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IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 19th September, 2024**Date of Decision: 16th October, 2024*

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W.P.(CRL) 2089/2017

PAWAN GUPTA

.....Petitioner

Through: Mr. J. P. Sengh, Sr. Advocate with Mr. Vibhor Verdhan, Mr. Harshit Kucchal, Mr. Mrinal Sharma & Ms. Manisha Mehta, Advocates.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Ajay Digpaul, CGSC and Mr. Anil Soni, CGSC for UOI.

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

1. The present petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, (hereinafter referred as “Cr.P.C.”), seeking the following reliefs:

- “a. to issue a writ, order or direction in the nature of mandamus directing the respondents to place on record Complete Records of Detention Order Dated 27-04-2015;
- b. to quash the impugned detention order bearing F. NO. 673 /13/2015-CUS.VIII dated 27.04.2015 issued against Sh. Pawan Gupta under section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974 by the respondent no.2.;
- c. To quash the notification bearing s.o. 1845 (E) F.No.673/21/2015-Cus.VIII dated 06.07.2015 passed under



section 7(1) of COFEPOSA Act and was published in official gazette on 06.7.2015.

d. direct the Respondent to decide the representation dated 03.07.2017 filed by the proposed detainee before the concerned authority by a speaking order;

e. to pass such other and further order as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the present case and in the interest of justice in favour of the Petitioners.”

2. By way of the present petition, Order of Detention dated 27th April, 2015 under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (hereinafter referred as “COFEPOSA”) Act, 1974 is sought to be quashed at pre-execution stage.

3. The impugned order was passed by the Detaining Authority after receiving a proposal from Lucknow Zonal Unit, Directorate of Revenue Intelligence (hereinafter as “Sponsoring Authority”) and after finding sufficient material regarding involvement of the Petitioner, the said detention order was passed. It is the case of the Respondents that the Petitioner is involved with a syndicate in illegal storage and illegal exports of Red Sanders Woods, a prohibited item for export under Foreign Trade Policy read with CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora), in the guise of genuine exports.

4. The case of the prosecution is that on 21st October, 2014, a container containing 1280 Kgs of alleged Red Sanders Woods valued at Rs. 6 Crores was seized which was being exported to Sharjah, UAE under the guise of “Acrylic Bath Tubs and Bath Tub Accessories”. Thereafter, during the investigation in the aforesaid seizure, various places were searched and statements of the persons including certain accused were recorded. The alleged residence of the Petitioner at D-35, Third Floor, South Extension,



New Delhi was also searched on 29th October, 2014. It is the case of the Respondents that the Petitioner was issued summons which were pasted at his aforesaid alleged residence at South Extension and all other available addresses, however, the Petitioner did not appear and, thereafter, as mentioned hereinabove, after receiving the proposal from the Sponsoring Authority, the impugned detention order was passed against the Petitioner on 27th April, 2015.

SUBMISSIONS ON BEHALF OF THE PETITIONER

5. Learned Senior Counsel, appearing on behalf of the Petitioner submitted that the primary ground for seeking quashing of the aforesaid detention order is that the Petitioner is a citizen of Nepal and residing at 32 Battis Pulti Sadak, Teku/Teka Road, Kathmandu, Nepal and the said address is in the knowledge of the Respondents. However, the detention order dated 27th April, 2015 had not been served on the Petitioner till the filing of the present petition which was on 12th January, 2017.

6. Learned Senior Counsel submitted that despite the fact that the aforesaid address was in the knowledge of the Respondents, the latter made attempts to serve the detention order on the Petitioner at his alleged address in Delhi and Sonipat, Haryana. It is submitted that when he was not found at either of the alleged addresses, proceedings to declare him a proclaimed offender under Sections 82 and 83 of the Cr.P.C. were initiated at both the places and no attempt was made to serve the detention order by post or otherwise at his address in Nepal.

7. Learned Senior Counsel drew attention of this Court to order dated 10th September, 2018 passed by Predecessor Bench of this Court wherein after noting the aforesaid, it was observed as under:-



“9. It is not explained why the Respondent, despite knowing the address of the Petitioner in Nepal, made no attempt to actually serve him the detention order at that address.

10. Counsel for the Respondent seeks time to obtain specific instructions on the legal obligation of the Respondent to serve the detention order on the Petitioner at his Nepal address, particularly considering the fact that the Petitioner is a citizen of Nepal.”

8. It is pointed out that thereafter in pursuance of the direction of the Court, an additional reply on behalf of the Respondents was filed on 1st November, 2018 wherein it recorded as under:

“4 (e) Further, in the process to verify the Nepalese address as given by the Petitioner absconder while filing a restoration application before this Court, the Embassy of India, Kathmandu (Nepal) vide the letter dated 12.3.2018 (**ANNEXURE – VII**) requested the Director General, Department of Revenue Investigation, Kathmandu, Nepal to verify the given Nepalese address of Shri Pawan Gupta. Consequently, Embassy of India, Kathmandu (Nepal) vide the letter dated 10.9.2017 (**ANNEXURE – VIII**) confirmed verification in respect of Shri Pawan Gupta, the Proclaimed Offender as Kathmandu Municipality, ward No. 9, Battspitali, Kathmandu, Nepal.

5. As regards the other query of the Hon’ble Court about the steps taken to serve the detention order, which is under challenge in this Petition, on the Petitioner at his address in Nepal, it is respectfully submitted that execution of Detention Order passed under Section 3(1) of the COFEPOSA Act upon a proposed Detenue must in terms of Section 3(3) of ibid Act followed with communication of grounds as well as relied upon document on which the detention order has been passed ordinarily within five days after the execution of the order of detention and in exceptional circumstances and for the reasons to be recorded in writing, not later than fifteen days,



from the date of the detention of the COFEPOSA Act. In other words, the service of detention order means, execution of Detention order and to detain the person to whom detention order is to be served. As regards limitation to serve the Detention Order on the Petitioner absconder at his Nepal address, it is respectfully submitted that as per Section 4 of the COFEPOSA Act, 1974 a detention order can be executed anywhere in India similar to arrest warrants under the Code of Criminal Procedure, 1973. Procedure in respect of issuance and execution of the Warrants has been defined in Section 70 and 75 of the Criminal Procedure Code and as per the said provisions, the warrants is to be executed through jurisdictional police. It is also submitted that in terms of Section 6 of COFEPOSA Act, 1974, no detention order shall be invalid or inoperative merely by reason – (a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or the officer making the order of detention, or (b) that the place of detention of such person is outside the said limits. Further, so far as execution of the COFEPOSA Detention Order upon Shri Pawan Gupta in Nepal being a sovereign country is concerned, it is respectfully submitted that the said Detention Order was to be executed through local/jurisdictional police authorities i.e. Delhi Police Commissioner or DGP, Haryana in accordance with his available residential addresses in Delhi and Haryana respectively. After having verified the address of Shri Pawan Gupta, a Proclaimed Offender being in Nepal, necessary recourse of available legal persuasion including extradition of proclaimed offender from Nepal to India is being initiated.”

It is submitted the aforesaid additional reply/affidavit is completely silent on the issue raised in the order dated 10th September, 2018.

9. The attention of this Court was also drawn to order dated 12th July, 2022, passed by learned Additional Sessions Judge, Patiala House Courts,



New Delhi in **Crl. Rev. Petition No. 353/2018**, wherein the process under Section 82 of the Cr.P.C. issued against the Petitioner was stayed. Attention was also drawn to an order dated 10th August, 2022 passed in **CRM-M-32366-2022**, passed by Hon'ble High Court of Punjab and Haryana whereby the proclamation under Section 82 of the Cr.P.C. of trial Court of Haryana was stayed. It is submitted that the aforesaid order reflects that the exercise alleged to have been done by the Respondents to serve the order of detention on the Petitioner at his alleged residences in Delhi and Haryana was a farce as he never resided at those addresses and at his address in Nepal which was known to the Respondents, no attempt was made to serve him.

10. Learned Senior Counsel has placed reliance on the following judgments:

- i. **Abhishek Gupta vs Union of India, 2022 SCC OnLine Del 1494**
- ii. **Smt. Shashikala Rane vs Union of India, 1986 SCC OnLine Bom 282**
- iii. **R. Prakash vs State of Karnataka, 1979 SCC OnLine Kar 151**
- iv. **Smt. Naseem Imran Mohd Siddique vs State of Maharashtra, 2000 SCC OnLine Bom 791**
- v. **Maqsood Yusuf Merchant vs Union of India, (2008) 16 SCC 51**

11. Learned Senior Counsel relies upon the aforesaid judgments to submit that there is no live and proximate link between the grounds of detention alleged by the detaining authority and the purpose of detention namely prevention of smuggling activities as there is a long and unexplained delay between the date of detention order which has not been executed till date. It was submitted that the word “engaging” which is integral part of Clauses 3, 4 and 5 of Subsection 1 of Section 3 of the COFEPOSA Act is absent in the



grounds of the detention and therefore the order of detention is vitiated. It is also submitted that the Petitioner had admitted himself at Medanta Hospital in the month of April, 2014, which was before the alleged seizure in October, 2014 and he was again admitted in November, 2014 at Nepal Bharat Maitri Hospital. It is submitted that the alleged premises belonging to the present Petitioner at South Extension, New Delhi never belonged to him and when the search of the premises was conducted, the wife of the Petitioner was present, and signed on the *panchnama*, however, she had gone to the premises for checking the same as they were in the process of buying it.

SUBMISSIONS ON BEHALF OF THE STATE

12. *Per contra*, learned CGSC for the Respondents raised a preliminary objection with regard to the maintainability of the present petition inasmuch as the same has been preferred at pre-execution stage. Reliance is placed on **Addl. Secy. to the Govt. of India v. Alka Subhash Gadia (Smt.), 1992 Supp (1) SCC 496** to submit that the Courts can entertain challenge to detention order at pre-execution stage, however, the grounds under which the same can be interfered with are limited in scope and only in exceptional cases. It is further submitted that a detention order on the same date was passed with respect to the co-accused of the present Petitioner namely Deepak Verma and the said challenge was dismissed by a judgment dated 4th September, 2015 by Division Bench of this Court in **W.P.(CRL.) 1214/2015**. Another writ petition being **W.P.(CRL) 203/2015** preferred by co-detenu *Gautam Jain* against the same Detention Order dated 27th April, 2015 was also dismissed by the Hon'ble Supreme Court vide its judgment dated 4th January, 2017. It is further submitted that the present petition, which is at the stage of pre-execution cannot challenge the detention order on merits as the said order was



not available with the Petitioner. Furthermore, in view of the fact that the said detention order with respect to other co-*detenues* were upheld, the merits of the same cannot be urged by the Petitioner in the present petition.

13. Attention of this Court was drawn to the additional reply filed on behalf of the Respondents, as pointed out hereinabove with regard to the service of the Petitioner and in particular to the following paragraphs:

“4.(b) Since the Petitioner has been absconding and has not submitted to the Detention Order by way of surrendering or otherwise before the concerned authorities as per the requirement of law, therefore, an Order dated 6th July, 2015 was issued by Central Government under Section 7(1)(b) of the COFEPOSA Act, 1974 as published in the Gazette of India, Extraordinary [Part II Section 3 Sub-section (ii) on 9th July, 2015] requiring the Petitioner viz. Shri Pawan Gupta to appear before the Commissioner of Police, Delhi or Director General of Police (DGP), Government of Haryana, Chandigarh within 7 days of publication of this order [a copy thereof is enclosed herewith and marked as **Annexure-I**] Further, copies of the said order as got published in the newspapers viz. “Dainik Jagran dated 22.7.2015: Lucknow Edition”, “Times of India dated 22.7.2015: Lucknow Edition”, “Dainik Jagran dated 22.7.2015: New Delhi Edition” and “Times of India dated 23.7.2015: New Delhi-Edition” are also enclosed herewith and marked as **Annexure-II**. But Shri Pawan Gupta has failed to comply with the said directions of surrendering before the Police Authorities (Executing Authorities) and thereby has rendered himself liable for punishment with imprisonment for a term which may extend to one year or with fine or with both, under Section 7(1)(b) of COFEPOSA Act, 1974.

It is further submitted that necessary statutory action was initiated under Section 7(1)(a) of the said Act against Shri Pawan Gupta(COFEPOSA absconder), the Petitioner herein and a ‘Report’ was filed before the Hon’ble Court of the



Metropolitan Magistrate, Patiala House, Delhi on 12th October, 2015 (**Annexure III**) requesting therein for initiation of further proceedings under Section 82,83, 84 and 85 of the Code of Criminal Procedure, 1973. Consequent to completion of statutory provisions of Section 7(1)(a) of ARE COFEPOSA Act, 1974, the Petitioner has been declared as Proclaimed Offender by both Hon'ble JMIC, Sonipat vide order dated 15.10.2016 (**Annexure IV**) and the Hon'ble ACMM, Patiala House Courts, New Delhi vide Order dated 21.02.2017 (**Annexure V**). The legal proceedings under Section 83 of the Cr. P.C. have already been initiated vide Order dated 06.07.2017 (**Annexure VI**).

c) The Petitioner absconder disregarding the law of land has not joined the trial proceedings before the competent Court even after issuance of repeated summons and initiation of proceedings under Section 82 of Cr. P.C.

(d) Taking into account the Nepalese residential address of the absconding Petitioner, the Sponsoring Authority have also arranged to have issued Look Out Circular (LOC)/ Red Alert No.15/2015 dated 05.05.2015 but in vain till date. In pursuance of the efforts to execute the detention order at the earliest and also in view of the untraceability of the absconding Petitioner at his known addresses in India, the concerned authorities in the Ministry of External Affairs, New Delhi were also addressed on 28.05.2015 with the request to provide information in respect of the passport of the absconding Petitioner.

(e) Further, in the process to verify the Nepalese address as given by the Petitioner absconder while filing a restoration application before this Court, the Embassy of India, Kathmandu (Nepal) vide the letter dated 12.3.2018 (**ANNEXURE – VII**) requested the Director General, Department of Revenue Investigation, Kathmandu, Nepal to verify the given Nepalese address of Shri Pawan Gupta. Consequently, Embassy of India, Kathmandu (Nepal) vide the letter dated 10.9.2017 (**ANNEXURE – VIII**) confirmed



verification in respect of Shri Pawan Gupta, the Proclaimed Offender as Kathmandu Municipality, ward No. 9, Battasputali, Kathmandu, Nepal.

(f) It is evident that respective authorities and the Courts have made all efforts provided under law to secure presence of Petitioner absconder; however, the Petitioner has not so far submitted to the jurisdiction of Courts in compliance of detention order as well as in compliance issued under trial proceedings. Thus, the authorities tried their level best and took recourse to the process as provided under the law to execute the Detention Order.

(g) Despite best efforts of Executing Authorities viz, DGP, Haryana Police and Commissioner, Delhi Police to serve the Detention Order dated 27.4.2015 against the Proclaimed Offender, Shri Pawan Gupta under the COFEPOSA Act, 1974, the Detaining Authority vide its endorsement to letter dated 15.10.2018 and letter dated 23.10.2018 (**ANNEXURE-IX**) requested Sponsoring Authority to initiate and coordinate its efforts with the concerned Executing Authority in the case of Proclaimed Offender viz. Shri Pawan Gupta for his extradition from Nepal for the purpose of execution of Detention Order dated 27 April, 2015 issued against him under Section 3 (1) of COFEPOSA Act, 1974 for his involvement in smuggling (Export) of prohibited item i.e. Red Sanders and taking into consideration the propensity of the petitioner to indulge into smuggling activities in future, and now Shri Pawan Gupta being a Proclaimed Offender under Section 7(4) (a) of ibid Act.

5. As regards the other query of the Hon'ble Court about the steps taken to serve the detention order, which is under challenge in this Petition, on the Petitioner at his address in Nepal, it is respectfully submitted that execution of Detention Order passed under Section 3(1) of the COFEPOSA Act upon a proposed Detenue must in terms of Section 3(3) of ibid Act followed with communication of grounds as well as relied upon document on which the detention order has been passed



ordinarily within five days after the execution of the order of detention and in exceptional circumstances and for the reasons to be recorded in writing, not later than fifteen days, from the date of the detention of the COFEPOSA Act. In other words, the service of detention order means, execution of Detention order and to detain the person to whom detention order is to be served. As regards limitation to serve the Detention Order on the Petitioner absconder at his Nepal address, it is respectfully submitted that as per Section 4 of the COFEPOSA Act, 1974 a detention order can be executed anywhere in India similar to arrest warrants under the Code of Criminal Procedure, 1973. Procedure in respect of issuance and execution of the Warrants has been defined in Section 70 and 75 of the Criminal Procedure Code and as per the said provisions, the warrants is to be executed through jurisdictional police. It is also submitted that in terms of Section 6 of COFEPOSA Act, 1974, no detention order shall be invalid or inoperative merely by reason – (a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or the officer making the order of detention, or (b) that the place of detention of such person is outside the said limits. Further, so far as execution of the COFEPOSA Detention Order upon Shri Pawan Gupta in Nepal being a sovereign country is concerned, it is respectfully submitted that the said Detention Order was to be executed through local/jurisdictional police authorities i.e. Delhi Police Commissioner or DGP, Haryana in accordance with his available residential addresses in Delhi and Haryana respectively. After having verified the address of Shri Pawan Gupta, a Proclaimed Offender being in Nepal, necessary recourse of available legal persuasion including extradition of proclaimed offender from Nepal to India is being initiated.”

(emphasis supplied)

14. It was pointed out that steps for extradition were taken, however, in



view of the certain limitations in the Extradition Treaty with Nepal, the prosecution could not be commenced.

15. Learned Central Government Standing Counsel submitted that all possible steps were taken to serve the Detention Order on the present Petitioner, however, he deliberately absconded and therefore he cannot take advantage of his own wrong. It is further urged that it is an admitted fact that the wife of the Petitioner was present at South Extension address when the search was conducted and she signed the *panchnama*. The Petitioner was well aware of the proceedings in the present case as his family was present in India. It is submitted that the detention order cannot be served in Nepal as it necessarily involves taking the *detenue* in custody. Attention of this Court was drawn to Section 4 of the COFEPOSA Act which provides as under:

“4. Execution of detention orders.—A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).”

16. It is further submitted that in terms of Section 6 of the COFEPOSA Act, the detention order will not be invalid and inoperative on the ground that the person to be detained is outside the jurisdiction of Government or Officer making the order of detention. Section 6 of the Act reads as under:

“6. Detention orders not to be invalid or inoperative on certain grounds.

No detention order shall be invalid or inoperative merely by reason— (a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or the officer making the order of detention, or (b) that the place of detention of such person is outside the said limits.”



17. In view of the aforesaid provisions, the only available remedy left to the Respondent was to take steps in terms of Section 7 of the COFEPOSA Act which reads as under:

“7. Powers in relation to absconding persons.—

(1) If the appropriate Government has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government may—

(a) make a report in writing of the fact to a Metropolitan Magistrate or a Magistrate of the first-class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

(b) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction, he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under clause (b) of sub-section (1) shall be cognisable.”

18. It is submitted that the Respondents have taken all the necessary steps in accordance with law and therefore, the order of detention cannot be set aside on the ground that it is not been executed till date. It is submitted that



the live link continues. Reliance is placed on the following judgments:

- i. **Addl. Secy. to the Govt. of India v. Alka Subhash Gadia (Smt.) 1992 Supp (1) SCC 496** (Relevant Paras 30, 32,34)
- ii. **Subhash Popatlal Dave v. Union of India & Anr. (2014) 1 SCC 280** (Relevant Paras 42,43,46)
- iii. **Naushad Ali vs Union of India & Ors. 2022 SCC OnLine Del 1141** (Relevant Paras 30,39,40-42)
- iv. **Bhupendra Thakkar vs. Union of India and Anr. Order W.P.(CRL.) No. 3329/2017** (Relevant Paras 5 and 6)
- v. **Bhawarlal Ganeshmalji vs. State of T.N. (1979) 1 SCC 465** (Relevant Para 6)
- vi. **Mohd. Nashruddin Khan vs Union of India & Ors. 2020 SCC OnLine Del 1190** (Relevant Paras 86, 87, 88, 89)

ANALYSIS AND FINDINGS

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

20. There is no dispute with regard to the proposition that the order of detention is liable to be set aside on the ground of delay in execution, however, each case would have to be seen in its own facts and circumstances. In a given case, if there is a long and unexplained delay between the date of detention order and execution of the same, it would be pertinent to assume that the live link has snapped, however, in the present case, the detention order has not been executed till date. The primary contention of the Petitioner is that despite Nepal's address being in knowledge of the Respondents, the detention order was not served upon him at the said address. The Hon'ble Supreme Court in **Subhash Popatlal Dave (supra)** while examining the issue whether



the detention order can be quashed merely on the ground that there was a long delay in execution of the same at the pre-execution stage by way of the majority decision has observed and held as under:

Per Gyan Sudha Misra, J.

“16. Thus, if it is held that howsoever the grounds of detention might be weighty and sustainable which persuaded the authorities to pass the order of detention, the same is fit to be quashed merely due to long lapse of time specially when the detenu is allowed to challenge the order of detention even before the order of detention is served on him, he would clearly be offered with a double-edged weapon to use to his advantage circumventing the order of detention. On the one hand, he can challenge the order of detention at the pre-execution stage on any ground, evade the detention in the process and subsequently would be allowed to raise the plea of long pendency of the detention order which could not be served and finally seek its quashing on the plea that it has lost its live link with the order of detention. This, in my view, would render the very purpose of preventive detention laws as redundant and nugatory which cannot be permitted. On the contrary, if the order of detention is allowed to be served on the proposed detenu even at a later stage, it would be open for the proposed detenu to confront the materials or sufficiency of the material relied upon by the authorities for passing the order of detention so as to contend that at the relevant time when the order of detention was passed, the same was based on non-existent or unsustainable grounds so as to quash the same. But to hold that the same is fit to be quashed merely because the same could not be executed for one reason or the other specially when the proposed detenu was evading the detention order and indulging in forum shopping, the laws of preventive detention would surely be reduced into a hollow piece of legislation which is surely not the purpose and object of the Act.

17. Therefore, in my view, the order of detention is not fit to be quashed and should not be quashed merely due to long lapse of time but the grounds of detention ought to be served on him once he gains knowledge that the order of detention is in existence so as to offer him a plank to challenge even the grounds of detention after which the courts will have to examine whether the order of detention which



was passed at the relevant time but could not be served was based on sufficient material justifying the order of detention. Remedy to this situation has already been offered by this Court in *Union of India v. Parasmal Rampuria* [(1998) 8 SCC 402 : 1998 SCC (Cri) 1537] wherein it was observed as under: (SCC p. 403, para 5)

“5. ... the proper order which was required to be passed was to call upon the respondent first to surrender pursuant to the detention order and then to have all his grievances examined on merits after he had an opportunity to study the grounds of detention and to make his representation against the said grounds as required by Article 22(5) of the Constitution of India.”

18. The consequence that follows from the above is that each individual/proposed detenu will have to be served with the order of detention which had been passed against him along with the grounds and the materials relied upon by the authorities to pass the order of detention leaving it open to him to challenge the correctness of the order by way of a representation before the appropriate authority or court as per procedure prescribed. It is no doubt true that the materials relied upon at the relevant time would be on the basis of which the order of detention was passed so as to hold whether the materials were sufficient and justified or not but when the correctness of the order of detention is challenged in a court of law at the pre-execution stage, then setting aside the order of detention merely on the ground of long lapse of time might lead to grave consequences which would clearly clash with the object and purpose of the preventive detention laws.

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20. It is also not possible to lose sight of the fact that if the petitioners and the appellants had preferred not to challenge the order of detention at the pre-execution stage or had not evaded arrest, the grounds of detention would have been served on them giving them a chance to challenge the same but if the petitioners and the appellants have taken recourse to the legal remedy to challenge the order of detention even before it was executed, it is not open for them to contend that it should be quashed because there is no live link between the existing/subsequent situation and the previous situation when the order of detention was passed overlooking that they succeeded in pre-empting the order by challenging it at the pre-execution stage never allowing the matter to proceed so as to



examine the most crucial question whether there were sufficient material or grounds to pass the order of detention.

21. Subsequent events or conduct in any view would be a matter of consideration for the authorities before whom the representation is filed after the grounds are served on the detenu and cannot be gone into when the only question raised is regarding the correctness and legality of the order of detention. The alternative view is bound to operate as a convenient tool in the hands of the law-breakers which has not been approved earlier by this Court in the decisions referred to earlier.

22. A fallout and consequence of the aforesaid discussion, therefore, in my view, is that the order of detention cannot be quashed and set aside merely due to long lapse of time on the specious plea that there is no live link between the order of detention and the subsequent situation. I am, therefore, of the considered opinion that the order of detention is not fit to be quashed merely due to long lapse of time specially when the orders of detention have been allowed to be challenged even at the pre-execution stage on any ground.

23. It is, therefore, legally appropriate to serve the order of detention on the proposed detenu leaving it open to them to challenge the same after the grounds are served on them so as to appreciate whether there had been sufficient materials before the detaining authorities to pass the orders of detention which were existing at the relevant time and approve or disapprove the same.

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Per Jasti Chelameswar, J.

39. Whether the test of live nexus developed by this Court in the context of examining the legality of the order of preventive detention can be automatically applied to the question of the legality of the execution of the preventive detention orders where there is a considerable time-gap between the passing of the order of preventive detention and its execution is the real question involved in these matters.

40. To answer the question, we must analyse the probable reason for the delay in executing the preventive detention orders. There could be two reasons which may lead to a situation by which the preventive detention order passed by the competent authorities under the various enactments could remain unexecuted:



(1) the absconding of the proposed detenu from the process of law,
(2) the apathy of the authorities responsible for the implementation of the preventive detention orders.

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42. It can be seen from the said Section 7 that in a case where proposed detenu is absconding or concealing himself, the Government may report the matter to the Magistrate having jurisdiction over the place where the proposed detenu ordinarily resides. On making of such report by the Government, the provisions of Sections 82, 83, 84 and 85 of the Code of Criminal Procedure apply to the proposed detenu and his property, as if the order of preventive detention is a warrant issued by the Magistrate under the provisions of the Code of Criminal Procedure. In substance, the property of the proposed detenu could be attached and perhaps even be confiscated in an appropriate case. Apart from that the State can also by notification in the Official Gazette direct the proposed detenu to appear before an officer specified in the said notification at such place and time. Failure to comply with such notified direction on the part of the proposed detenu—without a reasonable cause—is made an offence punishable either with imprisonment for a term extending up to one year or with fine or both.

43. If a preventive detention order is to be quashed or declared illegal merely on the ground that the order remained unexecuted for a long period without examining the reasons for such non-execution, I am afraid that the legislative intention contained in the provisions such as Section 7(1)(b) of the Cofeposa Act would be rendered wholly nugatory. Parliament declared by such provision that an (recalcitrant) individual against whom an order of preventive detention is issued is under legal obligation to appear before the notified authority once a notification contemplated under Section 7(1)(b) of the Cofeposa Act is issued. We have already noticed that failure to appear without a reasonable excuse would be an offence and render the defaulter liable for a punishment of imprisonment. Holding that the preventive detention orders are themselves rendered illegal, on the basis of the live nexus theory (which, in my opinion, is valid only for examining the legality of the order vis-à-vis the date on which the order is passed) would not only exonerate the person from the preventive detention order but also result in granting impunity to such person from the subsequent offence committed by him under the provisions such as Section 7(1)(b) of



the Cofeposa Act.

44. This question fell for consideration of this Court on more than one occasion. In *Bhawarlal Ganeshmalji v. State of T.N.* [(1979) 1 SCC 465 : 1979 SCC (Cri) 318] , this Court speaking through O. Chinnappa Reddy, J. held: (SCC p. 469, para 6)

“6. ... where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the ‘link’ not snapped but strengthened.”

It was a case where the detenu evaded the arrest for a period of more than 3 years but eventually surrendered himself before the Commissioner of Police, Madras and then challenged the order of detention. One of the submissions before this Court was that the detention order must be considered to have lapsed or ceased to be effective in the absence of the fresh application of mind of the detaining authority to the question of continuing necessity for preventive detention. This Court rejected the submission. The said principle was followed in *M. Ahamedkutty v. Union of India* [(1990) 2 SCC 1 : 1990 SCC (Cri) 258] .

45. Once again in *Union of India v. Arvind Shergill* [(2000) 7 SCC 601 : 2000 SCC (Cri) 1422] , this Court held that: (SCC p. 605, para 6)

“6. ... we do not think that it would be appropriate to state that merely by passage of time the nexus between the object for which the husband of the respondent is sought to be detained and the circumstances in which he was ordered to be detained has snapped.”

It was a case where the detention order was challenged at the pre-execution stage before the High Court and the High Court had stayed the execution of the order and the matter was pending for some time. After losing the matter in the High Court, the proposed detenu approached this Court without surrendering and advanced the argument that the live nexus snapped in view of the delay in executing the preventive detention order. The submission was rejected.

46. Therefore, I am of the opinion that those who have evaded the process of law shall not be heard by this Court to say that their fundamental rights are in jeopardy. At least, in all those cases, where proceedings such as the one contemplated under Section 7 of the Cofeposa Act were initiated consequent upon absconding of the



proposed detenu, the challenge to the detention orders on the live nexus theory is impermissible. Permitting such an argument would amount to enabling the law-breaker to take advantage of his own conduct which is contrary to law.

47. Even in those cases where action such as the one contemplated under Section 7 of the Cofeposa Act is not initiated, the same may not be the only consideration for holding the order of preventive detention illegal. This Court in Shafiq Ahmad v. District Magistrate, Meerut [(1989) 4 SCC 556 : 1989 SCC (Cri) 774] , held so and the principle was followed subsequently in M. Ahamedkutty v. Union of India [(1990) 2 SCC 1 : 1990 SCC (Cri) 258] , wherein this Court opined that in such cases, the surrounding circumstances must be examined [“14. In Shafiq Ahmad v. District Magistrate, Meerut, (1989) 4 SCC 556 relied on by the appellant, it has been clearly held that what amounts to unreasonable delay depends on facts and circumstances of each case. Where reason for the delay was stated to be abscondence of the detenu, mere failure on the part of the authorities to take action under Section 7 of the National Security Act by itself was not sufficient to vitiate the order in view of the fact that the police force remained extremely busy in tackling the serious law and order problem. However, it was not accepted as a proper explanation for the delay in arresting the detenu. In that case the alleged incidents were on 2-4-1988/3-4-1988/9-4-1988. The detention order was passed on 15-4-1988 and the detenu was arrested on 2-10-1988. The submission was that there was inordinate delay in arresting the petitioner pursuant to the order and that it indicated that the order was not based on a bona fide and genuine belief that the action or conduct of the petitioner were such that the same were prejudicial to the maintenance of public order. Sabyasachi Mukharji, J., as my Lord the Chief Justice then was, observed that whether there was unreasonable delay or not would depend upon the facts and circumstances of a particular situation and if in a situation the person concerned was not available and could not be served, then the mere fact that the action under Section 7 of the Act had not been taken, would not be a ground for holding that the detention order was bad. Failure to take action even if there was no scope for action under Section 7 of the Cofeposa Act, would not by itself be decisive or determinative of the question whether there was undue delay in serving the order of detention.” (M. Ahamedkutty case, p. 10, para



14)] . In both *Shafiq Ahmad* [(1989) 4 SCC 556 : 1989 SCC (Cri) 774] and *Ahamedkutty* [(1990) 2 SCC 1 : 1990 SCC (Cri) 258] cases, these questions were examined after the execution of the detention order. Permitting an absconder to raise such questions at the pre-execution stage, I am afraid would render the jurisdiction of this Court a heaven for characters of doubtful respect for law.

48. This Court in *Alka Subhash Gadia* [Govt. of India v. Alka Subhash Gadia, 1992 Supp (1) SCC 496 : 1992 SCC (Cri) 301] , emphatically asserted that “it is not correct to say that the courts have no power to entertain grievances against detention order prior to its execution”. This Court also took note of the fact that such an inquiry had indeed been undertaken by the courts in a very limited number of cases and in circumstances glaringly untenable at the pre-execution stage.

(emphasis supplied)

21. As per the above decision in **Subhash Popatlal Dave** (*supra*) mere delay in execution of detention order *per se* cannot lead to quashing of the same. The reasons for non-execution of the detention order deserves to be examined viz., whether the *detenue* is evading/ absconding or the authorities have been recalcitrant. If it is the former, then quashing may not be warranted. The aforesaid judgement of the Hon’ble Supreme Court in **Subhash Popatlal Dave** (*supra*) has been followed by coordinate Division Benches of this Court in **Naushad Ali** (*supra*) and **Mohd. Nashruddin Khan** (*supra*).

22. On the other hand, the judgements relied upon by the Petitioner with respect to the aforesaid issue of non-execution of detention order are distinguishable on the facts of the case. In **Abhishek Gupta** (*supra*) the Detaining Authority could not explain the fact that the detention order of the Petitioner therein could not be served on the two dates when he appeared before the Trial Court despite the availability of the Petitioner.

23. Similarly in **Smt. Naseem Imran Mohd Siddique** (*supra*), steps under Section 7 of the Act were initiated on the admitted wrong address of the



Petitioner therein. In **Maqsud Yusuf Merchant** (*supra*) the Petitioner therein had approached the Settlement Commission under the Customs Act which granted immunity from prosecution to the Petitioner along with a penalty. Thereafter the Petitioner again moved the High Court in its writ jurisdiction and the matter was ultimately remitted back to the Settlement Commission, which set aside its own order regarding the penalty.

24. In the present case, as already noted above, the Petitioner was not available at any given address for its execution in India. The Petitioner's stand is that the detention order has to be executed on his Nepal address which was not done by the Respondents herein. The said stand is not tenable, in view of the discussion below.

25. It has already come on record that the Respondents had taken all the possible steps as provided for in the COFEPOSA Act to ensure the presence of the Petitioner, however the latter did not surrender before any authority and continues to evade the process of law. As noted hereinabove, Section 4 of the COFEPOSA Act provides for execution of the detention order in a manner similar to an arrest warrant under Cr.P.C. Thus, it is clear that service of detention order, in other words, would mean to detain the person on whom it is to be served. This process could not have been initiated by the Respondents on the Petitioner at his Nepal address. The sending or communicating the detention order on the Petitioner at his Nepal address would not be proper procedure under the provisions of the COFEPOSA Act read with the provisions of the CrPC.

26. Learned Counsel for the Respondent has also placed on record the Treaty of Extradition between the Government of India and the Government of Nepal dated 22nd February, 1963 and in particular drew the attention of the



Court to the following articles:

“Article 2

Neither Government shall be bound in any case to surrender any person who is not a national of the country by the Government of which the requisition has been made, except where such person is accused of having committed the offence specified in clause (10) of Article 3.

Article 3

The offences for which extradition is to be granted in accordance with this Treaty are the following, namely :-

- (1) Murder or attempt or conspiracy to murder,
- (2) Culpable homicide not amounting to murder,
- (3) Grievous hurt,
- (4) Rape,
- (5) Dacoity,
- (6) Highway robbery,
- (7) Robbery with violence,
- (8) Burglary or house breaking,
- (9) Arson,
- (10) Desertion from Armed forces.**
- (11) Offences against the laws prohibiting the export and import of goods,
- (12) Embezzlement by public officers,
- (13) Serious theft, that is to say, cases of theft where violence has been used or where the value of the property stolen exceeds Rs. 500 and cattle stealing,
- (14) Abduction or kidnapping,
- (15) Forgery and the use of what is known to be forged, counterfeiting or altering money; uttering or bringing into circulation counterfeited or altered money,
- (16) Receiving of illegal gratification by a public servant,
- (17) Escaping from custody while undergoing punishment after conviction for any of the offences specified in clauses (1) to (16).”

27. Thus, as per the aforesaid treaty, a citizen of Nepal can be only extradited for an offence described under Article 3(10) “*desertion from armed forces*” which is not applicable in the present case. As already noted hereinabove, the only way in which a detention order can be executed is by



detaining the person on which it is being so executed and that could have been only possible if the Petitioner was within the jurisdiction of India. It is also a matter of record that the Petitioner filed an application for Anticipatory Bail before Id. Special Judge, MCOCA/TADA/POTA, ASJ-03, Patiala House Courts, New Delhi on 22nd March, 2017. The said application was dismissed for non-prosecution after being adjourned for four dates.

28. It is the admitted case of the Petitioner that he was in India in April 2014 where he was being treated at the Medanta Hospital and his case is that he had left India before the alleged seizure in October 2014. It is also not disputed by the Petitioner that at the time of the search at his alleged residence in South Extension, his wife was present who had signed the *panchnama*. It is also a matter of record that co-accused/co-detenuue of the Petitioner, i.e., Deepak Verma had also challenged his detention order of the even date and after the dismissal of the same, the present petition has been filed. During the course of the arguments, it was pointed out that the Petitioner after leaving Delhi did not return to India thereafter at any given point of time. In support of the said argument, it was pointed out that the Passport of the said applicant was issued by the authorities in Nepal on 24th September, 2014 which thereafter expired on 23rd September, 2024 and subsequently a fresh Passport had been issued on 7th March, 2019 which is currently valid. This Court while recording the aforesaid submissions passed the following order on 29th July, 2024:

“6. The Court notes that the seizure of goods and arrest of the accomplice was done between 21st October, 2014 to 29th October, 2014. As per the writ petition, the Petitioner was stated to be in India in April, 2014 when he was admitted to the Medanta hospital. However, in November, 2014 the Petitioner



is stated to be in Kathmandu, Nepal. The exact date when he left India is not clear from the writ petition or from the record.

7. Accordingly, a short affidavit shall be filed by the Petitioner giving the dates when the Petitioner left India along with copies of his passport. Let the same be filed within one week.”

29. In pursuance of the aforesaid order an affidavit dated 12th August, 2024 was filed by the Petitioner. In the affidavit it has been stated that the Petitioner left India in the month of July, 2014 and was admitted in Hospital in Kathmandu, Nepal from 2nd August, 2014 to 10th August, 2014. It is further stated that his earlier passport got expired so he was issued a fresh passport in September, 2014. The original Passport was shown to this court and the following order was passed on 20th August, 2024:

“2. An affidavit dated 12th August, 2024 has been filed on behalf of the Petitioner placing on record the details regarding the travel of the Petitioner.

3. The case of the Petitioner in the affidavit is that the earlier passport had expired and the same is not available with the Petitioner. However, the new passport was received by the Petitioner, with effect from 24th September, 2014 at Kathmandu, Nepal and from September, 2014 onwards, the Petitioner has not travelled to India. Copy of the said passport along with the relevant pages have been annexed along with the said affidavit.

4. Mr. Digpaul, Id. CGSC, on the other hand, submits that for travelling to and from Nepal, no passport or visa is required.

5. In any case, it is admitted by the Petitioner in the writ petition that after November, 2014, the Petitioner has not travelled to India. It is his case now, that during the relevant period from 21st to 29th October, 2014, there is nothing on record to show that the Petitioner was in India.

6. The original passport has been shown to the Court and the same has been perused by the Court.



7. Let a clear colour photocopy of the entire passport be placed on record.”

30. Subsequently, the Petitioner was asked to bring both the original passports issued to him on 24th September, 2014 and 7th March, 2019 *vide* order dated 30th August, 2024. Finally on 19th September, 2024 both the original Passports were produced before this court and the following was observed:

“2. Two original passports have been produced before the Court. The details of the same are as under:-

S.No.	Passport No.	Date of Issue	Date of Expiry
1.	07899371	24 th September, 2014	23 rd September, 2024
2.	11349829	7 th March, 2019	6 th March, 2029

3. In both the passports the cover page shows that the passports have 32 pages. In the latest passport, i.e., 11349829, at page 31, the details of the earlier passport, i.e., 07899371 is given and the same is shown as a cancelled passport. However, in the passport bearing No. 07899371, pages 31 and 32 are missing from the original passport.

4. The passport which was valid in 2014 and was used to travel to India allegedly between April to July is stated to be missing and the said passport has also not been produced. Details of the said earlier passport are also not available in the passport bearing No. 07899371 at page 31 as the said pages 31-32 are missing from the passport bearing No. 07899371. The period which is relevant for the present case is April to October 2014. The passport for the said period is not produced. It cannot be therefore, categorically accepted that in September-October 2014 the Petitioner was not present in India.

5. Mr. Soni, Id. Standing Counsel on the other hand submits that to travel from India to Nepal, a visa is not required, and



only an identity card is usually required.

6. As per the observation of this Court, the missing pages 31 and 32 in the passport bearing No. 07899371 appear to be clearly an attempt by the Petitioner not to reveal the details of the earlier passport. The passport bearing no. 07899371 has also been shown to the Counsel for the Petitioner and he was also queried regarding the missing pages 31 and 32, to which he candidly admits that the said pages 31 and 32 do not exist.

7. Both the original passports are returned to the Counsel for the Petitioner and the coloured photocopies (cover-to-cover) have been retained by the Court.”

31. A perusal of the aforesaid proceedings would reflect that the Petitioner has placed on record documents which are clearly manipulated and an attempt has been made to conceal some information from this Court. It is pertinent to note that Page 31 of the Passport contains the details of the previous Passport held by the concerned person, which can be observed from Page 31 of the Passport of the Petitioner issued to him on 19th March, 2019 which has been reproduced as under:

The highlighted portion shows the details of previous passport of the



Petitioner issued on 24th September, 2014.

32. However, the said Page 31 has been torn from the booklet issued to the Petitioner on 24th September, 2014. As noted hereinabove, the said remnants of torn up page were clearly visible in the original passport as has been recorded so in the aforesaid order. Thus, a tampered document has been sought to be placed on record. It may also be noted that the Passport issued to the Petitioner on 24th September, 2014 carries endorsement of certain travel made by him which starts from the period 28th August, 2015.

33. It is pertinent to note that the learned counsel for the Petitioner had vehemently argued that each time a person from Nepal enters or exits India, an endorsement to the said effect is made on the passport and it was for that purpose the passport was placed on record to demonstrate that there is no endorsement of the relevant period. In these circumstances details of previous passport, if any, on page 31 of the passport issued in September 2014 becomes significant. It is possible that the passport which the Petitioner has chosen not to place on record either never existed or would have shown some material contradictory to the aforesaid stand. Be that as it may, it is settled legal position that a person must have approached the Writ Court with clean hands.

In K. Jayaram And Others v. Bangalore Development Authority and Others, (2022) 12 SCC 815, it was observed and held as under:-

“10. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the



opposite parties which cannot be countenanced.”

34. It is pertinent to note that the Petitioner has still not been served with the detention order. In similar circumstances, the Hon’ble Supreme Court in **Union of India v. Parasmal Rampuria, (1998) 8 SCC 402** observed and held as under:

“4. In our view, a very unusual order seems to have been passed in a pending appeal by the Division Bench of the High Court. It is challenged by the Union of India in these appeals. A detention order under Section 3(1) of the COFEPOSA Act was passed by the authorities on 13-9-1996 against the respondent. The respondent before surrendering filed a writ petition in the High Court on 23-10-1996 and obtained ad interim stay of the proposed order which had remained unserved. The learned Single Judge after hearing the parties vacated the ad interim relief. Thereafter, the respondent went in appeal before the Division Bench and again obtained ad interim relief on 10-1-1997 which was extended from time to time. The writ appeal has not been still disposed of.

5. When the writ petition was filed, the respondent had not surrendered. Under these circumstances, the proper order which was required to be passed was to call upon the respondent first to surrender pursuant to the detention order and then to have all his grievances examined on merits after he had an opportunity to study the grounds of detention and to make his representation against the said grounds as required by Article 22(5) of the Constitution of India. It is true as the learned Senior Counsel for the respondents submits that the appeal is partly heard before the Division Bench and the last hearing was over on 4-6-1997 and thereafter, the Bench has not reassembled. It is obvious that for the same neither the respondent nor the appellant is at fault. However, the fact remains that the detention order dated 13-9-1996 has still not been executed and the respondent has not surrendered. Under these circumstances, in our view, it will be appropriate to direct that the ad interim relief which is extended from time to time by the Division Bench of the High Court and which was continued all throughout, shall stand vacated. We also vacate the further orders of extension of interim relief and direct the respondent to surrender in the light of the detention order. After surrendering it will be open to the respondent to amend his writ petition and to take all permissible legal grounds



to challenge the detention order and these grounds will have to be considered by the High Court on their own merits after hearing the parties. These appeals have been moved also against various extensions of interim relief orders passed by the Division Bench pending the appeal. All these extension orders are also set aside. We make it clear that we make no observation on the merits of the controversy centering round this detention order. The said controversy will have to be resolved by the High Court in the pending writ petition after hearing the contesting parties.”

(emphasis supplied)

35. Similarly, in **Bhupendra Thakkar** (*supra*), a learned Division Bench of this Court in similar circumstances passed the following order:

“1. In this writ petition, the main ground urged is that since the impugned detention order dated 13th October, 2003 was passed nearly 14 years ago, it should be quashed.

2. In response to the petition, it has been pointed out inter alia by the Respondents that the Petitioner cannot take advantage of the fact that the detention order has remained unexecuted for over 13 years. It is pointed out that the legal requirement is that the detainee must first surrender to the process of law before seeking legal remedies. He cannot be allowed to take advantage of his own conduct of evading the process of law.

3. It is further stated by the Respondents in reply to grounds 6 and 7 that the question of considering the plea of the Petitioner for revoking the order of detention would arise only if the Petitioner first surrenders.

4. The above stand of the Respondents does not seem to be unreasonable. The Petitioner cannot take advantage of the fact that he himself was evading the process of law and till date has not surrendered. Whether in a given case, a detention order should be revoked due to lapse of time is a call that should be taken by the Detaining Authority. There cannot be a mandamus issued in every case where there is a delay in executing the detention order that due to the lapse of time, it should be revoked. The conduct of the detainee would also be relevant factor. However, in a given case, where the detainee surrenders after a considerable lapse of time, the Detaining Authority may want to take a call as to whether any useful purpose would be served in continuing with the order of the detention.



5. In the present case that stage has not been reached since the Petitioner is yet to submit to the process of law. As and when the Petitioner does that, the Respondents can decide whether they need to continue with the order of detention taking into account all the relevant factors.
6. This Court is not inclined to grant the relief prayed for by the Petitioner, at this stage.
7. The petition and the application are accordingly dismissed.”

36. In view of the above discussion and the material placed on record, this Court is of the considered opinion that the only procedure for serving the detention order on the Petitioner, is in the manner provided under the Section 4 of the COFEPOSA Act, i.e., by detaining the person on whom the order is served, in the absence of the same, the proceedings as contemplated under Section 7 of the COFEPOSA Act are required to be initiated in case the proposed *detenue* has absconded. In **Subhash Popatlal Dave (*supra*)** the Hon’ble Supreme Court has held that in cases where proceedings under Section 7 of the COFEPOSA Act has been initiated after abscondence of the proposed *detenue*, the challenge to the detention orders on the live link theory is impermissible. The present Petitioner has managed to evade the law and service of the detention order since passing of the same, i.e., 27th April, 2015. From the passports that have been produced there is a clear attempt to hide relevant information especially details of passport used during the relevant period documenting his entry into or exit from India. The said passport or the details of the said passport have not been given to the Court. Under such circumstances the Court has no option but to draw an inference that the said passport may have in fact established that the Petitioner has evaded the service of the Detention Order. Presence of Petitioner’s wife during the search conducted at his alleged residence in South Extension may have a role in his



disappearance from India. The Petitioner for the present purposes, due to the non-production of the relevant passport document, would have to be treated as a person who has absconded deliberately. Nothing has been shown to prove otherwise or to establish the *bonafide* of the Petitioner.

37. The prayer of the Petitioner with respect to non-consideration of the representation dated 3rd July, 2017 is also not maintainable as the right of representation to the *detenu* is available post execution of the said detention order in terms of Article 22(5) of the Constitution of India. Thus, in the facts and circumstances of the case, the Court finds no ground to interfere with the detention order dated 27th April, 2015 bearing F. NO. 673 /13/2015-CUS.VIII issued against Sh. Pawan Gupta under section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974 by the Respondent No.2 at this stage. However, in case the Petitioner surrenders, his representation may be considered, keeping in mind the considerable time that has lapsed since the time of passing the Detention Order, by the Competent Authority to decide whether the impugned order of detention needs to be continued in accordance with law.

38. The present petition is dismissed and disposed of.

39. Pending application(s), if any, also stand disposed of.

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

AMIT SHARMA, J.

PRATHIBA M. SINGH, J.

OCTOBER 16, 2024/bsr/nk/sn