



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI**Reserved on: 8th October, 2024****Date of Decision: 29th October, 2024**

+

W.P.(CRL) 1901/2024**JOYI KITTY JOSEPH**

.....Petitioner

Through: Mr. Priyadarshi Manish with Mrs. Anjali Jha Manish, Dr. Sujay Kantawala, Ms. Vanshika Rana and Ms. Shambhavi Singh, Advocates (M-7719691844).

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Dr. B Ramaswamy, CGSC for R-1 & 2 (M-9999605344).
Mr. Aditya Singla, Sr. Standing Counsel for DRI with Mr. Ritwik Saha, Mr. Sahil Parashar, Mr. Sarthak Mittal, Mr. Umang Krishna Mishra, Mr. Vaibhav Chechi, Advocates for R-3 (M-9958846148).

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present petition filed by the Petitioner – Joyi Kitty Jospeh under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (in short ‘Cr.P.C.’) seeks the following prayers:-

“(a) Issue a writ, order or direction especially in the nature of habeas corpus directing the forthwith release of the Detenue from custody as his detention is illegal;

(b) Issue a writ, order or direction in the nature of certiorari to



quash the detention order bearing F.No. PD-12001/13/2024-COFEPOSA dated 09.05.2024 passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act, 1974), by the Respondent No. 2; and
(c) Pass such other order or further order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case."

2. The present petition seeks quashing of the preventive Detention Order bearing F.No. PD-12001/13/2024- COFEPOSA dated 09th May, 2024 passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short '*COFEPOSA Act*'), by the Joint Secretary (COFEPOSA) i.e., Respondent No.2, thereby ordering the detention of Mr. Sameer Haroon Marchant alias Afzal Haroon Batatawala (in short '*Detenu*') who is the husband of the Petitioner.
3. The impugned Detention Order for the sake of completeness is being reproduced as under:-

"To,

*(i) Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala
S/o Shri Haroon Batatawala,
Rio Flat No. 1401, B wing, Hollywood Kanakia,
Yari Road, Versova Mumbai-400061.*

*(ii) Rio A-612 Juhu Taj CHS, 10th Road NSJVPD Juhu Scheme,
Near HSBC Bank, Vile Parle, Mumbai, Juhu-400049.*

Subject: Grounds on which Detention Order No. PD-12001113/2024 COFEPOSA dated the 9th May, 2024 has been issued against Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala i.e., you, S/o Shri Haroon Batatawala, under the provisions of the COFEPOSA Act, 1974.

i) Specific intelligence was gathered that a syndicate led by Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala ie you,



along with your wife Ms Joyi Kitty Joseph alias Kitty is involved in smuggling foreign origin gold into India and selling it in the grey market. Further, the intelligence indicated that on 05.03.2024, Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala ie you, would be sending 10 kg of smuggled gold through Shri Mohammad Rafique Noor Mohammad Razvi alias Aarif and Shri Mahendra Jain for sale in the local Mumbai market at Shop No. 19, 1st floor, building no. 51/53, Vitthal Wadi Lane, Kalbadevi, Mumbai-400002. Additionally, it was learnt that Shri Sameer Haroon Marchant i.e you, made arrangements for the sale proceeds from the smuggled gold to be delivered to you or sent to third parties as per your instructions via hawala channels. Therefore, a search was conducted at the said premises on 05.03.2024.

ii) During the search at the premises mentioned above, Shri Ummed Singh and Shri Mahipal Vyas, both caretakers of the shop mentioned above, along with other employees and Shri Mohammad Rafique Noor Mohammad Razvi alias Aarif and Shri Mahendra Jain were found present in the shop. During the search proceedings, gold in various forms viz. Gold Bars, Coins, cut pieces, etc. was found and recovered from the counter table, whereas from the cupboard placed on the side wall, a huge quantity of Indian Currency notes bundles of various denominations viz. 500, 200, 100 and 50 were found. Cash amounting to Rs. 1,80,15,600/- was found at the premises mentioned above. Thereafter, the officers enquired with Shri Ummed Singh and Shri Mahipal Vyas about the source of the gold bars/coins/cut pieces and the source of Indian currency. On being enquired, they informed that 05 gold bars with foreign markings (weighing 4999.97 grams) and 15 cut pieces of gold bars with foreign markings (weighing 2711.41 grams) totally weighing 7711.38 grams had been brought to the shop premises for sale by Shri Mohammad Rafique Razvi alias Arif and Shri Mahendra Jain on 05.03.2024, and one gold bar with foreign marking weighing 1000 grams was brought for sale by Shri Shailesh of M/s Pravin Jewellers on 05.03.2024. It was further informed that the rest of the gold (6 gold bars weighing 409.97 grams with Indian markings, 757.540 grams gold which includes 3 crude gold kadas and assorted cut pieces of gold bars without markings, 5 gold bars with foreign markings weighing 500.07 grams and one gold coin and 05 gold bars of different sizes with foreign markings weighing



327.69 grams) weighing 1995.270 grams belong to their employer i.e. Mahi Bhai and Brijesh alias Birju and were meant for trading purposes. Further, in respect of the cash amount of Rs. 1,80,15,600/-, it was informed by Shri Ummed Singh and Shri Mahipal Vyas that the said cash is the sale proceeds of the smuggled gold already sold by them in the local market on a cash basis without any invoices/bills.

iii) Thereafter, at the request of DRI officers, the government approved gold assayer assayed all the gold recovered from the said premises and issued 03 valuation certificates dated 05.03.2024, certifying the gold as 24 Karat gold; (1) total weighing 9539.14 Kgs valued at Rs. 6,36,26,064/-, (2) total weight 409.970 gms valued at 27,34,500/-, (3) total weighing 757.54 grams value at 50,52,792/-. Thereafter, the said gold weighing 10706.65 grams valued at 7,14,13,356/- along with cash amounting to Rs. 1,80,15,600/- was recovered vide panchanama proceedings dated 05.03.2024. On being asked about the source of gold, Shri Mohammad Rafique Razvi alias Aarif and Shri Mahendra Jain during the panchanama dated 05.03.2024, stated that the said gold was smuggled gold, brought by them to sell at Shop No. 19, 1st floor, building no. 51/53, Vitthal Wadi Lane, Kalbadevi, Mumbai-400002 at the behest of Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala i.e you residing at Flat No. 1401-B Kanakia Hollywood, Yaari Road Versova. Shri Mahendra Jain stated that he was working as an agent who helped them (i.e., Mohammad Rafique Razvi alias Arif and Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala i.e you,) to sell the smuggled gold in the local market on a commission basis. The officers asked Shri Ummed Singh, Shri Mahipal Vyas, Shri Mohammad Rafique Razvi alias Aarif, Shri Mahendra Jain and Shri Shailesh whether they had any documents pertaining to the said cash and gold to which all of them replied in the negative. In the absence of any valid documents proving the legitimate ownership of the said gold and cash, the DRI officers recovered the said gold and cash from the premises vide panchnama dated 05.03.2024, which was subsequently seized under Seizure Memo dated 06.03.2024 under the provisions of the Customs Act, 1962. Taking into account the facts stated by Shri Mahendra Jain in respect of gold smuggling by Shri Mohammad Rafique Razvi alias Arif and his financier Sameer Haroon Marchant alias Afzal Haroon Batatawala i.e you, two separate teams were dispatched



by DRI, Mumbai to the residential premises of Shri Mohammad Rafique Razvi alias Arif and Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala i.e you to carry out the search proceedings therein as it was suspected that some more smuggled gold could have been concealed at their residential premises.

iv) Upon reaching of the DRI officers' team at the residential premises located at 1401-B Kanakia Hollywood, Yaari Road Versova, Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala i.e you, slightly opened the door and on seeing the DRI officers immediately shut the door and prevented the DRI officers from entering the premises. After some time, the officers of DRI managed to enter the premises and observed that the house was in complete disarray. It appeared that the cupboards had been emptied and various items were lying in the rooms. It, therefore, became apparent that Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala i.e you, had tried to destroy the evidence. An amount of Rs. 60,40,000/- and 4,600 UK Pounds were recovered under panchnama dated 05.03.2024 and subsequently seized vide seizure memo dated 06.03.2024 as sale proceeds of smuggled gold.

v) The other team of DRI officers was sent to the residential premises of Shri Mohammad Rafique Razvi alias Aarif located at 149, Haroon Manzil, B Block, 4th floor, Room No.10, Immamwada Road, Mumbai- 400003. During the search of the residential premises of Shri Aarif, 3772.38 grams of smuggled gold was recovered under panchnama dated 05.03.2024, the government approved gold assayer assayed all the gold recovered from the said premises and issued valuation certificate dated 05.03.2024, certifying the above said recovered goods are 24KT gold total weighing 3772.38 grams valued at Rs. 2,51,61,775/- and the said recovered gold was seized vide seizure memo dated 06.03.2024 under the provisions of Customs Act, 1962.

vi) Statements of Shri Mahipal Vyas and Shri Ummed Singh were recorded on 05.03.2024 under Section 108 of the Customs Act, 1962, wherein they, inter alia, confirmed that they are involved in the trading of smuggled gold. They also informed that Shri Mohammad Rafique Razvi alias Aarif and Shri Mahendra Jain brought foreign origin smuggled bars and cut pieces total weighing 7711.38 grams on 05.03.2024 to sell and collect the sale proceeds of the smuggled gold. They stated that they look after the day-to-day operations of the said premises on the directions of



their employer i.e. Mahi Bhai. Furthermore, they handle various tasks, including managing smuggled gold deliveries, collecting cash from clients, and overseeing accounting responsibilities.

vii) Further, Shri Mohammad Rafique Razvi alias Aarif in his voluntary statement recorded on 05.03.2024 and 07.03.2024 under Section 108 of the Customs Act, 1962, inter alia, stated that he came in contact with Shri Sameer Haroon Marchant i.e. you in December 2023, you gave him the task of sale of smuggled gold bars and, in return, had offered a commission of Rs. 2000 per kg which was accepted by him; that accordingly, Shri Sameer Haroon Marchant i.e. you started sending smuggled gold to him regularly, which included foreign-marked gold bars, cut pieces of foreign-marked gold bars, melted gold bars etc; that Shri Sameer Haroon Marchant alias i.e. you used to send 2-3 Kg of smuggled gold every 2-3 days, for the sale of which he used to get in touch with Mr. Mahendra Jain alias Jetha; that with regard to the seizure of 7711.38 grams of smuggled gold from the premises located at Shop No. 19, Ist Floor, Building No. 51/53, Vithalwadi Lane, Kalbadevi, Mumbai on 05.03.2024, he along with Shri Mahendra Jain alias Jetha had gone there to sell the smuggled gold. He further stated that while the exchange was underway, they were intercepted by the officers of DRI, Mumbai and 7711.38 grams of smuggled gold was recovered; that he acknowledges receiving approximately 8.5-9 kilograms of foreign-marked smuggled gold from Shri Sameer Haroon Marchant i.e. you on 04.03.2024; that on 04.03.2024 itself, he had sold approximately 04 kg worth of smuggled gold to Shri Mahi Bhai and Shri Brijesh alias Birju; that he obtained an additional 6.5 kilograms of foreign-marked smuggled gold from Shri Sameer Haroon Marchant i.e. you increasing the total quantity of smuggled gold with him to approximately 11-11.5 kg; that out of this total, he sold 7711.38 grams to Shri Mahi Bhai and Shri Brijesh alias Birju, and the remaining gold was stored at his residence. Further, on being asked about the sale proceeds of 04 Kg of smuggled gold, he stated that the same was transferred by Mahi Bhai through hawala; that he received a total of 11-11.5 kgs of smuggled gold from Shri Sameer Haroon Marchant i.e. you for selling the same in the local market; that he had gone to sell approximately 7.7 kg of smuggled gold to Shri Mahi Bhai and Shri Brijesh alias Birju at his shop; that 3772 38 grams of smuggled gold recovered from his residence which constitutes the remaining



portion of the 11-11.5 kg that he received from Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala i.e you, that he received a call from Afzal i.e. you at around 1:00 pm on 04.03.2024, informing him that you have instructed someone to deliver approximately 8.5-9 Kg of smuggled gold to his residence; that the delivery was made around 2:30 pm by that person; that subsequently, he contacted Shri Mahendra Jain to facilitate the sale of the aforementioned quantity of smuggled gold; that he also received token number from the same person who delivered the smuggled gold to him at his residence having contact number (8828961282), saved in his mobile by name of MF; that he subsequently transferred the token number to Shri Mahendra Jain for transferring the sale proceeds to Dubai; that Similarly, on the following day i.e. on 05.03.2024, he received another call from Shri Sameer Haroon Marchant alias Afzal i.e you at around 1-1:30 pm, instructing the same person to deliver an additional 6.5 Kg of smuggled gold to his home. Further, Shri Aarif acknowledged that both Afzal i.e. you and Kitty were apprehended by the DRI, Mumbai Zonal Unit in 2017, due to your involvement in smuggling of gold and that both of you have been engaged in the smuggling of gold for an extended period.

viii) Statement of Shri Mahendra Jain was recorded on 05.03.2024 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that Mr. Mohammad Rafique Razvi alias Aarif proposed a task involving the sale of smuggled gold bars on his behalf, offering him a commission of Rs. 1000-2000 per kilogram for each sale: that he agreed to Aarif's proposition and assisted him in selling of 7711.38 grams smuggled gold at Shop No. 19, 1st Floor, Building No. 51/53, Vithal wadi Lane, Kalbadevi, Mumbai-400002; that he was aware that Mahi Bhai and Brijesh alias Birju were dealing with smuggled gold at the said premises and whenever Aarif brought the smuggled gold for sale, he accompanied him to the said location to sell the smuggled gold; that he assisted Mr. Aarif when he sold 04 kilograms of smuggled gold to Mahi Bhai and Brijesh alias Birju on 04.03.2024, earning a commission of Rs. 4000 from Aarif for his assistance.

ix) Statement of Shri Sameer Haroon Marchant/Afzal Haroon Batatawala alias Afzal ie. you was recorded on 05.03.2024 under Section 108 of the Customs Act, 1962, wherein you, inter alia, admitted to assigning Mr. Mohammad Rafique Razvi alias Aarif



the task of selling smuggled gold bars on your behalf and offered him a commission of Rs. 2,000 per Kg for each sale; that you started sending smuggled gold to Aarif on a regular basis which included foreign-marked gold bars, cut pieces of foreign-marked gold bars, melted gold bars etc. and used to send 2-3 Kg of smuggled gold to Shri Mohammad Rafique Razvi alias Aarif at a gap of every 2-3 days; that with regards to the modus operandi, you informed that a person named Amzad, residing in Dubai, is responsible for sending the smuggled gold from Dubai to India through carriers mainly in the form of bars and sticks; that upon their arrival at Mumbai International Airport, Amzad provides you with the details of the carrier through WhatsApp; that accordingly, based on this information, you would arrange a meeting at a pre-determined secure location; that subsequently, you and your wife Ms. Joyi Kitty Joseph would handle the disposal of the smuggled gold in the local market through Aarif; that occasionally, as per your or your wife's instructions, the smuggled gold was also directly delivered to Aarif; that you received and delivered 8.5 kilograms of smuggled gold to Shri Aarif on 04.03.2024, and an additional 6.5 kilograms on 05.03.2024; that the cash and the foreign currency amounting to Rs. 60.40 Lakh and 4600/- UK Pounds respectively, recovered from your residence at 1401-B Kanakia Hollywood, Yaari Road Versova are the sale proceeds of smuggled gold.

x) During the search at your residential premises at Versova, disorderly state of the room suggested a recent flurry of activity or perhaps an attempt to conceal or hastily tidy up before the officers' arrival. It was also noticed by the officers that a car key was thrown outside the window and was lying on the outer platform of the window. The chaos of the room added another layer of intrigue to the situation, prompting the officers to further investigate the circumstances surrounding its presence. It was noticed that you might have tried to conceal or destroy the evidence by throwing them out of your house. Accordingly, a team of DRI officers was then sent to the Sai Nagar Cooperative Housing Society, Plot-66, Yari Road, Andheri (West), Versova-400061, adjacent to your residential society. On enquiry Shri Shakeel Ahmed Khan, Society manager informed that on 05.03.2024 some mobile phones and gold bars were found in the society premises in the evening which were in the possession of Ms. Ayesha and Ms. Anisha Zainab Rizvi. Accordingly, 02 kg



foreign origin gold bars valued at Rs. 1,33,40,000/- and 03 mobile phones were recovered by the DRI officers under panchnama dated 06.03.2024, valuation certificate for the said 02 gold bars dated 06.03.2024 was issued by the govt. approved valuer. Said 02 gold bars were seized vide Seizure Memo dated 19.03.2024. The mobile phones were found to be in extremely damaged condition and were sent to a forensic laboratory for possible data extraction.

xi) The statement of Shri Sharfaraz Samiullah Patel (who was present along with Shri Sameer Haroon Marchant i.e. you during search of your residential at Versova) was recorded on 06.03.2024 under Section 108 of the Customs Act, 1962 wherein he, inter alia, stated that at around 6:30 PM on 05.03.2024, someone rang the doorbell of the flat and Mr. Sameer Haroon Marchant ie you cautiously opened the door slightly, and upon seeing some individuals outside, immediately shut it; that you then appeared to be in a state of panic, moving around the rooms and hall; that then you proceeded to your bedroom, grabbed your mobile phones, and threw them along with two yellow-colored metal bars out of the window of the bedroom facing Sai Nagar, CHS; that you also threw your car keys from the window of another bedroom; that regarding the number of mobile phones thrown away, he was uncertain, but he observed two or three mobile phones; that the individuals at the door continued to ring the doorbell, and it took Mr. Sameer Haroon Marchant i.e you 5-7 minutes to open the door; that it was only upon opening of the door that he realized the individuals outside were officers of the DRI.

xii) Further statement of Shri Sameer Haroon Marchant/Afzal Haroon Batatawala alias Afzal i.e. you was recorded on 07.03.2024 under Section 108 of the Customs Act, 1962, wherein you, inter alia, admitted all three mobile phones viz. blue-coloured Samsung phone, grey-coloured Samsung phone and Samsung Fold phone recovered under panchanama dated 06.03.2024, belong to you; that you use the blue-coloured Samsung phone to communicate with Amjad, your counterpart in Dubai, who sends gold through his carriers for smuggling the same into India; that the grey-coloured Samsung phone is used to communicate with Mr. Mohammad Rafique Razvi @ Aarif and Samsung Fold phone to communicate with your relatives and family members; that the 02 foreign-marked gold bars recovered



during the aforesaid panchnama also belong to you and the said gold bars are smuggled and you do not have any legitimate documents to prove their ownership; that you have saved Amjad contact details in your blue-coloured Samsung phone as Amj and his phone no. 8828961282 and that you have shared his contact no. with Mohammad Rafique Razvi alias Aarif; that on the evening of 05.03.2024, at around 6-6:30 pm, DRI officers arrived at your house, when they rang the doorbell, you opened the door slightly and on realizing that they were officers from the DRI, you immediately panicked and shut the door; that you dealt with smuggled gold and any evidence found in your house could be used against you, so you decided to dispose of the smuggled gold and any incriminating evidence that the DRI authorities may recover from your house; that at that time, Shri Sharfaraz Saimullah Patel was also present in your house; that you swiftly gathered the 02 gold bars and all your phones from your bedroom and began searching for places to hide them and you wrapped the gold bars with brown adhesive tape, and you went to your bedroom and threw them out of the window facing Sai Nagar CHS; that following this, you opened the door and the DRI officers entered and began searching your premises; that these gold bars were smuggled into India via airport through various carriers employed by Amjad without paying customs duties; that you were arrested by NCB, Ahmedabad under the NDPS Act and were released from Baroda jail in Oct 2013. After your release, you officially changed your name from Afzal Batatawala to Sameer Haroon Marchant; that in 2017 also DRI Mumbai has arrested you in a case of gold smuggling.

xiii) Statement of Smt. Ayesha Kapadia was recorded on 07.03.2024 under Section 108 of the Customs Act, 1962, wherein she, inter alia, stated that on 05.03.2024, at around 6:25PM-6:30PM, she was standing in the premise near her apartment wing, where a blue color phone dropped near her feet; that she picked up the phone and went towards the crowd to find out the matter; that she found two more phones were also found in the premise; that at that time a watchman came to her with an unclaimed gold bar, being the committee member of the society and treasurer of the society, she took the gold bar from him to keep it in the safe custody in the society. Thereafter, she took the phones and 01 gold bar found in the society with other committee members to keep it in safe custody.



xiv) Statement of Ms. Anisah Zainab Rizvi was recorded on 07.03.2024 under Section 108 of the Customs Act, 1962, wherein she, inter alia, at around 6 pm, when she was taking round in the building, she saw crowd and the treasurer (Ayesha), who found three phones in the society premise; that at around 6-6:30 pm, while taking round in the society she found 01 gold bar and kept it in her bag and took it to her home; that she called the treasurer at around 9-9:30 pm, to hand it over to her but it could not be done; that in the morning, when she again tried the treasurer phone at 11-11:30 am, to hand it over, it was found that the treasurer has gone to the hospital, then at around 2-2:30 pm she went to her friend Mrs. Reshma Saheer Kasmani's place, who lives in a nearby society called John Rose and asked her to keep the gold bar so that they can hand it over to the treasurer, when the treasurer returns as she has no male person living in her house.

xv) Statement of Ms. Reshma Zaheer Kashmi was recorded on 07.03.2024 under Section 108 of the Customs Act, 1962, wherein she, inter alia on 06.03.2024, her friend Anisah came to her house at around 03 pm with a gold bar to keep it in the safe custody as she has no male member in her house, till the time it is handed over to the Committee members in the society. Anisah found it unclaimed in the premise of the society names Sai Nagar and as Anisah was unable to contact the treasury member of the committee of the society, so it was given to her to keep it in safe custody.

xvi) DRI officers received another specific intelligence on 06.03.2024 that the wife of Shri Sameer Haroon Marchant i.e. you, Ms. Joyi Kitty Joseph, was trying to evade DRI and, hence, a team was dispatched to search the premises located at Plot No. 149, opp. Kusum Farms, Dharvali Village, Madh Marve Road, Malad (West), Mumbai-400061 where Ms. Joyi Kitty Joseph was found and who admitted that she had instructed the caretakers and the workers of the said premises to move the two metal almirahs containing cash and silver to the residence of one Shri Surendra Harish Davdekar alias Bhuriya at Ambe Wadi, Dharval: Village, Madh Marve Road, Malad (West), Mumbai-400061. The DRI officers reached the said premises and recovered Indian Currency amounting to Rs. 25,66,500/- and 6 pieces of 01 Kg silver bars valued at Rs. 4,51,800/- under panchnama dated 06.03.2024 and valuation certificate for the same was issued by the govt. approved valuer on 11.03.2024. The said cash and silver bars were seized



under Seizure Memo dated 19.03.2024.

xvii) The statement of Shri Ramesh Kumar, driver-cum-caretaker of the premises Plot No. 149, opp. Kusum Farms, Dharvali Village, Madh Marve Road, Malad (West), Mumbai-40006 was recorded on 07.03.2024 under Section 108 of the Customs Act, 1962 wherein he, inter alia, stated that on the morning of 06.03.2024, he was instructed by one of the caretakers to drive a tempo to shift the 2 almirahs from the premises to the residence of Mr. Surendra Harish Davdekar, as per the directions of Ms. Joyi Kitty Joseph; that he was unaware of the reason behind the sudden need to shift the almirahs and he was not aware of the contents of the almirah.

xvii) The statement of Shri Surendra Harish Davdekar alias Bhuriya, currently overseeing the construction work at the farmhouse of Ms. Joyi Kitty Joseph, was recorded on 07.03.2024 under Section 108 of the Customs Act, 1962 wherein he, inter alia, admitted that he was asked by Ms. Joyi Kitty Joseph to keep the two almirahs at his place due to certain urgency.

xix) The statement of Ms. Joyi Kitty Joseph was recorded on 06.03.2024 under Section 108 of the Customs Act, 1962 wherein she, inter alia, stated that three months back Shri Mohammad Rafique Razvi alias Aarif approached her for a potential job; that she asked Sameer Haroon Marchant i.e. you to help him and then you offered him (Aarif) to take up the task involving the sale of smuggled gold bars for a commission of Rs. 2000 per kilogram; that the commission is paid by her or you to Aarif in cash only so that no money trail is left behind; that on being asked about Amzad, she stated that Sameer Haroon Marchant i.e. you deal with Amzad; that cash recovered from your residence are the sale proceeds of the smuggled gold, as you are actively engaged in gold smuggling and all the cash brought to home by you is related to the sale proceeds of gold smuggling activity; that on being questioned about shifting of almirahs from her farm house, she stated that after the search was conducted at her residence in Versova, she anticipated the possibility of a similar search at her farmhouse; that as she knew that the almirahs containing 6 Kg silver and approximately Rs. 25 lakhs cash which were the sale proceeds of the recently smuggled gold, as a precautionary measure she directed the caretakers to move the two almirahs to Shri Surendra Harish Davdekar alias Bhuriya's premises. Further, Ms. Joyi Kitty Joseph stated that she has secreted



approximately Rs. 70 lakhs in cash at her sister's residence (Ms. Crecy Maria Creado) located at Flat No. 1813, Ruby Isle CHS, Royal Palms, Aarey Colony, Goregaon (East), Mumbai; that on the morning of 06.03.2024, she transferred Rs. 20 lakhs from the aforementioned Rs. 70 lakhs to her friend's residence (Shri Liyaqat Taji) in Sultanabad, Jogeshwari; that the remaining Rs. 50 lakhs in cash were retained at her sister's residence.

xx) A team of officers was sent to search the premises of Shri Mohd. Liyaqat Taji at Flat No. 304, Building no. 2, Sultanabad Darshan CHS Ltd, Behram Baug Road Jogeshwari West-400102, where Indian Currency of Rs. 20,60,350 - and 202 USD was found in a bag handed over by Ms. Joyi Kitty Joseph to Mohd. Liyaqat Taji for safe keeping which was recovered under Panchnama dated 08.03.2024 and seized under Seizure Memo dated 19.03.2024. The statement of Mohd Liyaqat Taji was recorded on 08.03.2024 under Section 108 of the Customs Act, 1962 wherein he, inter-alia, stated that he is a friend of Ms. Joyi Kitty Joseph since 20 years; that on the morning of 06.03.2024, he got a call from Ms. Joyi Kitty Joseph for his assistance who then handed over the bag to him without mentioning the contents of the bag for safe custody. Being her old friend, he kept the bag inside his house as she appeared to be in some trouble.

xxi) Thereafter, a team of officers was sent to search the premises of her sister's home located at Flat No. 1813, Ruby Isle CHS Royal Palms, Aarey Colony, Goregaon (E), Mumbai along with Shri Pathan Aiyubkhan Hamidkhan who is a driver-cum-caretaker of Ms. Joyi Kitty Joseph. Shri Pathan, in his statement dated 07.03.2024 stated that Ms. Joyi Kitty Joseph handed over the keys of the said premises in a brown colour handbag for safekeeping to him as he was her trusted person; that the said premises contain a huge amount of cash and silver bars. Accordingly, Shri Pathan opened the door of the said premises, and a search was conducted which led to further recovery of Indian Currency of Rs. 1,01,87,100/-, foreign currency of 3800 UK Pounds, 940 US Dollars and 10 silver bars/bullion weighing 9528.9 grams valued at Rs. 7,17,526/-. The said items were recovered under panchnama dated 08.03.2024. Valuation certificate for the same was issued by the govt. approved valuer on 11.03.2024. The said cash and silver bars were seized under seizure memo dated 19.03.2024.

xxii) Shri Sameer Haroon Marchant i.e. you along with five other



members of the syndicate were arrested under the provisions of Section 104(1) of the Customs Act, 1962 on 06.03.2024 for various offences punishable under Section 135 of the Customs Act, 1962, vide arrest memo dated 06.03.2024. Shri Sameer Haroon Marchant i.e. you, Smt. Joyi Kitty Joseph and Shri Mohammad Rafique Noor Mohammad Razvi alisa Arif were given one day DRI custody till 07.03.2024. Thereafter, on 07.03.2024, they were produced before the Hon'ble Additional Chief Metropolitan Magistrate (ACMM), 19th Court, Esplanade, Mumbai during which they have retracted their statements. Subsequently, a rebuttal was filed by the Sponsoring Authority promptly before the Hon'ble Court on 11.03.2024 stating that their retraction is an afterthought and there was no duress or coercion involved at the time of recording their statements. Shri Sameer Haroon Marchant i.e. you were initially placed under judicial custody till 19.03.2024 and an extension was subsequently granted till 01.04.2024 by the order dated 19.03.2024 of the Hon'ble ACMM. Vide order dated 01.04.2024, the Hon'ble ACMM, extended his Judicial Custody till 15.04.2024. You have filed the bail application dated 01.04.2024 before the Hon'ble ACMM. DRI Mumbai has filed a reply on 15.04.2024 before Hon'ble ACMM for cancellation of your bail application. Shri Sameer Haroon Marchant i.e. you were released on bail vide order dated 16.04.2024 of Hon'ble ACMM on certain conditions viz. furnishing cash bail of Rs. 100000 with one or more sureties in like amount, be provisionally released on his furnishing cash bail of Rs. 100000 in lieu of surety for 2 months, not influence and tamper with prosecution witnesses, cooperate with further investigation of the case, be present before DRI officers for further 15 working days from date of release from 11 AM to 2 PM, thereafter on every 1st and 15th of Month, if holiday is not there and if holiday falls on 1st and 15th on next working day in between 11 AM to 2 PM and also as and when called by respondent (DRI, MZU) in connection with investigation of the offense under written intimation, till further investigation is completed or till further orders, surrender his passport, take prior permission to travel abroad, furnish residential address and mobile no./email, furnish address and mobile number of his two nearest relatives with their consent and address proof for contacting them if he fails to appear during further investigation. xxiii) Three mobile phones which were recovered under panchanama on 06.03.2024, were found to be in extremely



damaged condition and were sent to a forensic laboratory for possible data extraction. However, since two of the mobile phones are in a severely damaged condition, recovery of any data from them, if any, is bound to take time. Phone number used on these mobiles are 7045771998, 9076367869 and 9820221356. Data from only one phone have been retrieved and on analysis of the forensic data retrieved, the following facts emerged:

- a) SIM was having phone no. 9076367869.*
- b) Phone is Samsung Galaxy Z Fold, Model No. SM-P936B, IMEI-350383130192012, IMEI2- 353800710192010.*
- c) From 01.01.2024 to 05.03.2024, 19 calls have been exchanged between you and Mohammad Rafique Razvi alias Aarif (9967869264) and on 05.03.2024 at 12:19 pm you contacted Aarif.*
- d) You were browsing the flight booking websites and the flights tracking website regularly.*

In this regard, a Certificate dated 07.03.2024 from Cyber Forensic Laboratory, Mumbai under Section 65 B(4)(C) of the Evidence Act 1872 has been obtained.

xxiv) The subscriber detail report (SDR) of the SIM used in one of the mobile phones having no. 9076367869 shows that it is registered in the name of Shri Sameer Haroon Marchant i.e. you and you have accepted the same in your statement dated 19.04.2024. Call Detail Report (CDR) of the other two phones having phone nos. 9820221356 and 7045771998 reveals that both the mobile phones were used in the vicinity of the residential addresses of Sameer Haroon Marchant ie you, and thus it appears that the devices belong to you. All the three number 9820221356, 7045771998 and 9076367869 were showing the same location most of the times as per their Call Details Records provided by their SIM card providers.

<i>Sr. No.</i>	<i>Date</i>	<i>Location shown in CDR</i>
<i>1</i>	<i>03.02.2024</i>	<i>Near Versova Village Bus stop Andheri West</i>
<i>2</i>	<i>04.02.2024</i>	<i>Near Versova Village Bus stop Andheri West</i>
<i>3</i>	<i>05.02.2024</i>	<i>Near Atharva tech Park, Dharvali Village, Madh Mumbai</i>
<i>4</i>	<i>06.02.2024</i>	<i>Near Versova Village</i>



		<i>Bus stop Andheri West</i>
5	07.02.2024	<i>Near Versova Village Bus stop Andheri West</i>
6	08.02.2024	<i>Near Atharva tech Park, Dharvali Village, Madh Mumbai</i>
7	15.02.2024	<i>Thote lane nea nityanand hotel madh jetty Mumbai 61</i>
8	29.02.2024	<i>Yari road Ganesh Mandir Andheri W</i>
9	04.03.2024	<i>Near Versova Village Bus stop Andheri West</i>

xxv) Further statements of Shri Sameer Haroon Marchant ie you were recorded on 19.04.2024 and 26.04.2024 wherein you have chosen to remain silent and not share any comments on the obvious question asked. It shows your non-cooperation.

xxvi) Further statement of Shri Mohammad Rafique Razvi alias Aarif was recorded on 26.04.2024 after he was released on bail on 16.04.2024 wherein he, inter alia, stated that retraction application dated 07.03.2024 was filed on the advice of his lawyer and he was not aware of the contents of the said retraction application; that once again reiterate that the contents of his earlier statements dated 05.03.2024 and 07.03.2024 are absolutely correct and true; that phone no. 7045771998 was used by Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala le. you to contact him; that you used to calls/ messages and WhatsApp calls/messages through this number to discuss the delivery and disposal of smuggled gold; that on 04.03.2024 and 05.03.2024, there were six WhatsApp calls on each day; that mobile phone Samsung Galaxy F04 SM-8045F having phone number 9004388755 was provided by you to him and he has saved your number by the name TP. Total 25 calls were exchanged between you and Aarif from 01.01.2024 to 05.03.2024 as per CDR.

xxvii) Shri Sameer Haroon Marchant ie you, in your statement dated 05.03.2024 and 07.03.2024 have admitted that you were involved in multiple cases of smuggling in the past. From the records available, the case details wherein your involvement have been established are as under:



2024:DHC:8392-DB



S.No.	File No.	Issue	Role/Status
1	NCB/ AZU/ CR- 05/200 3	Smuggling of Methaqualone powder at Narsanda.	Afzal Batatawala i.e you were financing the Methaqualone production and dealing in Mandrax tablets. Arrested vide Arrest Memo dated 13.05.2004. The supplementary complaint was filed in addition to the actual complaint dated 29.03.2004. The changes were confirmed by the NDPS Fast Track Court vide judgment dated 28.09.2007 and the appeal filed by you have been rejected by the Gujarat HC vide order dated 17.08.2012. An appeal was filed by you in the Supreme Court, and you were granted bail in September 2013 after spending over 9 years in jail.

Signature Not Verified

Digitally Signed
By: SHIWANI NEGI
Signing Date: 29.10.2024
19:12:39

W.P.(CRL) 1901/2024

Page 17 of 55



2	DRI/M ZUIIR U/INT - 62/201 7	Smuggling of foreign NT-62/2017 marked gold bars weighing 3995 grams valued at 1,06,09,741/- at CSI Airport, Mumbai on 12.05.2017.	Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala i.e you hatched a conspiracy to smuggle gold into India. He was the kingpin of the syndicate. An SCN vide F. No. DRI/MZU/IRU/IN T-62/2017 was issued on 01.11.2017 which was confirmed by OIO ADC/AK/ ADJN/52412018- 19 dated 31.03.2019.
---	---	--	--

xxviii) Smt. Joyi Kitty Joseph in her statement dated 06.03.2024, stated that Shri Sameer Tandel is like her son since long, but he was not legally adopted. Shri Sameer Tandel on behalf of Shri Sameer Haroon Marchant i.e. you and your wife vide letter dated 27.03.2024 requested DRI, Mumbai not to dispose of the seized cash and silver as the same is claimed by the notices.

2. From the facts mentioned herein above, it is evident that you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala are a key player in arranging and handling the smuggling of foreign origin gold into India in a planned and systematic manner, as also its disposal within India. The material placed also indicates that apart from the present instance involving 13.484 Kgs of smuggled gold and connected sale proceeds, you are habitually active in indulging in the prejudicial activities including gold smuggling. Your engagement is of the nature that



brings out your tendency and propensity to indulge yourself in arrangements related to smuggling in the future also. Your attempt to smuggle and disposal of foreign gold into India, was foiled by the officers of DRI, Mumbai when they intercepted you and your accomplices.

3. In view of the facts, circumstances, findings, corroborative statements, and your role in this whole operation, I am satisfied that you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala are a habitual offender and a key person of this well-organized syndicate involved in the smuggling and disposal of foreign origin gold into India. You i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala along with your associates, are in the habit of regularly smuggling gold into India from abroad, without declaring the same to Customs Authorities and without paying the applicable duty, which amounts to smuggling in terms of Section 2 of Customs Act, 1962. The underlying common threat is your propensity to smuggle goods for making illicit profit and thereby putting the national economy into danger, which needs to be curbed; and you are to be prevented from indulging in such activities further.

4. I am, satisfied that you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala have indulged in the activities amounting to "smuggling" in terms of Section 2(39) of the Customs Act, 1962 and Section 2(e) of the COFEPOSA Act, 1974; and your acts of deliberate commissions and omissions have rendered the goods involved liable for confiscation under the provisions of Customs Act, 1962.

5. It is evident that you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala have innate propensity to devise ways and means to smuggle foreign origin gold into India and to defraud the Government of its revenue. You i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala with the aid of your trusted associates are running a well-organized smuggling network & have established efficient mechanism in smuggling, concealing, possessing, transporting, carrying and/or dealing in the substantial quantities of foreign origin gold. You i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala habitually and actively indulged yourself in the prejudicial activities, and your engagement is of the nature that brings out your propensity to indulge in gold smuggling in future also.

6. I am satisfied that, as evidenced and discussed in the foregoing



paras, Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala i.e. you have shown a general habit and propensity to indulge in fraudulent activities by way of smuggling goods, abetting the smuggling of goods, engaging in transporting or concealing or keeping smuggled goods, and dealing in smuggled goods, at the cost of government revenue and national security, and with clear motive of enriching yourself with no concern to the general economy and the national security interests.

7. In view of the facts and circumstances explained above, I have no hesitation in concluding that you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala have played a vital role in the smuggling of foreign origin gold from Dubai. You i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala along with your accomplices have executed the plan in an organized and repeated manner for the acts of smuggling. Investigation done by the officers of DRI, Mumbai clearly establishes your continued propensity and inclination to indulge in the acts of smuggling in a planned manner and that unless prevented, you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala will continue to do so. Further considering the nature and gravity of offence, and the organized way you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala have engaged yourself in such prejudicial activities, your role therein, and your high potentiality & propensity to indulge in such prejudicial activities in future, I am satisfied that there is an immediate need to prevent you from smuggling goods. Hence, you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala ought to be detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing you from smuggling goods, abetting smuggling of goods, engaging in transporting or concealing or keeping smuggled goods, and dealing in smuggled goods, in terms of Section 3(1) of the COFEPOSA Act, 1974.

8. Prevention of perpetration of such despicable activities is indispensable for the greater cause of the nation. The smuggling syndicate has committed the offence with meticulous planning & deliberate designs having the sole intention of personal profit regardless of the consequences of the society at large, and there is every likelihood that you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala as a key member of the syndicate will engage yourself in such smuggling activities again in view of your propensity to do so.



9. I am aware that prosecution under Section 135 of the Customs Act, 1962 may be launched against you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala and adjudication proceedings are also likely to be initiated soon, which are however punitive in nature and independent of the preventive detention provided under the COFEPOSA Act, 1974. However, considering your i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala's high propensity to indulge in the prejudicial activities, I am satisfied that in the meantime you should be immobilized by detention under COFEPOSA Act, 1974 with a view to prevent you from smuggling goods, abetting the smuggling of goods, engaging in transporting or concealing or keeping smuggled goods, and dealing in smuggled goods, in future.

10. Having regard to the chronological sequence of events in this case, the time required to scan the proposal along with the voluminous relied upon documents (RUDs), the time required to procure additional information, 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 the passing of this Detention Order as well as object of your detention has been well maintained.

11. I consider it to be against the public interest to disclose the source of information at the relevant paragraphs of the Grounds above.

12. While passing the Detention Order under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, I have referred to and relied upon all the documents mentioned in the enclosed list, which are also being served to you along with the Grounds of Detention.

13. You i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala have the right to represent against your detention to the Detaining Authority, to the Central Government as well as to the State Advisory Board. If you wish to avail this right, you should send your representation through the Jail Authorities where you are detained, in the manner indicated below:

a. Representation meant for the Detaining Authority should be addressed to the Joint Secretary (COFEPOSA), Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau (CEIB), 6th Floor, 'B' Wing Janpath Bhawan, Janpath, New Delhi- 110001.

b. Representation meant for the Central Government should be



addressed to the Director General, Central Economic Intelligence Bureau, Govt. of India, Ministry of Finance, Department of Revenue, 6th Floor, B-Wing Janpath Bhawan, Janpath, New Delhi- 110001.

c. Representation meant for the Advisory Board should be addressed to the Chairman, State Advisory Board, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), Bombay High Court, Mumbai, Maharashtra-400032.

14. You are further informed that you shall be heard by the State Advisory Board in due course, if the Board considers it essential to do so or if you so desire.

15. The above grounds are communicated to you for the purpose of Clause (5) of Article 22 of the Constitution of India and as required under Section 3(3) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.”

SUBMISSIONS ON BEHALF OF THE PETITIONER

4. The submissions made by Id. Counsel for the Petitioner is that firstly, the ordinary law is sufficient to take care of the apprehensions of the Sponsoring Authority/Respondent No.3 and the impugned Detention Order is totally uncalled for. Further, various vital documents including the application for cancellation of bail bearing **Misc. Appl. No. 949 of 2024** in **RA No.191/2024** filed by the Sponsoring Authority/Respondent No.3 before the Id. Sessions Court challenging the bail granted to Detenu on 16th April, 2024, was not placed before the Detaining Authority, despite the same being filed on 3rd May 2024 prior to the passing of the impugned Detention Order. Further, other important documents such as papers pertaining to the earlier complaint of 2004, judicial orders dated 28.09.2007, 17.08.2012 and/or order passed by the Hon'ble Supreme Court etc. have not been placed on record.

5. It is argued that the apprehensions which are expressed in the impugned



Detention Order are in fact on the same grounds on which the bail granted to the Detenu was opposed by the Sponsoring Authority/Respondent Authority before the Id. ACMM. It is submitted that, in fact, the bail order dated 16th April, 2024 considers the various grounds raised by the Sponsoring Authority/Respondent No.3 for not granting of bail to the Detenu and the Id. Trial Court having considered the same has imposed various conditions in the bail order itself. Reference is made to paragraph 3 of the order granting bail as also paragraph 6, which are reproduced as under:

“3. The investigation is under process. All out efforts are being made to locate other members of the syndicate. He has played significant role but not revealed details regarding the supply chain of smuggling of gold into India. There is likelihood that he will active the supply chain and engage in the smuggling of gold again. The syndicate members are still at large. If he enlarged on the bail the investigation may hamper, he may tamper with or destroy the evidence and, influence the witnesses. He is mastermind of the smuggling racket. His continuous judicial custody is extremely crucial so that, his smuggling network can be busted and the smuggling activities can be prevented He involved in very serious economic offence which adversely affects the economy of the country. The case is having international ramifications. Therefore they submitted for rejecting the application.

xxx

xxx

xxx

6. Id. Advocate submitted that, he is in custody for more than 41 days. No purpose would be served by keeping him behind the bar. During his custody his further statement is not recorded nor any inquiry is conducted with him. It is also submitted that, he is ready to co- operate for investigation and abide any terms and conditions. On the other hand Id. Special PP vehemently submitted that, he tried to destroy the goods. It is also submitted that, as per information gathered he was earlier involved in similar type of activities in Gujarat State and now changed his name. Therefore there is possibility that, there may be more



recovery and more involvement of the persons who are yet to be arrested. But it is required to note that as per their statement they themselves were not bringing gold from the Dubai but the part of smuggling. It is not disputed that there is huge recovery of Indian and foreign currency with gold and silver bars. But thereafter no further progress in the investigation is shown. Moreover, no further statement of the accused is recorded on the basis of further investigation. Already there was sufficient time with the respondent to investigate about his further involvement in the alleged smuggling. The prosecution is suspecting that he may again involved himself in similar type of activity. But care can be taken by imposing certain conditions to prevent him from engaging in smuggling activity. Therefore considering all these circumstances and already the seized currency and other goods were with the respondent it is just and proper to enlarge him bail on certain conditions. Therefore I pass following order:-

ORDER

- 1. Application is allowed.*
- 2. Accused be released on bail on his executing PR. Bond Rs.1,00,000/- (Rs One lakh only) with one or more sureties in amount.*
- 3. He be provisionally released on his furnishing cash bail Rs.1,00,000/- (Rs. One Lakh only) in lieu of surety for 02 (two) months.*
- 4. He shall not influence and tamper with the prosecution witnesses and evidence. He shall co-operate for further investigation of the case.*
- 5. He is directed to remain present before the respondent for further 15 working days from the date of release from the jail in between 11:00 am to 02:00 pm, thereafter on every 1st and 15th Month if Holiday is not there and if Holiday falls on 1 and 15 on next workign day in between 11:00 am to 02:00 pm and also as and when called by respondent in connection with investigation of this offence under written intimation, till further investigation is completed or till further order.*
- 6. He shall surrender his passport to the respondent for the period of six months from the date of his arrest. The department to return passport to him after said period with due acknowledgment without any reference to the court.*
- 7. He shall take prior permission of the court for travelling*



abroad.

8. He shall furnish his residential address and telephone/mobile number with E-mail address to the Court and department. He shall not a change his residential address, telephone/mobile number without prior intimation in writing to the Court and concern Department

9. He shall furnish address and mobile number of his two nearest relatives to the court and department with their consent alongwith their address proof for contacting them if he fails to appear during further Investigation before respondent and during trial of the case”

6. It is submitted by the Id. counsel for Petitioner that the crux of the aforesaid order granting bail to the Detenu is that despite the apprehensions expressed by the Sponsoring Authority/Respondent No.3, the Id. ACMM has held that after the search and the recording of the statements of all persons involved, no further investigation was conducted and there was sufficient time for the Sponsoring Authority/Respondent No.3 for further investigation. The Id. ACMM has also held that the apprehension of the Petitioner getting involved in similar type of activity i.e., smuggling of gold, is fully addressed by imposing stringent conditions on the Petitioner, such as to appear before the Sponsoring Authority/Respondent No.3 on a periodic basis as mentioned in the order dated 16th April, 2024.

7. It is further submitted that in the application for cancellation of bail filed by the Sponsoring Authority/Respondent No.3 on 3rd May, 2024, one of the grounds for challenge is the possibility of the Detenu indulging in similar activity of smuggling of gold and this was a vital document which could not have been held back from the Detaining Authority. It is also submitted that there is no live link between the incident and the impugned Detention Order. Moreover, it is argued that the investigation has yet not been completed by



the Sponsoring Authority/Respondent No.3 and, thus, the impugned Detention Order deserves to be quashed.

8. In addition, it is argued that in the earlier prejudicial activity which has been considered in the impugned Detention Order i.e., **Case No. NCB/AZU/CR-05/2013**, the Detenu was convicted under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short '*NDPS Act*') on 28 September 2007, and has served 9 years of sentence and the appeal being **Crl.A. No. 000344/ 2013** is pending before the Hon'ble Supreme Court. The same would not constitute material for passing the impugned Detention Order as the same was immaterial. It is also argued that the arrest of the Detenu in 2017 in **File No. DRI/MZU/IRU/INT-62/2017** under the Customs Act, 1962 also would not constitute relevant material as no prosecution had commenced under the said Act after the arrest. On these grounds, the counsel for the Petitioner submits that the Detenu deserves to be released.

9. Ld. Counsel for the Petitioner also submitted that the impugned Detention Order is vague and there is no clarity as to under which sub-clause of Section 3 of the COFEPOSA Act, the impugned Detention Order was passed. It was also argued that in the impugned Detention Order all the possibilities as mentioned in the COFEPOSA Act, 1974 have been mentioned under the various sub-clauses of Section 3, without exactly referring as to which particular provision was violated by the Detenu due to which the impugned Detention Order was passed.

10. It is also argued that no allegation has been made against the Detenu for absconding and violating the order dated 16th April, 2024. Also, it is important to note the fact that the Detenu does not have a passport for the past 20 years and, therefore, cannot be a flight risk.



11. Reliance has been placed on the following judgments by the Id. Counsel for the Petitioner: -

- i. Banka Sneha Sheela v. State of Telangana, (2021) 9 SCC 415.*
- ii. Rekha v. State of T.N., (2011) 5 SCC 244.*
- iii. Frank Vitus v. Narcotic Control Bureau & Ors., 2024 SCC OnLine SC 1657.*
- iv. T.A. Abdul Rahman v. State of Kerala & Ors., (1989) 4 SCC 741.*
- v. Sama Aruna v. State of Telangana., (2018) 12 SCC 150.*
- vi. Mallada K Sri Ram v. State of Telangana & Ors., 2022 SCC OnLine SC 424*
- vii. Surinder Kumar Khanna v. Directorate of Revenue Intelligence., (2018) 8 SCC 271*
- viii. Union of India v. Manoharlal Narang., (1987) 2 SCC 241*
- ix. Ashadevi v. K. Shivraj., (1979) 1 SCC 222*
- x. Mehrunissa v. State of Maharashtra., (1981) 2 SCC 709*
- xi. Union of India v. Ranu Bhandari., (2008) 17 SCC 348*
- xii. Rajesh Gulati v. Govt. of NCT of Delhi., (2002) 7 SCC 129*
- xiii. Gimik Piotr v. State of T.N., (2010) 1 SCC 609*
- xiv. Yumman Ongbi Lembi Leima v. State of Manipur., (2012) 2 SCC 176*
- xv. Munagala Yadamma v. State of A.P., (2012) 2 SCC 386*
- xvi. Boris Sobotik Mikolic v. Union of India, 2018 SCC OnLine Del 9363.*
- xvii. Jagannath Misra v. State of Orissa, AIR 1966 SC 1140*
- xviii. Ananta Mukhi @ Ananta Hari v. State of West Bengal, (1972) 1 SCC 580*
- xix. V.C. Mohan v. Union of India., (2002) 3 SCC 451*
- xx. Pooja Batra v. Union of India., (2009) 5 SCC 296*



xxi. Tsering Dolkar v. Administrator, Union Territory of Delhi & Ors., (1987) 2 SCC 69

xxii. Hem Lall Bhandari v. State of Sikkim & Ors., (1987) 2 SCC 9

xxiii. Ram Manohar Lohiya v. State of Bihar & Anr., 1965 SCC OnLine SC 9.

xxiv. State of Punjab v. Sukhpal Singh., (1990) 1 SCC 35

xxv. D.K. Basu v. State of West Bengal., (1997) 1 SCC 416

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1 AND 2

12. Dr. B. Ramaswamy, Id. CGSC for Respondent No.1 and Respondent No.2, i.e., Union of India and Joint Secretary (COFEPOSA), respectively, submitted that firstly, the Petitioner's husband, i.e., Detenu in the present case is a habitual offender and he is a smuggler having local and international links. Reference is made to the Impugned Detention Order to argue that for the past 20 years he has been continuously involved in smuggling activities and illegal circulation of large quantum of black money in the economy. He further submitted that a plain reading of the impugned Detention Order would show the *modus operandi* adopted by the Detenu whereby large quantities of gold and cash were recovered from the places which were raided by the Sponsoring Authority on 5th March, 2024.

13. It is submitted that pursuant to the raid being conducted, statement of persons found at the said places had been recorded which reflect that there is a clear link to the Detenu. It is also submitted that the Detenu is involved in overseas smuggling and even if the Detenu is released for a short period he would be able to re-activate his entire network involved in the smuggling activities. The impact of such a release would be quite significant for the



country's economy. It is further submitted that the allegation regarding the recording of the statement of the Detenu under force and coercion is false and baseless. Reliance has been placed on the judgment of ***Surjeet Singh Chhabra v. Union of India and Ors., (1997) 1 SCC 508*** wherein the Court concluded that Custom Officials are not Police officers and the confession retracted, is an admission and binds the Detenu.

14. Ld. Counsel for Respondents No. 1 and 2 also submitted that an Arrest Memo was served to the Detenu at the time of his arrest and acknowledgement for receiving the copy was taken while serving the said memo to him and the same is mentioned in his Arrest Memo. There was a technical error while generating Document Identification Number (for short '*DIN*') on 06th March, 2024. As per circular No. 37/2019 dated 05th November, 2019 of Central Board of Indirect Taxes and Customs (for short '*CBIC*'), *post facto* approval was taken from the senior and the same has been taken on record and thereafter the DIN was generated.

15. In response to the Petitioner's allegations that the investigation is incomplete, it is submitted by the Ld. Counsel that while the investigation is ongoing it does not mean that the Detenu is not involved in smuggling activities. Further, it is submitted that lack of prosecution at this stage does not necessarily indicate weakness in the evidence, but rather the complexity and thoroughness of the investigation and the impugned Detention Order is necessary even if the investigation is incomplete. Ld. Counsel also submits that as per Section 124 read with Section 110(2) of the Customs Act, 1962 a notice for the seizure of goods can be issued within six months of the seizure which is extendable by 6 more months for reasons to be recorded in writing by the Pr. Commissioner/Commissioner of Customs.



16. It is further submitted that the Sponsoring Authority/Respondent No.3 approaching the Id. Sessions Court for cancellation of bail and the Detaining Authority 's exercise of powers under COFEPOSA Act are two separate and distinct proceedings with different objectives. The former seeks to revoke the Detenu's bail, while the latter aims to prevent the Detenu from engaging in smuggling activities. The parallel proceedings do not render the Detention Order impermissible, as the Detaining Authority's powers are discretionary and intended to address emergent situations.

17. Reference is made to the recent decision of the Supreme Court in *Ameena Begum v. State of Telangana & Ors., 2023 SCC OnLine SC 1106; 2023 INSC 788, [Ref. Para 15]* where the Court holds clearly that detention orders could be passed in anticipation or suspicion. Under such circumstances, it is Id. Counsel's submission that in the present case, the anticipation is that the Detenu would engage in smuggling and he would also indulge in illegal activities through the Petitioner and other third parties, who are connected to him.

18. It is submitted that there is a direct link between the Detenu's activities and the impugned Detention Order, and the said link is still not broken. Lastly, it is submitted that the Detenu and his wife i.e., the Petitioner did not cooperate in the investigation.

19. Reference is also placed on the decision of the Kerala High Court in *Jamseena v. Union of India & Ors., 2021 SCC OnLine Ker 3572 [Ref. Pg. 20, Para 20]* to argue that the proceedings for preventive detention under COFEPOSA Act cannot be equated with those in a Court of law. The relevant para is extracted hereunder:

"20. [...] There cannot be a parallel between prosecution in a Court



of law and a detention order under the COFEPOSA Act. One is a punitive action whereas the other is a preventive act. In one case a person is punished on proof of his guilt on a standard of proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which is necessary for reasons mentioned in Section 3 of the COFEPOSA Act to prevent. Applying the principles of the Evidence Act is foreign to the jurisdiction exercised under the COFEPOSA Act to make an order of preventive detention. In short, none of the normal rules of criminal jurisprudence or the provisions of the Evidence Act are attracted while invoking the provisions of the COFEPOSA Act. No embargo can be placed on the material which a detaining authority may consider and no artificial restriction can be placed on the so-called analogy of the sections of the Evidence Act to restrict the material which the administrative authority exercising statutory powers of detention may consider. [...]"

20. It is further submitted that the Petitioner has been involved over the years in multiple illegal activities including drug trafficking. One cause of concern which has been mentioned by the Id. Counsel is the fact that the Detenu keeps changing his name. Further, it is stated that in 1997 the Detenu was a suspect in another case under the COFEPOSA Act, and in the relevant judgment of the High Court of Bombay passed in the said case ***titled Ms. Annie Kitty Creado v. The State of Maharashtra 1997 ALL MR (Cri) 1322.*** which was handed across in the Court, the name of the Detenu is mentioned as Rahim Haroon Manoria @ Afzal Haroon Batatawala. It is argued that this name was later changed by the Detenu as is evident from the show cause notice dated 30th August, 2024, wherein, he is identified as Sameer Haroon Merchant @ Afzal. The fact that the Detenu has changed his name over the years has also not been disputed by the Petitioner.

21. Ld. Counsel has argued that the fact that the Detenu keeps changing his names would also go to show that he is trying to hide his identity in some way or the other. It is further submitted that the Detenu is involved in a complete



supply chain of smuggled goods as also drugs and gold smuggling. The supply chain is not merely national but also has international elements involved. Detenu is stated to have a consistent criminal record. It is argued that the investigation which has been completed in respect of a particular seizure may not have any relevance as the impugned Detention Order is preventive in nature.

22. Ld. Counsel submits that the question that is relevant for the Court in such a case is whether the Detenu is likely to indulge in crime once again or not. The facts stated in the show cause notice would clearly establish that the network allegedly established by the Detenu for smuggling activity is vast, it is argued that thus there is a clear propensity of the Detenu being involved again in illegal and unlawful activities upon his release. Finally, it is submitted that the Maharashtra State Board has already confirmed the detention of the Detenu.

23. Further, reliance is placed by the Id. Counsel for Respondents No.1 and 2 upon the following decisions:

- i) State of Maharashtra & Ors. v. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613*
- ii) Ashok Kumar v. Delhi Administration & Ors., (1982) 2 SCC 403*
- iii) Union of India & Anr. v. Dimple Happy Dhakad, (2019) 20 SCC 609*
- iv) Union of India & Ors. v. Arvind Shergill & Anr., (2000) 7 SCC 601*
- v) Sunil Fulchand Shah v. Union of India, (2000) 3 SCC 409*
- vi) Haradhan Saha v. State of West Bengal, (1975) 3 SCC 198*
- vii) Rutugna Arvindkumar Trivedi v. Union of India, 2020 SCC OnLine Guj 1030*
- viii) Prakash Chandra Mehta v. Commissioner and Secretary., Government*



of Kerala, AIR 1986 SC 687

ix) Madan Lal Anand v. Union of India, (1990) 1 SCC 81

x) State of Maharashtra vs. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613

xi) Naresh Kumar Goyal v. Union of India and Ors., (2005) 8 SCC 276

xi) State of Gujarat vs. Sunil Fulchand Shah, (1988) 1 SCC 600

xii) Surinder Kumar Khanna vs. DRI., (2018) 8 SCC 271

xiii) Rajendra Kumar Natvarlal Shah v. State of Gujarat & Ors., (1988) 3 SCC 153

xiv) Poolpandi & Ors. vs. Superintendent Central Excise & Ors., AIR 1992 SC 1795

xv) A.K. Roy vs. Union of India., (1982) 1 SCC 271

xvi) Kamleshkumar Ishwardas Patel vs. Union of India, (1995) 4 SCC 51

xvii) Union of India vs. Paul Manickam, (2003) 8 SCC 342

xviii) K.I. Pavunny v. Assistant Collector, (1997) 3 SCC 721

SUBMISSIONS ON BEHALF OF RESPONDENT NO.3

24. Ld. Counsel appearing for the Sponsoring Authority/Respondent No.3 has submitted that pursuant to the seizure of gold, silver bars and currency notes the Detenu and the other related person involved were informed regarding disposal of the said goods as per the provisions of the Customs Act, 1962. Further, *vide* letters dated 27th March, 2024 and 28th March, 2024, one Mr. Sameer Tandel (claimed to be adopted son of the Petitioner but he was not legally adopted) had requested not to dispose of the seized silver bars and the currency notes. *Vide* various summons dated 26th April, 2024, and 14th May, 2024, the Detenu was asked to produce legal documents for the seized



goods but he has not submitted any legal documents till date.

25. Ld. Counsel also argued that the Id. Trial Court while allowing the bail application of the Detenu, *vide* order dated 16.04.2024, failed to take into account that the offence under Section 135(1)(a) of the Customs Act, 1962, is a cognizable and non-bailable offence as per Section 104 of the said Act.

26. It is further submitted that Detaining Authority's consideration of past cases does not solely rely on time scale, but rather their relevance and bearing on the Detenu's likelihood of engaging in similar activities in the future.

27. It is further argued that the Detenu, despite not having a passport for 20 years, has been the mastermind of a gold smuggling syndicate and a key member of a syndicate involved in drug trafficking. The conditions of the bail such as surrender of passport (which he does not even possess) are not sufficient to prevent the Detenu from engaging in prejudicial activities. Further, despite getting a bail in the NDPS case in the year 2013 and the gold smuggling case in the year 2017, the Detenu still managed to indulge in smuggling activities. Evidently, his claim that bail conditions are sufficient to hold him back from engaging in smuggling activities cannot be given any weightage due to the aforesaid reasons. Further, all evidence suggests that the Detenu had wilfully thrown away his mobile phones and 2 gold bars when the DRI officers went for a search operation at his residence on 05th March, 2024. Therefore, it can be said that the Detenu has a tendency of tampering with the evidence and trying to mislead the investigation.

28. Ld. Counsel appearing for the Sponsoring Authority/Respondent No.3 had filed an additional affidavit dated 6th September, 2024 in terms of the order dated 2nd September, 2024. As per the said additional affidavit, the initial proposal for detention of the Detenu under COFEPOSA Act, was sent



by the Sponsoring Authority on 12th April, 2024, while the Detenu was still in judicial custody. The Detenu was released on bail by the Id. Trial Court *vide* order dated 16th April, 2024 in ***R.A. 191 of 2024*** pursuant to which an updated proposal mentioning the release of the Detenu and the intention of Sponsoring Authority to apply for cancellation of bail was submitted to the Detaining Authority *vide* email dated 30th April, 2024. Further, he has handed over a copy of the updated proposal which was presented on 1st May, 2024 to the Screening Committee wherein at paragraph 29 there is a clear mention of the fact that an appeal is being filed against the aforesaid bail order. After the meeting on 1st May, 2024, the application for cancellation of bail was filed on 6th May, 2024 and the impugned Detention Order was passed on 9th May, 2024. Thus, it is argued that there was clear disclosure to the Detaining Authority regarding the bail granted to the Detenu and the fact that cancellation of the bail would be sought by the Sponsoring Authority.

29. Finally, he also updates the Court on the fact that the Maharashtra State Advisory Board held its meeting on 5th July, 2024 and the report was sent to the Central Government on 18th July, 2024. The Central Government confirmed the detention order on 26th July, 2024 and finally the order was issued on 30th July, 2024. It is thus his submission that there has been no withholding of the relevant facts or documents from the Detaining Authority.

30. Reliance is placed by the Id. Counsel for Respondent No.3 on the following judgments:

i) Poolpandi & Others v. Superintendent Central Excise & Others, AIR 1992 SC 1795

ii) Odut Ali Miah v. State of West Bengal, (1974) 4 SCC 129

iii) Union of India v. Dimple Happy Dhakad, 2019 SCC OnLine SC 875



iv) Ankit Ashok Jalan v. Union of India, (2020) 16 SCC 127

REJOINDER ON BEHALF OF THE PETITIONER

31. Ld. Counsel for the Petitioner, in rejoinder firstly submits that insofar as the name of the Detenu is concerned, he is aware that after the Detenu was released on bail in 2013 in *Case No. NCB/AZU/CR-05/2003*, he had changed his name to Sameer Haroon Merchant. However, insofar as the other names which are mentioned in the judgment of the Bombay High Court, namely, Rahim Haroon Manoria is concerned, the Detenu had not changed his name, however, the Detenu tried to travel on a ticket of Rahim Haroon Manoria which had been supplied by some travel agent only for taking the benefit of free tickets of airlines.

32. Ld. Counsel for the Petitioner highlights the fact that even in the bail application filed on behalf of Detenu in *R.A. 191 of 2024* before the ld. ACMM, the proper three names of the Detenu have been disclosed and there has been no intention to suppress any particular fact.

33. The core submission of ld. Counsel for the Petitioner is that if the alternative law of the land is sufficient to address the grievance of the Detaining Authority, preventive detention ought not to be invoked. He further submitted that the provisions of the Customs Act, 1964 have also been amended and there are sufficient measures under the said law that can be taken even in respect of smuggling or evasion of duty which is the basis of the show cause notice dated 30th August, 2024. It is submitted that preventive detention is an exceptional provision which has to be used rarely and the same cannot be used for every offense under the Customs Act or under other statutes. Further, it is argued that the show cause notice was not itself placed before the Detaining Authority. The fact that the filing of the appeal against the order



granting bail to the Detenu has also not been placed before Detaining Authority but only before the Screening Committee would itself show that there is an infraction in the procedure. It is also submitted that only stale material is referred to and relied upon by the Detaining Authority which shows that there is no live link between the material and the detention order which has been passed.

34. Reliance is placed upon the recent decision of the Hon'ble Supreme Court in *Jaseela Shaji v. Union of India & Ors.*, 2024 SCC OnLine SC 2496 where the Supreme Court has categorically held that the documents which are relied upon by the Sponsoring Authority must be mandatorily supplied to the Detenu, which in this case, it is argued has not happened. Finally, reliance is placed upon the decision of *Khaja Bilal Ahmed v. State of Telengana & Ors.*, (2020) 13 SCC 632 to argue that the reliance on stale material in fact shows that there was no live material to support the order of detention.

ANALYSIS AND FINDINGS

35. Heard learned counsel for the parties and perused the record.

36. At the outset, it was submitted that the ordinary law of the land was sufficient to deal with the Detenu. It was pointed out that the Detenu was arrested on 06th March, 2024, after the alleged recoveries, and was granted bail by the Id. ACMM on 16th April, 2024. Attention of this Court was drawn to the order granting bail to the Detenu wherein the opposition of the Respondent No.3/Sponsoring Authority have been recorded. It was submitted that the opposition by the Sponsoring Authority/Respondent No. 3 were similar to the grounds mentioned in the impugned Detention Order by Respondent No.2 with regard to the apprehension of Detenu engaging in prejudicial activity if released on bail. It was submitted that the Id. ACMM



after recording the opposition of the Sponsoring Authority/Respondent No.3 passed the aforesaid order granting bail while observing that the apprehension expressed on behalf of Respondent No.3 can be suitably addressed by imposing conditions. Accordingly, it is submitted, that conditions had been imposed on the Detenu by Id. ACMM which is sufficient to ensure that the Detenu would not engage in any other further illegal activities and therefore, the impugned Detention Order ought not to have been passed.

37. It was also the submission on behalf of Id. counsel for the Petitioner that the Sponsoring Authority/Respondent No.3 had moved an application for cancellation of bail before the Id. Sessions Court on 3rd May, 2024, which was not placed before the Detaining Authority and therefore, the impugned Detention Order also suffers from the vice of non-supply of vital documents. It was further submitted that the said documents ought to have been placed before the Detaining Authority before it passed the impugned Detention Order dated 9th May, 2024 as the same would have effected the decision of the Detaining Authority in one way or the other.

38. The impugned Detention Order is further challenged on the ground that there is no live-link between the impugned Detention Order and the alleged pre-judicial activity of the Detenu. It was submitted that the Detaining Authority has referred to past cases of the Detenu. One of the cases referred to is **Case No. NCB/AZU/CR-05/2013**. It is pointed out that in the said case the Detenu was convicted and his conviction is now under challenge before the Hon'ble Supreme Court in **Crl.A. No. 000344/2013**. It is further submitted that the Detenu was in jail for 9 years and was released on bail by the Hon'ble Supreme Court in September 2013. The second case referred to by the Detaining Authority is with respect to the year 2017 in **Case No.**



DR/MZU/IRU/INT-62/2017 in which prosecution has not been initiated. In view of the same it was urged that reliance could not have been placed on the aforesaid two cases by the Detaining Authority. So far as the present case of seizure is concerned the Detenu has already been granted bail while imposing conditions as pointed out hereinabove. It was submitted by relying on the aforesaid two old cases and ignoring the order granting bail to the Detenu, the impugned Detention Order suffers from non-application of mind and ought to be set aside.

39. Before advertng to the legal issues raised in the present petition the following facts are duly noted:-

- A) During the relevant period from 5th March, 2024 to 8th March, 2024, the officers of the Sponsoring Authority/Respondent No.3, on a specific intelligence being gathered and thereafter in furtherance of their investigation recovered a 13.484 kg of smuggled gold along with connected alleged sale proceeds and the same has been recorded in the impugned Detention Order. Statements of various persons from whom the said recovery was affected had been recorded under Section 108 of the Customs Act, 1964 and the involvement of the Detenu has been brought on record as a key player in arranging and handling the smuggling of the foreign origin gold in India in a planned and systematic manner.
- B) The nature of recovery as reflected in the impugned detention Order is not at one isolated place but at various locations reflecting the extent of the alleged operation which was unearthed by the officers of the Sponsoring Authority/Respondent No.3.



- C) Apart from his conviction under the NDPS Act, for which the Detenu has served 9 years in jail and was released on bail by the Hon'ble Supreme Court in September 2013, he was involved in smuggling of foreign marked gold bars weighing 3995 gms valued at Rs.1,06,09,741/- at CSI Airport, Mumbai on 12th May, 2017.
- D) After being released on bail by the Hon'ble Supreme Court in September, 2013, the Detenu officially changed his name from Afzal Haroon Batatawala to Sameer Haroon Merchant. The Detenu was arrested on 06th March, 2024 and was released on bail by the Id. ACMM on 26th April, 2024. The impugned Detention Order was passed on 09th May, 2024 and served on the Detenu on 14th May, 2024.

40. There is no dispute with regard to the legal principle, as argued by learned counsel for the Petitioner, that if the ordinary law of the land is sufficient then recourse to preventive detention should not ordinarily be resorted to. However, it is also a settled principle of law that the order of preventive detention can be passed even where the Detenu is facing prosecution under the ordinary law of land. Each case would depend on its own facts and circumstances and upon the subjective satisfaction of the Detaining Authority. In the present case it has been strenuously argued that the Detenu was arrested on 06th March, 2024 and was granted bail by the Id. ACMM on 26th April, 2024 and the fact that the order granting bail had imposed conditions on the Detenu, keeping in mind the apprehensions of the Authority with respect to his future involvement in illegal activities was sufficient and therefore there was no requirement of any order under the COFEPOSA Act. The Hon'ble Supreme Court in *Union of India v. Chaya*



Ghoshal, (2005) 10 SCC 97, while dealing with a similar situation under the COFEPOSA Act, wherein the Detenu was released on bail on 11th September, 2002 and the detention order was passed in November 2002, the Hon'ble Supreme Court while dealing with the aforesaid issue observed and held as under:-

“8. Before dealing with rival submissions, it would be appropriate to deal with the purpose and intent of preventive detention. Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the law concerned. The action of the executive in detaining a person being only precautionary, normally the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the detaining authority, therefore, is considered to be of primary importance, with great latitude in the exercise of its discretion. The detaining authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens would lose all their meanings, provide the justification for the laws of preventive detention. Laws that provide for preventive detention posit that an individual's



conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has at times been even called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment of individual liberty. "To lose our country by a scrupulous adherence to the written law", said Thomas Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs." This, no doubt, is the theoretical jurisdictional justification for the law enabling preventive detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other.

15. In case of preventive detention no offence is proved, nor any charge is formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. (See R. v. Halliday [1917 AC 260 : (1916-17) All ER Rep Ext 1284 : 169 ER 1252] and Kubic Darusz v. Union of India [(1990) 1 SCC 568 : 1990 SCC (Cri) 227 : AIR 1990 SC 605] .) But at the same time, a person's greatest of human freedoms i.e. personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however technical, is mandatory. The compulsions of the primordial need to maintain order in society, without which enjoyment of all rights, including the right of personal liberty, would lose all their meanings, are the true justifications for the laws of preventive detention. This jurisdiction has been described



as a “jurisdiction of suspicion”, and the compulsions to preserve the values of freedom of a democratic society and social order sometimes merit the curtailment of individual liberty. (See *Ayya v. State of U.P.* [(1989) 1 SCC 374 : 1989 SCC (Cri) 153 : AIR 1989 SC 364]) To lose our country by a scrupulous adherence to the written law, said Thomas Jefferson, would be to lose the law, absurdly sacrificing the end to the means. No law is an end itself and the curtailment of liberty for reasons of State's security and national economic discipline as a necessary evil has to be administered under strict constitutional restrictions. No *carte blanche* is given to any organ of the State to be the sole arbiter in such matters.

23. So far as the finding of the High Court that there was only one incident is really a conclusion based on erroneous premises. It is not the number of acts which determine the question as to whether detention is warranted. It is the impact of the act, the factual position as highlighted goes to show that the financial consequences were enormous and ran into crores of rupees, as alleged by the detaining authority. The High Court seems to have been swayed away that there was only one incident and none after release on bail. The approach was not certainly correct and the judgment on that score also is vulnerable. At the cost of repetition it may be said that it is not the number of acts which is material, it is the impact and effect of the act which is determinative. The High Court's conclusions in this regard are therefore not sustainable.”

(emphasis supplied)

41. Similarly, in *G. Reddeiah v. Govt. of A. P.*, (2012) 2 SCC 389, Hon’ble Supreme Court held as under:-

“11. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. Even, as early as



in 1975, a Constitution Bench of this Court considered the procedures to be followed in view of Articles 19 and 21 of the Constitution. In Haradhan Saha v. State of W.B. [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] a Constitution Bench of this Court, on going through the order of preventive detention under the Maintenance of Internal Security Act, 1971 laid down various principles which are as follows : (SCC p. 209, para 34)

“34. ... First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the person concerned is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate [sic] the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.”



16. The incident relating to the procedure to be adopted in case the detenu is already in custody has been dealt with in several cases. In *Union of India v. Paul Manickam* [(2003) 8 SCC 342; 2004 SCC (Cri) 239] this Court has held as under: (SCC pp. 352-53, para 14)

"14.... Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability, etc. ordinarily, it is not needed when the detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated.... The point was gone into detail in *Kamarunnissa v. Union of India* [(1991) 1 SCC 128; 1991 SCC (Cri) 88]. The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he



is actually in custody: (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail."

22. In a matter of detention, the law is clear that as far as subjective satisfaction is concerned, it should either be reflected in the detention order or in the affidavit justifying the detention order. Once the detaining authority is subjectively satisfied about the various offences labelled against the detenu, habituality in continuing the same, difficult to control him under the normal circumstances, he is free to pass an appropriate order under Section 3 of the 1986 Act by fulfilling the conditions stated therein. We have already concluded that there is no infirmity either in the reasonings of the detaining authority or the procedure followed by it. We are also satisfied that the detenu was afforded adequate opportunity at every stage and there is no violation of any of the safeguards. In these circumstances, we reject the contention raised by the learned Senior Counsel for the appellant."

42. In the facts and circumstances of the present case, applying the law laid down by the Hon'ble Supreme Court in the aforesaid judgments as discussed hereinabove, it is seen that the Detaining Authority has clearly noted that the Detenu was released on bail on 16th April, 2024 on certain conditions. The Detaining Authority was satisfied that on being released on bail there is every likelihood that the Detenu would engage himself in the alleged prejudicial



activities in view of his propensity to do so and therefore the need to immobilize him by way of the present Detention Order. A perusal of the impugned Detention Order further reflects the fact that the said satisfaction was based on the Detenu running a well-organized smuggling network with aid of his associates and having well-established mechanism in dealing with foreign origin gold.

43. It is further pertinent to note that the Detenu was arrested on 06th March, 2024 and as per the record he moved a bail application on 1st April, 2024 and the proposal for detention was moved on 12th April, 2024 which is proximate in time. By way of additional affidavit filed by Respondent No. 3 it has come on record that after the proposal for the Detenu's detention was moved by the Sponsoring Authority on 12th April, 2024, the Detenu was granted bail *vide* order dated 16th April, 2024 passed by the Id. ACMM, the Sponsoring Authority/Respondent No.3 sent an updated proposal on 30th April, 2024 to the Detaining Authority placing the said bail order on record as well as its intention to move for cancellation of bail. The aforesaid sequence of dates and events clearly show that the Sponsoring Authority/Respondent No.3 sent a proposal for detention soon after the Detenu having preferred an application for bail. Looking at the facts of the present case and the voluminous record relied by the Detaining Authority, the nexus between the date of the incident and the passing of the impugned Detention Order cannot said to be delayed or having no live-link.

44. Presuming, purely for the sake of argument, that previous two cases being in 2013 and 2017 should not have been relied upon, even then it is a settled legal proposition that a person can be detained on a single incident,



The Hon'ble Supreme Court in ***Kirti Kumar Nirula v. State of Maharashtra, (2005) 9 SCC 65***, observed and held as under:-

“9. While considering the first argument of the learned counsel, we must notice at the outset that there is no statutory provision against detaining a person based on a single incident provided the detaining authority had material before it to come to a reasonable opinion that from the surrounding circumstances coupled with the incident in question a satisfaction as to the future illegal activities of the detenu could be inferred. This is clear from the very judgment sought to be relied upon by the learned counsel in the case of Chowdarapu Raghunandan v. State of T.N. [(2002) 3 SCC 754 : 2002 SCC (Cri) 714 : JT (2002) 3 SC 110] wherein at para 13 of the said judgment this Court held that in an appropriate case, an inference could legitimately be drawn even from a single incident of smuggling that the person may indulge in smuggling activity but for that purpose antecedents and nature of the activities carried out by a person are required to be taken into consideration for reaching justifiable satisfaction that the person was engaged in smuggling and that with a view to prevent further smuggling, it was necessary to detain him.

10. We will now consider the facts of this case to find out whether a single incident in this case would be sufficient to detain the appellant, keeping in mind the principle of law enunciated by this Court in the above-referred case.

11. The fact that the detenu was arrested at the airport while he was handing over foreign currency totalling US \$ 70,000 with four mobile phones to the co-detenu Tilak Raj Sharma is not denied. The explanation of the detenu is that he had brought the same when he came into India from abroad and had declared the same to the Customs Authorities as required in law, hence, there is no illegality in his taking back this money with him when he is going out of India. This explanation cannot be accepted because of the fact that if he had brought the money and he wanted to take the money out



of India then there was no need for him to hand over this money to Tilak Raj Sharma at the airport lounge. Therefore, we will have to proceed on the basis that the detenu was arrested when he handed over the foreign currency to Tilak Raj Sharma at the airport. Now this incident being a single incident, we will have to see whether there was any other material before the detaining authority to come to a legitimate satisfaction that the detenu in this case would indulge in similar activities of smuggling currency in future also. In this regard, it is seen from the material placed on record that the detenu had a work permit to work in UAE but on enquiry it was found that he was neither working in UAE nor was a regular resident of UAE. From the material placed before the detaining authority, it is noticed that this detenu had travelled abroad a number of times and also he had made it a practice to travel between Delhi-Bombay-Ahmedabad in a particular manner, that is, he would take a domestic flight of Indian Airlines from Delhi to Bombay and in Bombay he would change over to an international flight which touches Ahmedabad on the way. It is also seen from the records that in almost all these flights the co-detenu Tilak Raj Sharma used to be a co-passenger. This detenu had taken 16 such flights during a short period of time and it is during one such flight he was arrested, as stated above. Thus on the facts and circumstances of this case, we are in agreement with the finding of the High Court that the material placed before the detaining authority coupled with the fact of arrest and seizure of the foreign currency which is handed over by the detenu to Tilak Raj Sharma are sufficient to form a reasonable conclusion that the detenu is likely to indulge in similar activities in future also. Therefore, we find no merit in this argument.”

45. So far as the ground taken by the ld. counsel for the Petitioner that the application seeking cancellation of bail was not placed before the Detaining Authority is concerned, it is noted in the additional affidavit on behalf of Sponsoring Authority/Respondent No. 3, that in the updated proposal sent to



the Detaining Authority on 30th April, 2024, the intention to challenge the order granting bail was mentioned; however, the actual application for cancellation of bail was filed only on 06th May, 2024 and since the impugned Detention Order was passed on 09th May, 2024, in the considered opinion of this Court, the same would not amount to non-supply of a vital document inasmuch as the same was not before the Detaining Authority. Further, filing for cancellation of bail would not vitiate the impugned Detention Order as same cannot be considered as an alternate to a Detention Order. The fact that the Sponsoring Authority can move for cancellation of bail cannot be a ground to quash the order of preventive detention as held by the hon'ble Supreme Court in *Abdul Sathar Ibrahim Manik v. Union of India, (1992) 1 SCC 1*, The relevant paragraph is as under:-

“12. ... (1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in custody.

*(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. **The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher court.***

(3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of



relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.

(4) Accordingly the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them, failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the court.

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

(emphasis supplied)

46. In *Jaseela Shaji (supra)* relied upon by the Ld. Counsel for the Petitioner, Hon'ble Supreme Court noted that a document which was extensively relied upon by the Detaining Authority was not supplied to the Detenu which is not the case here.



47. The impugned Detention Order was also challenged on the ground that the same is vague as there is no clarity as to under which sub-clause of Section 3(1) of the COFEPOSA Act the said order was passed. It was contended that in the impugned Detention Order all the possibilities mentioned in the said provision have been referred to without exactly referring as to which particular sub-clause was the case of the Detenu covered under. Reliance for the same was placed on a judgment of the Hon'ble Supreme Court in ***Jagannath Mishra (supra)***.

47.1 The relevant sub-clauses under Section 3(1) of the COFEPOSA Act are as under:-

- “(i) smuggling goods, or*
- (ii) abetting the smuggling of goods, or*
- (iii) engaging in transporting or concealing or keeping smuggled goods, or*
- (iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or*
- (v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods,”*

47.2 The relevant portion of the grounds of detention dealing with the aforesaid activities is being reproduced at the sake of repetition hereinbelow:-

*“7. In view of the facts and circumstances explained above, I have no hesitation in concluding that you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala have **played a vital role in the smuggling of foreign origin gold from Dubai. You i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala along with your accomplices have executed the plan in an organized and repeated manner for the acts of smuggling.** Investigation done by the officers of DRI, Mumbai clearly establishes your continued propensity and inclination to indulge in the acts of smuggling in a planned manner and that unless*



prevented, you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala will continue to do so. Further considering the nature and gravity of offence, and the organized way you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala have engaged yourself in such prejudicial activities, your role therein, and your high potentiality & propensity to indulge in such prejudicial activities in future, I am satisfied that there is an immediate need to prevent you from smuggling goods. Hence, you i.e. Shri Sameer Haroon Marchant alias Afzal Haroon Batatawala ought to be detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing you from smuggling goods, abetting smuggling of goods, engaging in transporting or concealing or keeping smuggled goods, and dealing in smuggled goods, in terms of Section 3(1) of the COFEPOSA Act, 1974.

(emphasis supplied)

47.3 A perusal of the aforesaid would reflect that the order of detention has referred only to sub-clauses (i), (ii), (iii) and (iv) of the Section 3(1) of the Act and not to sub-clause (v). It is further noted that the Detaining Authority has nowhere used “or” between the sub-clauses but it has only used “or” within sub-clause (iii).

47.4 In the judgment relied upon by learned counsel appearing on behalf of the Detenu, i.e., **Jagannath Mishra (supra)** Hon’ble Supreme Court was dealing with the situation where the order of detention contains 6 grounds, however, in the affidavit placed on record only two grounds were mentioned. It was further noted by the Hon’ble Supreme Court that in the detention order the Detaining Authority had used “or” between the grounds mentioned therein, thus showing that the same was a copy of the relevant provisions of the Act under which the detention order was made. In the present case as it has already been pointed out hereinabove, the Detaining Authority had not used “or” amongst the grounds mentioned in the said order and has clearly



spelt out the facts and circumstances which bring the case of the Detenu under the aforesaid sub-clauses of Section 3(1) of the COFEPOSA Act.

48. During the course of the hearing, Id. counsel for Respondent no. 1 and 2 has placed on record a judgment of the High Court of Bombay titled **Ms. Annie Kitty Creado v. The State of Maharashtra, 1997 ALL MR (Cri) 1322**, and the attention of the Court was drawn to para 3 therein, the same is as under:-

“3. This petition has been filed by the friend of the detenu, the detenu -----Rahim Haroon Manoria @ Atzal Haroon Batatawala----- The order of detention was issued by the respondent No. 2 under the provisions of the COFEPOSA Act on 31st March 1994 which was served on the detenu on 4th March 1997. The order of detention is annexed as Annexure 'A' to the petition while the grounds of detention have been annexed as Annexure 'B' to the petition.”

49. The said order was shown to demonstrate that the Detenu had earlier been detained under COFEPOSA Act which was set aside by High Court of Bombay *vide* the aforesaid judgement dated 10th July, 1997. It was further pointed out that in the said judgment the name of the Detenu was shown as Rahim Haroon Manoria @ Afzal Haroon Batatawala and the name of the Petitioner herein has been shown as Ms. Annie Kitty Creado. Thus, showing that both the Petitioner and the Detenu are in the habit of changing their names. In response to the same, an affidavit was filed by the Detenu in which he had admitted the fact that he has used the name Rahim Haroon Manoria in order to avail some benefit in air ticket. It was also admitted that the name of the Petitioner earlier was Ms. Annie Kitty Creado. In the considered opinion of this Court, the aforesaid circumstance was not before the Detaining



Authority and, therefore, for the purpose of present petition the same cannot be looked into.

CONCLUSION

50. In view of the aforesaid discussion and after going through the material on record reflecting the activity of the Detenu and also the fact that the procedure and statutory safeguards have been fully complied by the Detaining Authority, in the considered view of this Court the impugned order of detention dated 09th May, 2024 calls for no interference.

51. Accordingly, the present petition is dismissed and disposed of accordingly.

52. Pending application(s), if any, also stands disposed of.

53. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J.

PRATHIBA M. SINGH, J.

OCTOBER 29, 2024/sn