IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2024

PRONOUNCED ON : 21.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

H.C.P.No.2229 of 2024

Fathima Beevi ... Petitioner

Vs.

1.The 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 – 110 001.

2.The Directorate General Central Economic Intelligence Bureau
Government Of India
Ministry of Finance, Department of Revenue,
Central Economic Intelligence Bureau,
6th Floor, B-wing,
Janpath Bhawan
Janpath, New Delhi – 110 001.

3.The superintendent of Prison
Central Prison,
Puzhal, Chennai.

4.The Superintendent of Customs

Prosecution unit – Airport
New Custome House,
Meenambakkam, Chennai – 600 027. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records relating to the proceedings of the 1st respondent herein F.No.PD-12002/04/2024-COFEPOSA dated 13.08.2024 and quash the same and produce the detenue Thiru.Mohammed Sabir Ali, Male aged 29, S/o.Shahul Hameed COFEPOSA No.6197 now detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.G.Mohanakrishnan

For Respondents : Mr.AR.L.Sunderesan, Addl. Solicitor General of India for R1 and R2.
Mr.R.Muniyapparaj
Additional Public Prosecutor
Mr.N.P.Kumar, Spl.PP for R4.

ORDER

(*Order of the Court was made by M.JOTHIRAMAN, J.*)

The petitioner is the mother of the detenue viz., Mohammed Sabir ali s/o.Shahul Hameed aged about 29 years detained in Central Prison, Puzhal, Chennai has come forward with this petition, challenging the detention order passed by the first respondent in F.No.PD-12002/04/2024-

COFEPOSA dated 13.08.2024.

The brief case of the petitioner is as follows :-

2. The 4th respondent herein has registered a case in OS.No.651 of 2024-AIU-B Batch on 26.06.2024 for the offences under Section 132(1)(a) and 135(1)(b) of Customs, Act, 1962. The detenue was arrested on 28.06.2024 and remanded to judicial custody on 29.06.2024 with regard to smuggling of Foreign Origin Gold weighting 785grams valued for a sum of Rs.49,23,457/- into India by way of concealment in paste form. The investigation was almost completed, but they and failed to file the final report which shows that the investigating agency is only interested in detaining the petitioner's son.

2(i). The detenue was implicated as an accused based on a confession of co-accused, even the said statement obtained from the co-assued was by threat and coercion. Though, the bail petitions were enclosed in the booklet, the detaining authority while passing order have not taken into consideration the retracted statements and the same was not rejected by him. The bail application in Crl.MP.No...../2024 (unable to understand and read) and the detenue was totally confused because at Page No.222 it says at Cr.No.180 of 2024, whereas the counter at Page No.225 mentions OS.No.75/2024-INT (AIR) and OS.No.651/2024-AIU-B Batch. So the detenue was totally confused and he was prevented from giving an effective representation, notably the detaining authority has categorically stated in the grounds of detention at Page 14 para 10 that they had applied their mind to arrive at the subjective satisfaction and to formulate the grounds of detention. On this score, the detention order is liable to be set aside.

2(ii). Page Nos.220, 221 and 222 of the petitioner's bail application are illegible. That apart page No.243 is also illegible and unable to read which constitutes a clear violation of Article 22(5). Statutory provisions should be strictly applied without any deviation or else it will lead to the quashing of the detention order. Since the supplied materials were illegible to the detenue himself. It is implausible that the detaining authority could have received the records hence it violates the mandatory provisions for passing the detention order. There was an inordinate delay of 45 days in passing the detention order, and there is no live and proximate link for passing the detention order.

2(iii). On page No.151 of the grounds of detention, the case is presented involving a co-accused Mohammed Razin Mohammed Ismail who arrived from Abu Dhabi on an Indigo Flight on 25.06.2024, at 9.16a.m. and was scheduled to depart for Colombu on an by Indigo Flight on 26.02.2024, at 01.00a.m. He was then intercepted by Customs Officers and brought to the AIU room in the arrival area in the presence of witnesses along with his hand bag. So it causes great confusion for the detenue with regard to the dates. Furthermore, it appears that the detaining authority did not gone through the grounds of detention, which prevented the detenue from making an effective representation.

3. Mr.G.Mohanakrishnan, the learned counsel appearing on behalf of the petitioner would submit that there was an inordinate delay of 45 days in passing the detention order. There was no live and proximate link for passing the detention order. The unreasonable and unexplained delay

by the first respondent infringed the Constitutional rights guaranteed under Article 21 of the Constitution of India. He would submit that the remand extension orders were not supplied to the petitioner. Additionally, page Nos.220, 221 and 222 of the petitioner's bail application were illegible, and Page 243 was also unable to read, so it constitutes a clear violation of Article 22(5). The statutory provisions should be strictly applied without any deviation, or else it will lead to quashing the order of detention.

3(i). The learned counsel for the petitioner would further submit that the detention order was passed on 13.08.2024 and the detenue was shown as arrested on 28.06.2024. However, the ground of detention of the booklet were served on the detenue only on 17.08.2024. The unreasonable delay between the date of the order and the date of detention raises concern about the genuineness of detaining authority's subjective satisfaction. The detaining authority has not offered any satisfactory and proper explanation for the delay in executing the detention order and by giving necessary materials. The subjective satisfaction arrived at by the detaining authority is not genuine. Therefore, the detention order is liable to be revoked. To strengthen his contentions, the learned counsel for the petitioner has relied upon the recent judgment of the Hon'ble Supreme Court reported in **(2024) 4 SCR 460 – Shabana Abdulla v. The Union of India and others** wherein it has been held in Para 15 that *"When the Coordinate Bench of the same High Court based on same grounds of detention and on the basis of the same material, which was relied on by the detaining authority, had come to a considered conclusion that non-supply of certain documents had vitiated the right to make an effective representation of the detenus, another Coordinate Bench could not have ignored the same."*

4. Per Contra, Mr.AR.L.Sunderasan, the learned Additional Solicitor General of India, appearing for the respondents 1 and 2 would submit that on 26.06.2024 based on specific intelligence indicating gold being smuggled in the International Transit/Departure area of the Anna International Terminal Chennai Airport, Officers of Air Intelligence Unit mounted surveillance and intercepted an individual by name Shri.M.Kani a Sales Executive. Upon detailed examination, the officers recovered and seized 785 grams of gold valued at Rs.49,23,457/-. He would submit that on further enquiry, Shri.M.Kani admitted that the gold was in paste form

and the same was handed over to him by Shri.Mohammed Razeen Mohammed Ismail, an international transit passenger, inside the Airhub shop in the International Departure area. As per the instructions of Shri.Mohammed Sabir, Shri.M.Kani intended to hand over the said gold to Shri.Vijayan who was supposed to receive the same at one tea shop at Tirusulam Bus Stop near to Chennai Airport.

4(i). The learned Additional Solicitor General of India submited that during investigation, it was revealed that the detenue admitted to profiting Rs.2.5 crores from the smuggling activities and confessed to orchestrating the smuggling of approximately 267 kgs of gold through the transit area at Chennai International Airport. This involved around 890 bundles valued at approximately 167 crores over a period of 45 days. Furthermore, the detenue planned to expand the gold smuggling network by opening shops in various other airports, for this he contacted officials at Mumbai and Delhi airport.

5. Mr.N.P.Kumar, learned Special Public Prosecutor appearing for the 4th respondent would submit that the investigation has uncovered

compelling evidence pointing to the detenue's central role as the master mind behind the sophisticated gold smuggling operating between international sources in India. He would further submit that the operation was meticulously organised, involving the recruitment and training of staff, specifically for the purpose of smuggling gold. This indicates a high level of planning and coordination aimed at evading legal scrutiny and exploiting vulnerabilities in airport and transit procedures. The subjective satisfaction has also been noted by the detaining authority in the grounds of detention.

6. The first respondent passed the impugned order dated 13.08.2024. The relevant portion of the order is extracted hereunder :-

> *"Now, therefore, in exercise of the powers conferred by Section 3 (1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974, I direct that the said Shri Mohammed Sabir Ali s/o.Shri Shahul Hameed R/o.No.04-A, Madhav Apartments, Thomas Road, 1st Street, T.Nagar, Chennai – 600 017 be detained and*

kept in Central Prison, Puzhal, Mahalakshmi Nagar, Chennai, Tamil Nadu, Pin – 600066."

7. The learned counsel appearing for the petitioner has raised three primary grounds (i)there was an inordinate delay (ii)the impugned detention order was not based on subjective satisfaction and (iii)there is no live and proximate link maintained.

8. Per contra, the learned Additional Solicitor General of India would submit that only after arriving at subjective satisfaction based on relevant and sufficient material placed before the authority concerned, the impugned detention order has been passed. There was no inordinate delay in passing the impugned order and there is a live link exists between the prejudicial activities and order of detention. To strengthen his contentions, the learned Additional Solicitor General of India has relied upon the judgments of the Hon'ble Supreme Court reported in - ***2014 (11) SCC 326 – Licil Antony V. State of Kerala*** wherein it has been held in paragraph 9 that "*We have given our thoughtful consideration to the rival submissions and we have no doubt in our mind that there has to be a live-link between*

the prejudicial activity and the order of detention. C*OFEPOSA intends to deal with persons engaged in smuggling activities who pose a serious threat to the economy and thereby security of the nation. Such persons by virtue of their large resources and influence cause delay in making of an order of detention. While dealing with the question of delay in making an order of detention, the court is required to be circumspect and has to take a pragmatic view. No hard-and-fast formula is possible to be laid or has been laid in this regard. However, one thing is clear that in case of delay, that has to be satisfactorily explained. After all, the purpose of preventive detention is to take immediate steps for preventing the detenu from indulging in prejudicial activity. If there is undue and long delay between the prejudicial activity and making of the order of detention and the delay has not been explained, the order of detention becomes vulnerable. Delay in issuing the order of detention, if not satisfactorily explained, itself is a ground to quash the order of detention. No rule with precision has been formulated in this regard. The test of proximity is not a rigid or a mechanical test. In case of undue and long delay the court has to investigate whether the link has been broken in the circumstances of each case."* *(2)* ***2019 (20) SCC 609 – Union of India V. Dimple Happy***

Dhakad** (3) **2021 SCC Online M ad 14517 – R.Gannasundari v. Additional Chief Secretary to Government of Tamil Nadu** (4) **2021 SCC Online MAD 14518 – M.Rukkumuthu v. Additional Chief Secretary to Government of Tamil Nadu** (5) **2021 SCC Online MAD 5888 – S.Amutha v. Government of Tamil Nadu** (6) **2024 (3) SCC 347 – Safaraz Alam v. Union of India.

9. We have considered the submissions made on either side and perused the available records.

10. At this juncture, it is relevant to cite the judgment of the Hon'ble Supreme Court reported in ***2022 Livelaw (SC) 813 – Sushanta Kumar Banik v. State of Tripura*** wherein it has been held that a question, whether delay is unreasonable and stands unexplained depends on the facts and circumstances of each case. The relevant observation of the Hon'ble Supreme Court is extracted hereunder:-

> *"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."

11) By objecting, the contentions of the petitioner, the learned Additional Solicitor General of India has drew the attention of this Court, in the counter affidavit filed by the respondents 1 and 2, particularly in Paragraphs 8, 18 and 26. At this juncture, it is relevant to cite the paragraphs 8, 18 and 26 of the counter affidavit :-

"8. I respectfully submit that during the further course of investigation, it is revealed that Shri. Mohammed Sabir Ali, Proprietor of Airhub, established Airhub as a front of smuggling gold into India and orchestrated the smuggling activities by offering financial incentives to his employees viz. Shri. M. Kani S/o Shri. Muruganantham, Shri Johnmildon S S/o Shri. Sesumuthu Shri V Balaji S/o Shri. Vedhachalam, Shri Naveenraj G S/o Shri. Ganeshan, Shri Vignesh R S/o Shri. Ravichandran, Shri Vinoth M S/o Shri. Makesh and Shri Kishore S S/o Shri. Siva Kumar and reportedly arranged a seven-day training program for all of his employees to instruct them on the methods/techniques to effectively carry/conceal the gold paste in their rectums. Transit passengers were handing over gold at the Airhub Shop or sometimes in the rest room of the M2 Toilet. All his employees were tasked with collecting gold bundles from these locations, concealing them in their rectum and smuggling them out of the airport.

Thereafter, they supposed to hand over the gold to a person Shri. Vijayan at a tea shop near Tirusulam Bus Station. All instructions regarding the smuggling were given by Shri Mohammad Sabir, Ali, Vijayan and Shri Jhonmildon.

18. I respectfully submit that with reference to the contents of Paragraph 5 of the affidavit filed by the petitioner, the Sponsoring Agency submitted a proposal for the preventive detention of the detenue to the Detaining Authority on 31.07.2024. The Impugned Detention Order has been passed against the detenue on 13.08.2024 by the Respondent No. 1 being the Detaining Authority under the COFEPOSA Act, 1974 only after arriving at his subjective satisfaction based on relevant and sufficient material and facts. This decision was based on the nature and gravity of Shri Mohammed Sabir Ali's role in the activities, which exhibited a high level of sophistication aimed at *evading legal scrutiny and exploiting vulnerabilities in airport transit procedures. Such detailed planning and coordination underscore the sophisticated nature of his illicit activities and reflect his significant potential and propensity to engage in prejudicial activities in the future.*

26. I respectfully submit that with reference to the contents of Paragraph 13 and 14 of the affidavit filed by the petitioner, the detenue was arrested under Customs Act, 1962 on 28.06.2024 and thereafter the investigation was carried on by the Customs Authority. During the investigation, the Customs Authority felt the need to preventively detain the detenue. Accordingly, a proposal for preventive detention of the detenue Shri Md. Sabir Ali along with his co-detenues were forwarded to the office of the detaining authority on 30.07.2024 which was received in the office of detaining authority on 31.07.2024. The said proposal *was placed before the High Level Screening Committee, consisting of senior level officers of Govt. of India for screening the said proposal. The screening committee meeting took place on 07.08.2024 wherein the said proposal was found fit for preventive detention of Shri Md. Sabir Ali under COFEPOSA Act, 1974. Then only, the said proposals along with all the relevant documents were placed before the detaining authority. The detaining authority issued the detention order on 13.08.2024 only after arriving at his subjective satisfaction on the basis of the material/facts placed before him. The said subjective satisfaction has clearly been noted down by the detaining authority in the grounds of detention (para 8) wherein the detaining authority clearly mentioned that he was aware that the detenue was in judicial custody at the time of issuance of detention order and there is a possibility of his release from the judicial custody on bail. The said detention order was executed on the detenue on*

14.08.2024. Further, according to Section 3(3) of the COFEPOSA Act, 1974, the grounds of detention must be provided "as soon as possible after detention, but not necessarily immediately, as claimed in the petition. The phrase "as soon as implies a reasonable timeframe, and Section 3(3) generally allows for a period of up to five days under ordinary circumstances and up to fifteen days in exceptional cases. In this instance, the Detention Order was issued on 13.08.2024 and executed on 14.08.2024. The grounds of detention, along with the list of relied- upon documents, were served to the detenue on 17.08.2024, which is well within the time limits prescribed by the COFEPOSA Act, 1974."

12. It is pertinent to mention that the relevant portion of the detention order, where the detaining authority has stated that the

documents relied upon are being served upon the detenue is reiterated in the counter filed by the respondents 1 and 2, specifically in paragraph 25, the relevant portion is extracted below :-

> *"I respectfully submit that with reference to the contents of Paragraph 12 of the affidavit filed by the petitioner, the legible copies of RUDs from pages 220, 221, 222 and 243 were requested by the petitioner through a representation dated 02.09.2024 made to the detaining authority. The detaining authority directed the Sponsoring Authority to supply various documents as requested by the petitioner. The sponsoring authority received this request on 05.09.2024 and subsequently supplied various documents, including Notifications No.43/2024-Customs and 45/2024-Customs, a legible copy of the bail application dated 28.06.2024 filed by Mohammed Sabir Ali, a legible copy of the bail application dated 28.06.2024 filed by Mohammed Sabir Ali, a legible copy of the bail application dated 22.07.2024 filed by Mohammed*

Razeen Mohammed Ismail, and a chronological sequence of events along with Tamil translations of the requisite documents. These were provided to the detenue, acknowledged on 16.09.2024."

13. It is also pertinent to mention that the detaining authority has satisfied itself that the nexus between the dates of incident and passing of detention order, as well as object of detention has been well maintained. At this juncture, it is relevant to cite the Paragraphs 6, 7 and 10 of the detention order, the same is extracted hereinunder :-

"6. In view of the facts and circumstances explained above, I have no hesitation in concluding that you i.e. Shri Mohammed Sabir Ali played a vital role in smuggling of gold of foreign origin from abroad along with other accomplices. The investigation by Customs, Chennai I Commissionerate (Airport) has uncovered compelling evidence pointing to your central role as the mastermind behind a sophisticated gold smuggling network operating

between international sources and India. Alongside accomplices Shri Ihshan alias Kumar R and Shri Vijayan, you established Airhub shop shop in the transit area of Chennai International Airport. This establishment served as a front for smuggling operations, allowing them to successfully transport an astonishing 267 kgs of gold valued at approximately Rs. 167 Crores over just 45 days. The operation was meticulously organized, involving the recruitment and training of staff specifically for the purpose of smuggling gold. This indicates a high level of planning and coordination aimed at evading legal scrutiny and exploiting vulnerabilities in airport transit procedures. The use of body concealment and strategic transit routes at Chennai International Airport further highlight the sophisticated nature of your illicit activities. The systematic nature of these smuggling operations poses a grave threat not only to India's economic interests but also to its security and *regulatory frameworks. You have also designed plan in an organized and repeated manner in the act of smuggling. Investigations further clearly establish your continued propensity and inclination to indulge in act of smuggling in a planned manner to the detriment of the economic security of the country and that unless prevented you i.e. Shri Mohammed Sabir Ali will continue to do so. Further considering the nature and gravity of offence in an organized manner in which you i.e. Shri Mohammed Sabir Ali have engaged yourself in such prejudicial activities and your role therein, all of which reflect your high potentiality and propensity to indulge in such prejudicial activities in future, I am satisfied that there is a need to prevent you from smuggling of gold. Hence, you i.e. Shri Mohammed Sabir Ali ought to be detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974 with a view to preventing you from* *smuggling goods, abetting the smuggling of goods and harbouring persons engaged in smuggling goods in future, in terms of Section 3(1) of the COFEPOSA Act, 1974.*

7. Prevention of perpetration of such despicable activities is indispensable for the greater cause of the nation. The smuggling syndicate committed the offence with meticulous planning and deliberate designs having the sole intention of personal profit regardless of the adverse impact of your actions on national economy and security and there is every likelihood that you ie. Shri Mohammed Sabir Ali as member of the syndicate will engage yourself in such smuggling activities again in view of your propensity to do so.

10. Having regard to the chronological sequence of events in this case, the time required to *scan the proposal, procure additional information and the voluminous relied upon documents (RUDs), the time required to apply my mind to arrive at the subjective satisfaction and to formulate the Grounds of Detention, I am satisfied that the nexus between the dates of incident and passing of this Detention Order as well as object of your detention has been well maintained.*

14. We are of the opinion that in the present case a huge volume of gold i.e., 267 kgs of Gold valued approximately Rs.167 crores, had been smuggled into the country, over a period of 45 days. The detaining authority was satisfied that the detenue had a propensity to indulge in the same act of smuggling and passed the order of preventive detention, which is a preventive measure. Based on the documents and the materials placed before the detaining authority and considering the individual role of the detenue, the detaining authority satisfied itself as to the detenue continued propensity and his inclination to indulge in acts of smuggling in a planned manner, detrimental to the economic security of the country.

15. In the light of the above facts and circumstances, we are of the view that the detaining authority has deemed it necessary to issue a detention order against the detenue. This Court finds there is no reason to interfere with the impugned order dated 13.08.2024 passed by the first respondent.

16. In fine, the habeus corpus petition stands dismissed. No costs.

[S.M.S., J.] **[M.J.R., J.]**
21.12.2024

Index: Yes/No
Internet:Yes/No
Neutral Citation: Yes/No
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To

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