



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date: 14.6.2024

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HON'BLE MR.JUSTICE K.RAJASEKAR

H.C.P.(MD) No.1353 of 2023

Tmt.Sabeena Beevi

Petitioner

vs.

1. The Joint Secretary to
Government of India,
Ministry of Finance,
Department of Revenue (COFEPOSA Unit),
Central Economic Intelligence Bureau,
6th Floor, 'B' Wing,
Janpath Bhawan, Janpath,
New Delhi 110 001.
2. The Director General,
Central Economic Intelligence Bureau,
Government of India,
Department of Revenue,
Ministry of Finance,
6th Floor, 'B' Wing,
Janpath Bhawan, Janpath,
New Delhi 110 001.
3. The Superintendent of Central Prison,
Madurai Central Prison,
Madurai.

Respondents



Habeas Corpus Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Habeas Corpus calling for the entire records, connected with the order of respondent No.1 herein in order in F.No.PD-12001/03/2023-COFEPOSA dated 21.09.2023 and quash the same further directing the respondents to produce the body and person of the detenu, by name, Mohamed Sathik Ali, aged about 33 years son of Jainulabudeen, now confined in Madurai Central Prison before this court and set him at liberty forthwith.

For Appellant : Mr.R.Alagumani

For R1 and R2 : Mr.AR.L.Sundaresan,
Additional Solicitor General
assisted by Mr.K.Govindarajan,
Deputy Solicitor General of India

For R3 : Mr.A.Thiruvadikumar,
Additional Public Prosecutor.

ORDER

A.D.JAGADISH CHANDIRA, J.

The petitioner is the wife of the detenu viz., Mohamed Sathik Ali, son of Jainulabudeen, aged about 33 years. The detenu has been detained by the first respondent by his order in F.No.PD-12001/03/2023-COFEPOSA dated 21.09.2023.



2. The detenu stands detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974 by the detaining authority, having come to the conclusion that the detenu had played a vital role in smuggling of gold of foreign origin from Srilanka alongwith other accomplices.

3. Gist of the case behind as revealed from the materials produced before us is as under:-

i) The Directorate of Revenue Intelligence (hereafter referred to as 'DRI' for brevity), Chennai Zonal Unit received a specific intelligence that a gang operating from Vedhalai coastal hamlet of Ramanathapuram District was involved in smuggling of foreign origin gold from Srilanka through Mandapam Coast and that three persons belonging to the said gang were coming in a blue coloured fishing boat named "YAA ALLAH" carrying smuggled gold brought from Srilanka through sea and would be landing in the shore area near Mandapam Fishing Harbour.

ii) Acting on the specific intelligence, the DRI Officers, Chennai with the help of the Coast Guard boat intercepted the said boat in sea near Mandapam Fishing Harbour on 08.02.2023 and on enquiry, the



three persons introduced themselves as Shri.Nagoor Kani of Mandapam, the owner and driver of the boat, Shri.Mohammed Sameer of Maraikayarpatinam and Shri.Sahubar Sathik of Mandapam. All the three admitted that they had collected smuggled gold from a Srilankan boat at high seas and were returning with the smuggled gold in the fishing boat and on seeing the Coast Guard boat, they had dropped the smuggled gold parcel into sea and had marked the location with a GPS unit of brand GARMIN model GPS72H with serial number 1T7033511 for later recovery.

iii) On such admission, the Indian Coast Guard Scuba diving and snorkelling team searched in and around the said location marked on the said GPS unit and retrieved the parcel wrapped with cloth towel and tied around with nylon rope with floats containing smuggled gold in the presence of DRI officers on 09.02.2023. The parcel was found to contain 14 packets, which, on examination in the presence of Government Certified Gold Appraiser, was found to contain in total 167 numbers of foreign origin gold items such as 86 FMG Bars, 32 Thin Crude Gold sticks, 17 Crude Gold chains, 10 Crude Gold Bars, 6 Cut Pieces of Gold, 4 Coin shaped Gold piece, 3 Crushed Gold Rings, 2 Crude Gold Rod, 2 Crude Semi Circular shaped Gold piece, 2 Crude



Button shaped Gold piece, 2 Crude Triangular shaped Gold piece and 1 Circular shaped Gold piece totally weighing 17.740 kgs and valued at Rs. 10,17,29,540/- as detailed in the Annexure to the Mahazar dated 09.02.2023 drawn at the office of the Indian Coast Guard Base Station, Mandapam, Ramanathapuram District. The Gold appraiser informed that out of the 167 gold items 166 gold items are of 24 carat purity and 1 crushed Gold Ring is of 22 carat carat purity and the Appraiser had issued a Certificate of Appraisal dated 09.02.2023 to this effect.

iv) When enquired by the DRI officers for necessary documents with regard to possession of the above gold items, all the three had admitted that they did not have any valid document for possession the gold and thereby on coming to a conclusion that they were smuggled from Srilanka by sea without payment of duty or declaration to the Customs and thus they are all liable for confiscation under the provisions of the Customs Act, 1962, the gold items were placed under seizure. The officers also seized the GPS unit of brand GARMIN model GPS72H with serial number 1T7033511, which was liable for confiscation under the Customs Act, 1962 and the blue coloured fishing boat named "YAA ALLAH in Tamil language' bearing registration



No.IND.TN.11.MO.930, valued at Rs.2,00,000/-, which was used for transporting the smuggled gold and was therefore liable for confiscation under the provisions of the Customs Act, 1962, were also seized under the Mahazar proceedings dated 09.02.2023. The adhesive tapes used as packing materials, with no commercial value, which was liable for confiscation under the provisions of the Customs Act, 1962 was also seized under the above said Mahazar proceedings. The 167 numbers of seized foreign origin gold items, packing materials and GPS unit were deposited in the Seized Goods Godown, Customs Preventive Unit, Madurai under WHR No.32/2022-23 CPU MDU dated 10.02.2023. The seized boat was deposited at Customs Preventive Unit, Mandapam under WHR No.03/2023-24 dated 09.06.2023.

v) All the three were enquired individually on 08.02.2023 and 10.02.2023 and their statements were recorded. Tr.Nagoor Kani being owner of the fishing boat and Mohammed Sameer and Sahubar Sathik being fishermen/coolie claimed to have been engaged by the detenu through some agents for the act of smuggling the gold from Sri Lanka.

vi) On the basis of their statements, the agents, by name Jahangeer Abbas and Azaar, who are alleged to have been devised by the detenu to act as agents to involve the fishermen in the smuggling



activities, have also been enquired individually on 10.02.2023 and their statements were also recorded.

vii) Since the statements recorded from the fishermen and the agents point out the detenu as the mastermind for the smuggling activities, he was also enquired by the DRI officers on 10.02.2023. The statement so recorded from the detenu revealed that he had involved in the smuggling activity for one Mevin of Sri Lanka and thereby all the six persons including the detenu were arrested under Section 104 of the Customs Act, 1962 on 11.02.2023 and remanded. Later, the detenu came out on bail by order dated 15.03.2023 in CrI.M.P.No.390 of 2023 passed by the Additional Chief Judicial Magistrate, Madurai.

viii) Whiles, the Officers of Directorate of Revenue Intelligence, Chennai Zonal Unit, on 30.05.2023, received specific intelligence that a gang operating from Vedhalai coastal hamlet was involved in the smuggling of gold from Sri Lanka through Vedhalai coast and those persons belonging to the said gang had sailed to the international maritime boundary line between India and Sri Lanka in a blue coloured fishing boat bearing registration No.IND.TN.11.MO.1202 and after collecting foreign origin smuggled gold from a Srilankan boat, the gang



was returning to the Vedhalai Coast in the said blue coloured boat with the smuggled gold for delivery to their gang members.

ix) In pursuance of the said intelligence, the DRI Officers had reached the vicinity of the Vedhalai Sea Coast in a fibre boat and on mounting extensive surveillance, noticed that a fishing boat was speeding towards the Vedhalai Coast in a suspicious manner and accordingly the Officers had decided to intercept the said boat and the inmates of the boat on noticing the officers' boat fast approaching them, accelerated their boat and reached the shore of the Vedhalai Coast before the Officers could intercept them at sea. The officers noticed that there were two persons readily standing at the shore and the inmates of the fishing boat on reaching the shore, quickly disembarked from the boat with a package and handed over the package to the two persons standing in the shore. At the same time, the boat carrying the DRI officers also reached the shore of Vedhalai Coast and on seeing the officers, the inmates of the boat and the two persons who had just received the package from the inmates of the boat started to run away into the dark. The Officers, then, quickly alighted from the boat and started to chase the persons immediately. The inmates of the boat escaped into the darkness before the Officers



could get hold of them. The Officers had chased and nabbed the two persons, who had collected the package from the inmates of the boat and were found trying to run away together with the package. The officers noticed that the two persons caught by them with the package are Shri.Mohamed Sathik Ali, the detenu and Shri.A.Azharudeen, the main accused persons in the smuggling case involving the seizure of 17.740 kgs of foreign origin gold booked by DRI during February 2023.

x) The DRI officers noticed that the package carried together by the detenu and Shri.A.Azharudeen was a blue colour adidas brand jacket made into a bundle by knotting together the cuffs of the jacket. When enquired, they admitted that the blue jacket contained packets of smuggled gold. They had also admitted that the detenu had arrived to the sea shore using a Yamaha Ray ZR Street Rally two-wheeler bearing registration No. TN65 AK8476 and had parked it in the vicinity of the shore and after collecting the smuggled gold, they had planned to return back with the smuggled gold using the said two wheeler. They had further admitted that on noticing the officers, they had attempted to run in the direction of the said two-wheeler carrying the smuggled gold with the intent to use it for fleeing the spot.

xi) The officers found that the jacket contained eight cuboid



shaped heavily weighing packets wrapped with grey coloured Cellophane tape with markings. The officers, on examination of the eight-cuboid shaped heavily weighing packets in the presence of a Government Certified Appraiser, ascertained that the packets in total contained 69 items of foreign origin gold items such as 45 FMG Bars, 23 Crude Gold Bars and 1 small Elliptical Gold piece totally weighing 21.269 Kgs and valued at Rs.13,08,08,655/- as detailed in the Annexure to the Mahazar dated 30/31.05.2023 drawn at the office of the Indian Coast Guard Base Station, Mandapam, Ramanathapuram District. The Gold appraiser informed that all the 69 gold items are of 24 carat purity and issued a Certificate of Appraisal dated 31.05.2023 to this effect.

xii) When enquired by the DRI officers for necessary documents with regard to possession of the above gold items, they both had admitted that they did not have any valid document for possession the gold and thereby on coming to a conclusion that they were smuggled from Srilanka by sea without payment of duty or declaration to the Customs and thus they are all liable for confiscation under the provisions of the Customs Act, 1962, the gold items were placed under seizure. The blue colour boat valued at Rs.2,00,000/-, which was used



for transporting the smuggled gold and the Yamaha Ray two wheeler valued at Rs.40,000/-, which was used for transport of smuggled gold items were also seized under the provisions of Customs Act, 1962 under the Mahazar proceedings dated 30/31.05.2023.

xiii) The seized gold items and packing materials were deposited in the Seized Goods Godown, Customs Preventive Unit, Madurai under WHR No.02/2023-2024 CPU MDU dated 01.06.2023. The seized boat and two wheeler were deposited at Customs Division, Ramnad under WHR No.04/2023-24 dated 09.06.2023 and WHR No.05/2023-24 dated 09.06.2023 respectively.

xiv) The individual voluntary statement of the detenu and Shri.Azharudeen recorded on 31.05.2023 is as under:-

The detenu had sent people from Vedhalai coast by boat to go to specific GPS coordinates at sea and collect smuggled gold from Srilankans. After receiving the smuggled gold, he would contact the mobile numbers shared by a person in Srilanka and deliver the said gold to places like Ramnad and Madurai. Shri.Azharudeen would also assist the detenu in delivering the smuggled gold. Usually, the person to whom the detenu is delivering the said gold would offer him commission money. The detenu had previously smuggled gold into



India six times in this way. He would get Rs.80,000/- as commission in this. He would give a portion of this amount to Shri.Azharudeen and the persons in the boat carrying smuggled Gold. On 09.02.2023, 17740.000 grams of foreign origin gold worth Rs.10,17,29,540/- along with a fishing boat, which was used to carry the said smuggled gold, GPS kit and packing material used to smuggle was seized by DRI officers at Indian Coast Guard Station, Mandapam, Ramanathapuram - 623 518 and six persons, including the detenu and Shri.Azharudeen were involved in this. The detenu and 5 co-accused had been arrested and are currently on conditional bail. This time, Shri.Mevin had contacted the detenu and said that today i.e. 30.05.2023 he had smuggled gold and asked the detenu to send person to come and get it at the GPS point he refers to at sea. The detenu had informed this to Shri Azharudeen and sent three persons to the sea in a boat to get the smuggled gold. Expecting the persons whom the detenu had sent to the sea would return with smuggled gold to Vedhalai shore at around 07:15 pm, the detenu along with Shri.Azharudeen was waiting at Vedhalai Shore in a Yamaha Ray ZR Street Rally vehicle. The boat reached Vedhalai shore on that day at around 07:30 pm. The detenu were getting the smuggled gold kept in a jacket from the persons in



the boat. The Customs boat was fast approaching the shore and on seeing that, the persons in the boat hurriedly gave the said smuggled gold along with the jacket to the detenu and ran away from the boat. The detenu and Shri.A.Azharudeen got the said smuggled gold along with the jacket and as the smuggled gold was heavy, the detenu carried one side of the jacket and Shri.Azharudeen carried the other side of the jacket and while they were running to the vehicle hoping to get away in the said vehicle, the officers of DRI, who came in the Customs boat came running towards them and apprehended both of them and seized the smuggled gold they were carrying wrapped in the said jacket.

xv) Thereupon, the detenu and Shri.Azharudeen were arrested under Section 104 of the Customs Act on 31.05.2023 and were produced with remand application before the Hon'ble Court of Additional Chief Judicial Magistrate (ACJM), Madurai on 31.05.2023 and were remanded to judicial custody. They moved a bail petition in Cr.M.P.No.575 of 2023 and came out on bail granted by the Additional Chief Judicial Magistrate, Madurai by Order dated 10.07.2023.

xvi) In the above circumstances and the statements recorded from the detenu and the co-accused, the detaining authority had



passed the impugned order of preventive detention against the detenu, which has been challenged by the wife of the detenu.

4. Though several grounds have been raised in the Petition, learned counsel for the petitioner would confine his arguments to the following submissions:-

i) The petitioner was arrested on 27.9.2023 on the basis of the detention order dated 21.9.2023 passed by the first respondent, however, neither the detention order nor the grounds of detention was served on the same day and thereby the petitioner's wife had sent representation on 29.9.2023 and only thereafter, the detention order and grounds of detention were served on 30.9.2023 and thereby the detenu was prevented in making effective representation before the Advisory Board. Further, the reply of the second respondent in this regard was also issued in English on 9.10.2023 and the Tamil version of the same was served on the petitioner much belatedly viz., on 9.11.2023.

ii) In the Tamil version of the grounds of detention supplied, the address of the Advisory Board has not been properly mentioned and due to insufficient and improper details, representation dated



20.10.2023 posted on 21.10.2023 to the address indicated therein was returned with the endorsement "no such person" and thereby the right of the detenu to send the representation has been defeated.

iii) In the Tamil version of the grounds of detention served on the petitioner, while indicating the right to represent against the detention, there is mentioning of the word "**பிரதிநிதித்துவத்தை**" to mean the word "**representation**" and thus the petitioner was misled in taking a decision with regard to the further course of action.

iv) In the communication of the sponsoring authority to the Advisory Board on 12.10.2023, there is a mention to the effect that no representation has been received from the detenu or on his behalf till 12.10.2023 and thereby the representation dated 29.9.2023 sent by the petitioner to the third respondent and the representation made by the Advocate on behalf of the petitioner through email on 29.9.2023 were burked and not placed before the Advisory Board.

v) The representation dated 20.10.2023 sent to the Joint Secretary was received on 10.11.2023, however, forwarded to the sponsoring authority on 17.11.2023 and such a delay has caused prejudice to the detenu and thereby the detention order passed by the first respondent warrants interference.



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5. Per contra, the arguments submitted by Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for respondents 1 and 2 and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the third respondent are as under:-

i) It is a case of grave economic offence having deep impact on the economy of the country and the petitioner, who had earlier involved in a previous case of similar nature and on arrest in respect of the previous case, he came out on bail and taking advantage of such personal liberty granted by the court, he had indulged in the present case of the same nature and considering such facts and circumstances, the detaining authority has passed a reasoned order, which does not warrant any interference.

ii) Though the detention order was passed on 21.9.2023, based on the same, the petitioner was arrested only on 27.9.2023, sent to jail and he was taken custody by the jail authority and the detention order and grounds of detention were served on the detenu and the petitioner on 30.9.2023 within a reasonable period of three days and of course, the reply in this regard by the second respondent was issued on 9.10.2023 and its Tamil version was served on 9.11.2023,



but, it will not have any bearing on the present case.

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iii) So far as return of the representation dated 20.10.2023 is concerned, there is no fault on the part of the detaining authority and the mistake lies only the part of the Postal Department in perceiving the address.

iv) With regard to the allegation of defective translation in the Tamil version of the grounds of detention on the aspect of right to represent against the detention, the word "பிரதிநிதித்துவத்தை" also denotes the meaning "**representation**" and in fact, the petitioner had submitted her representation without being misled.

v) The representation dated 29.9.2023 was submitted by the petitioner seeking for grounds of detention and since the same does not challenge the detention order, that was not construed as a representation challenging the detention order to be placed before the Advisory Board and thereby, it was not disclosed before the Advisory Board.

vi) So far as the allegation of delay in forwarding the representation of the petitioner to the sponsoring authority is concerned, the representation submitted by the petitioner on 20.10.2023 was received only on 10.11.2023, which happens to be a



of the view that the petitioner cannot take the same as a valid ground to attribute any inordinate delay on the part of the respondents.

8. Similarly, with regard to the ground taken by the petitioner that when there exists a representation of the petitioner dated 29.9.2023, the mentioning made by the sponsoring authority in the communication dated 12.10.2023 made to the Advisory Board to the effect that there is no representation received from the detenu or on his behalf till 12.10.2023 and thereby the representation sent on 29.9.2023 was burked and not placed before the Advisory Board, this court finds that the representation dated 29.9.2023 has been sent by the petitioner only to the third respondent/Superintendent of Central, Madurai seeking for the detention order and grounds of detention to make an effective representation or appeal and it is not at all a representation to the sponsoring authority. However, a perusal of the materials would disclose that the Advocate for the petitioner had sent a representation on the same day viz., 29.9.2023 through an email, wherein, while seeking for furnishing of grounds of detention and booklet, raised an allegation to the effect that the detention authority intends to prevent the petitioner from filing an appeal against the detention order without furnishing any material.



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9. Of course, after such representations, the order of detention and grounds of detention were served on the petitioner on 30.9.2023 itself. An allegation has been made by the petitioner that she was misled by a defective translation of the word "**representation**" by mentioning as "**பிரதிநிதித்துவத்தை**" while indicating the rights of the detenu to represent against the detention in the Tamil version of the grounds of detention. A verbatim Google translation also denotes the meaning for the word "**representation**" as "**பிரதிநிதித்துவம்**", but, the actual meaning in the present context would only be "**முறையீடு**". However, this aspect does not assume much significance since the petitioner had submitted her representation without being misled by such a translation.

10. Still, it is relevant note that in the Tamil version of the grounds of detention, another issue exists with regard to defective translation. While mentioning the name and address of the State Advisory Board, which had resulted in return of the representation submitted by the petitioner with the postal endorsement "no such person".



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11. In the such circumstances, the allegation made by the Advocate for the of the petitioner in the representation sent through email on 29.9.2023 that the petitioner had been prevented from making an appeal, assumes much significance. Whiles, it may not be proper on the part of the sponsoring authority to make a mention in the communication dated 12.10.2023 made to the Advisory Board to the effect that there is no representation received from the detenu or on his behalf till 12.10.2023. There is also no justification on the part of the respondents to contend that the nature of the representation did not warrant them to place it before the Advisory Board.

12. In ***Golam Biswas vs. Union of India (2015) 16 SCC 177***, a Full Bench of the Apex Court has held as under:-

"15. As admittedly, the detenu's representation dated 8-7-2014, pending with the Central Government, the appropriate Government in the case, was not forwarded to the Advisory Board and was instead rejected during the pendency of the proceedings before the Advisory Board, we are constrained to hold



that the detention of the detenu is constitutionally invalid. The rejection of the representation by the Central Government later on 21-7-2014 during the pendency of the proceedings before the Advisory Board is of no consequence to sustain the detention. Consequently, the order of confirmation as well is rendered non est by this vitiation."

13. Though the detention order and grounds of detention both English and Tamil version had been served on the petitioner on 30.9.2023 itself, it is seen that in the Tamil version of the grounds of detention, while mentioning the address of the Advisory Board, it was named as "மாநில ஆலோசனை குழு" instead of "மாநில அறிவுரை குழுமம்" to mean "**State Advisory Board**" and accordingly, the petitioner had sent her representation dated 20.10.2023 mentioning the name and address as furnished in the Tamil version of the grounds of detention and posted the same on 21.10.2023, however, it was returned with an endorsement "no such person" as revealed from the copies of postal cover and endorsement found at pages 21 and 22 of the typed set of papers. In this regard, though the fault is sought to



be attributed on the Postal Department in perceiving the address, this court feels that it may not be appropriate on the part of the respondents to shift the burden on the Postal Department when it is the bounden duty of them to provide proper and correct materials and they cannot shirk their responsibility and it is a clear case of defective translation on their part. Therefore, while there is no delay in furnishing the grounds of detention, the defective translation had misled the petitioner and deprived of the opportunity of making effective and timely representation to the Advisory Board.

14. Further, a perusal of the records would disclose that the representation of the petitioner dated 20.10.2023 addressed to the first respondent/detaining authority, which was received on 10.11.2023 appears to have been forwarded to the second respondent/sponsoring authority only on 17.11.2023. There is a delay of seven days in forwarding the representation. In this regard, it has been sought to be clarified by the respondents that the representation of the petitioner dated 20.10.2023 was received by the detaining authority only on 10.11.2023, at the fag end of the week on Friday and the succeeding two days viz., 11.11.2023 and 12.11.2023 being



closed holidays, 13.11.2023 (Monday) and 15.11.2023 (Wednesday) are declared Restricted Holidays for Delhi resulting in dearth of sufficient staff, however, the representation, which was in Tamil was forwarded to the sponsoring authority after getting the translated for parawise comments and subsequently, it was rejected by the sponsoring authority by order dated 27.12.2023 and thereby there is no inordinate delay on the part of the respondents in considering the representation of the petitioner giving room for interference by this court.

15. Having considered the contentions raised by both sides, this court is of the view that though there there is no hard and fast rule fixing any time limit for considering the representation, there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

16. Timely and expeditious communication of grounds and disposal of representation in the cases of preventive detention has



been dealt with elaborately by a Full Bench in **Sarabjeet Singh**
Mokha vs. District Magistrate, Jabalpur and others (2021 20 SCC

98. The relevant portions are as under:-

"36. (1) The detaining authority must provide the detenu a very early opportunity to make a representation, (2) the detaining authority must consider the representation as soon as possible, and this, preferably, must be before the representation is forwarded to the Advisory Board, (3) the representation must be forwarded to the Advisory Board before the Board makes its report, and (4) the consideration by the detaining authority of the representation must be entirely independent of the hearing by the Board or its report, expedition being essential at every stage. However, the time-imperative [for consideration of representation] can never be absolute or obsessive".

.....

39. When the life and liberty of a citizen is involved, it is expected that the Government will



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ensure that the constitutional safeguards embodied in Article 22(5) are strictly observed. We say and we think it necessary to repeat that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of the procedural safeguards.

.....

41. *At this stage, it would be also important to note the principle of making simultaneous representations by the detenu to the State and Central Governments, as enunciated by a two-Judge Bench of this Court in *Haji Mohd. Akhlaq v. District Magistrate, Meerut* [*Haji Mohd. Akhlaq v. District Magistrate, Meerut*, 1988 Supp SCC 538, p. 540, para 3 : 1988 SCC (Cri) 886] . In that case, the petitioner challenged the validity of his detention under the NSA on the ground*



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that there was undue delay on part of the State Government to forward his representation to the Central Government. The Court noted that the power which is conferred upon the Central Government to revoke an order of detention under Section 14(1), even if it is made by the State Government, would only have real meaning and content, if the detenu is entitled to make a representation to the Central Government. The failure of the State Government to comply with the request of the detenu for onward transmission of the representation of the Central Government deprives the detenu of a valuable right to have the detention revoked by the Central Government.

.....

47. By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously. As we have noted earlier,



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the communication of the grounds of detention to the detenu “as soon as may be” and the affording to the detenu of the earliest opportunity of making a representation against the order of detention to the appropriate Government are intended to ensure that the representation of the detenu is considered by the appropriate Government with a sense of immediacy. The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for the State Government not to deal with the representation independently at the earliest. The delay by the State Government in disposing of the representation and by the Central and State Governments in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to understand that the law provides for such procedural safeguards to balance the wide powers granted to the executive under the NSA. The State Government cannot expect this Court to uphold its



powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution."

17. Of course, it has been pointed out on behalf of the respondents that the detenu is alleged with an offence of grave magnitude affecting the economy of the country. But, such gravity cannot take away his right to personal liberty which has been guaranteed by the Constitution. A similar stand has been taken in the case of ***Kamleshkumar Ishwardas Patel vs. Union of India*** (1995) 4 SCC 51, wherein a question arose for consideration as to when an order for prevention detention is passed by an officer especially empowered to do so by the Central Government or the State Government, is the said officer required to consider the representation submitted by the detenu and a Constitution Bench of the Apex Court has held as under:-

"49. At this stage it becomes necessary to deal with the submission of the learned Additional Solicitor General that some of the detenus have been indulging in illicit smuggling of narcotic drugs and psychotropic



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substances on a large scale and are involved in other anti-national activities which are very harmful to the national economy. He has urged that having regard to the nature of the activities of the detenus the cases do not justify interference with the orders of detention made against them. We are not unmindful of the harmful consequences of the activities in which the detenus are alleged to be involved. But while discharging our constitutional obligation to enforce the fundamental rights of the people, more especially the right to personal liberty, we cannot allow ourselves to be influenced by these considerations. It has been said that history of liberty is the history of procedural safeguards. The Framers of the Constitution, being aware that preventive detention involves a serious encroachment on the right to personal liberty, took care to incorporate, in clauses (4) and (5) of Article 22, certain minimum safeguards for the protection of persons sought to be preventively detained. These safeguards are required to be "zealously watched and



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enforced by the Court". Their rigour cannot be modulated on the basis of the nature of the activities of a particular person. We would, in this context, reiterate what was said earlier by this Court while rejecting a similar submission:

"Maybe that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenus."

(See: Rattan Singh v. State of Punjab [(1981) 4 SCC 481 : 1981 SCC (Cri) 853] , SCC at p. 483)"

18. In the case on hand, there is a delay of seven days on the part of the detaining authority in forwarding the representation of the petitioner to the sponsoring authority. A feeble stand has been taken on behalf of the respondents contending that the representation was



made in Tamil requiring translation and the intervening two closed holidays and two Restricted holidays had caused the delay of a few days and the same cannot be a ground for interference.

19. The preventive detention, being the one involving a serious encroachment on the right to personal liberty, this court feels that certain minimum safeguards for the protection of person sought to be preventively detained have to be ensured. The holidays, either closed holidays or restricted ones, would have been intimated well in advance and thereby, when liberty of a citizen under preventive detention was involved, it is incumbent on the part of the officers concerned to show some sensitivity with conscience in dealing with timely disposal of the representation without resorting to avail their regular entitlement of leave, especially the restricted holidays. Therefore, it may not be appropriate for the respondents to take a stand that the intervening restricted holidays had prevented the execution of their assignment to forward the representation. In the circumstances, this court is of the view that the delay on the part of the detaining authority in forwarding the representation of the petitioner to the sponsoring authority has not been properly explained and such delay is also a ground for interference by this court.



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20. Considering the overall circumstances that the petitioner was served with the grounds of detention with defective translation while mentioning the name and address of the State Advisory Board, which had resulted in return of the representation sent by the petitioner to the State Advisory Board, non-forwarding of the representation sent by the Advocate on behalf of the petitioner to the Advisory Board and the delay on the part of the detaining authority in forwarding the representation to the sponsoring authority, this court is of the view that the least safeguards guaranteed by the Constitution are denied to the detenus and thereby, this court is of the view that the detention order is liable to be set aside.

21. In the result, the Habeas Corpus Petition is allowed and the order of detention in F.No.PD-12001/03/2023-COFEPOSA dated 21.09.2023, passed by the first respondent is set aside. The detenu, viz., Mohamed Sathik Ali, aged about 33 years, son of Jainulabudeen, is directed to be released forthwith unless his detention is required in connection with any other case.

(A.D.J.C.,J.) (K.R.S.,J.)
14.6.2024



Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. The Joint Secretary to
Government of India,
Ministry of Finance,
Department of Revenue (COFEPOSA Unit),
Central Economic Intelligence Bureau,
6th Floor, 'B' Wing, Janpath Bhawan,
Janpath, New Delhi 110 001.
2. The Director General,
Central Economic Intelligence Bureau,
Government of India,
Department of Revenue,
Ministry of Finance, 6th Floor, 'B' Wing,
Janpath Bhawan, Janpath,
New Delhi 110 001.
3. The Superintendent of Central Prison,
Madurai Central Prison, Madurai.
4. The Public Prosecutor,
High Court, Madurai.

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A.D.JAGADISH CHANDIRA, J.
and
K.RAJASEKAR, J.

ssk.

H.C.P.(MD) No.1353 of 2023

14.6.2024