***⁸ has pertinently observed thus :-

“ 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 abode purpose of detention mainly the prevention of smuggling activities. We may in appropriate cases assume that the link is “snapped” if there is any 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 a result of recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the “link” not snapped, but strengthened.”

In one of the latest pronouncement from the Apex Court in ***Sushanta Kumar Banik vs. State of Tripura & Ors.*** , by referring to the authoritative pronouncements on this point, it is observed thus ::

“20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.

21. In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The “live and proximate link” between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same.”

8(1979) 1 SCC 645

15. When we specifically enquired with the learned APP Mr. Yagnik whether the Detaining Authority has offered any response to this ground raised in the petition, he would submit that the only explanation offered by the Detaining Authority is that voluminous documents were seized and being analysed and, therefore, the delay is immaterial.

We do not find it to be the stand of the Detaining Authority that after a period of transaction from 2000 to 2010 when the Petitioner had imported 7 secondhand cranes in India, he is found to have indulged in any other violation of law and in fact in the additional Affidavit filed by the Detaining Authority on 27/09/2024, a specific statement is made that the Sponsoring Authority office has not observed any prejudicial activities undertaken by the Petitioner during the period from the decision of the Detaining Authority till date.

16. Admittedly, since there was a stay granted in favour of the Petitioner when he raised challenge to the impugned order of detention and which continued to remain in force all the while, till he withdrew the writ petition before the Punjab & Haryana High Court on 15/11/2023, so as to approach this Court and the present Petition being filed and with the aforesaid statement in the Affidavit of the Detaining Authority, we are satisfied that the order of detention deserve to be quashed and set aside, on two counts viz. its execution after more than a decade with a clear statement coming from the Respondent that there is no activity of the detenu which is found to be prejudicial and also on the ground that even when the order of detention was issued on 25/01/2012, it suffered from delay, which snapped the live link between the activities of the detenu which were alleged to be prejudicial at that relevant point of time and which were sought to be curbed by passing an order of detention.

As a result of the discussion , the Writ Petition is made absolute in terms of prayer clause (b) by quashing and setting aside the impugned order of detention dated 25/01/2012 passed by the Detaining Authority under the COFEPOSA, 1974.

(MANJUSHA DESHPANDE)

(BHARATI DANGRE, J.)