IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1309 of 2024

Arising Out of PS. Case No.-20 Year-2023 Thana- D.R.I District- Patna

==

KUNAL KISHORE S/O SRI RAJ KISHORE SINHA R/O LAIN NO. 01, NEAR JAIL PRESS, SHASTRINAGAR, P.S- RAMPUR, DISTT.- GAYA-823001.

... ... Petitioner

Versus

1. THE UNION OF INDIA THROUGH THE DIRECTOR GENERAL CENTRAL ECONOMIC INTELLIGENCE BUREAU BIHAR
2. THE JOINT SECRETARY, GOVT. OF INDIA, MINISTRY OF FINANCE DEPARTMENT OF REVENUE, CENTRAL ECONOMIC INTELLIGENCE BUREAU, 6TH FLOOR, 'B' WING JANPATH BHAWAN, JANPATH, NEW DELHI- 110001.
3. THE UNDER SECRETARY, GOVT. OF INDIA, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, CENTRAL ECONOMIC INTELLIGENCE BUREAU, 6TH FLOOR, 'B' WING JANPATH BHAWAN, JANPATH, NEW DELHI- 110001.
4. THAT ADDITIONAL DIRECTOR GENERAL, DIRECTORATE REVENUE INTELLIGENCE (DRI), LUCKNOW ZONAL UNIT LUCKNOW, UTTAR PRADESH
5. THE DEPUTY DIRECTOR, DRI, PATNA REGIONAL UNIT, PATNA. BIHAR
6. THE SUPERINTENDENT OF POLICE, PATNA. BIHAR
7. THE SUPERINTENDENT, ADARSH KENDRIYA KARA, BEUR JAIL, PATNA. BIHAR

... ... Respondents

==

For the Petitioner	:	Mr. Ramakant Sharma, Senior Advocate
		Mr. Rakesh Kumar Sharma, Advocate
For the Respondent UoI	:	Dr. K.N Singh, Senior Advocate (A.S.G)
		Mr. Alok Kumar, C.G.C. UoI
		Mr. Anshuman Singh, Advocate (D.R.I.)
For the respondent State	:	Mr. Sunil Kumar Mandal, SC-3
		Mrs. Neelam Kumari, AC to SC-3

==

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

12 17-02-2025 **<u>Re: I.A. No. 01 of 2024</u>**: -

This interlocutory application has been filed by the petitioner praying for addition of prayer in the main writ petition to the extent that "to quash the Letter No. F.No. PH-12001/08/2-24 COFEPOSA dated 06.03.2024 and 29.05.2024, whereby and whereunder the detention order has been passed by the respondent authorities and consequentially release the petitioner."

2. Permission is accorded.

3. I.A. No. 01 of 2024 accordingly stands allowed.

Re: Cr.W.J.C. No. 1309 of 2024: -

The present petition has been filed under Articles 226 and 227 of the Constitution of India in which the petitioner has challenged the order dated 06.03.2024 passed by the respondent detaining authority under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short 'COFEPOSA Act'). The petitioner has also challenged the communication dated 29.05.2024 issued by the concerned respondent authority by which the Central Government has confirmed the order of detention passed by the detaining authority. The petitioner has prayed that both the impugned orders be quashed and set aside.

FACTUAL MATRIX:

2. The factual matrix of the present case is as under: -

2.1. A confidential information was received by one Abhishek Kamal to the effect that a syndicate was involved in smuggling of foreign gold from Yangoon (Myanmar) to Gaya through Gaya International Airport with the active involvement of Marshal deputed in the flight and the flight handling executive working there. It is alleged that Md. Salim is the kingpin of the said syndicate, who operates from Yangoon. Arun Kumar and Pappu Kumar, both senior customer service executives of Air India Airport Service Limited, helped the syndicate in collecting foreign origin gold from Marshal in the flight and deliver it to Kunal Kishore (petitioner) for further delivery to Md. Hassan, who, in turn, used to deliver it to the customers as per direction of Md. Salim. It is further alleged that the information also indicated that consignments of foreign origin gold have been planned to be smuggled on 13.12.2023 via two Myanmar International Flights UB-7001 and 8M-601 coming from Yangoon (Myanmar) to Gaya International Airport.

2.2. Based on the written report/complaint on the basis of intelligence input to the aforesaid effect, search and seizure memo. Economic Offence Case No. 85(O) of 2023 (D.R.T. Patna Unit Case No. 20/2023-24) dated 13.12.2023 for the offences punishable under Sections 135(I)(a) and 135(I)(b) of the Customs Act came to be drawn. Further, on the basis of the specific intelligence input that the syndicate involved in the smuggling of foreign origin gold from Yangoon (Myanmar) to Gaya (Bihar) through Gaya International Airport, four persons, namely, Ko Ko Latt, Htin Linn Phyo, Arun Kumar and Pappu Kumar were apprehended on 13.12.2023 at Gaya International Airport and total 12004 grams of foreign origin gold was recovered and seized. Based on the intelligence input, simultaneous search was conducted by the officers of Directorate of Revenue Intelligence (DRI) at the premises of the petitioner, i.e., Kunal Kishore. During the search, total 124000 US Dollars were recovered from his residence in presence of the petitioner and two independent witnesses. The recovery and seizure memo was prepared on the spot. Further, voluntary statement of the petitioner was recorded on 14.12.2023 under Section 108 of the Customs Act, 1962. It is alleged that the petitioner admitted his involvement in the said smuggling syndicate and delivery and stated about the said syndicate that Md. Salim used to inform him about the quantity of gold coming by Myanmar International flight. He used to convey the said information to Arun Kumar and Pappu Kumar, who, it is further alleged, used to collect the foreign origin gold from the Marshals in the flight as per directions of Md. Salim. Kunal Kishore (the petitioner) used to receive the foreign origin gold from Arun Kumar and deliver the same to Md. Hassan. It is also alleged that the said recovery of 124000 US Dollars was his commission out of the sale proceeds of the smuggled foreign origin gold.

2.3. It further transpires that thereafter, the petitioner was arrested and thereafter he was in custody and at that time the respondent detaining authority passed order of detention dated 06.03.2024, while exercising powers conferred under Section 3(1) of the COFEPOSA Act. Copy of the said order is produced on record with Interlocutory Application. The order of detention was executed on 11.03.2024 and the grounds of detention along with the documents were served upon the petitioner on 11.03.2024.

2.4. It further reveals that the case of the petitioner was referred to the Advisory Board (COFEPOSA), Patna High Court, Patna on 10.04.2024 in terms of the provisions contained in Section 8(b) of the COFEPOSA Act. The Advisory Board, after hearing the petitioner in person and the respondent Department in the proceedings held on 29.04.2024 and

13.05.2024, opined that detention of the petitioner is justified. It also reveals that the Central Government considered the opinion of the Advisory Board and after considering the representation of the petitioner confirmed the detention order passed by the detaining authority against the petitioner and the same was conveyed by the Deputy Secretary to the Government of India to the petitioner vide order dated 29.05.2024.

2.5. It further transpires that the detaining authority and the Central Government received two separate representations both dated 04.04.2024 made by the petitioner on 12.04.2024 and 15.04.2024 respectively through jail authorities.

2.6. The petitioner challenged the impugned order of detention, which has been confirmed by the Central Government, by filing the present petition.

3. We have heard Mr. Ramakant Sharma, learned Senior Advocate assisted by Mr. Rakesh Kumar Sharma, learned counsel for the petitioner and Dr. K.N. Singh, learned Additional Solicitor General of India assisted by Mr. Alok Kumar, learned counsel for the respondent Union of India.

SUBMISSIONS ON BEHALF OF THE PETITIONER: -

4. Mr. Ramakant Sharma, learned Senior Advocate

has assailed the impugned order of detention by contending that when the search was carried out on the basis of the intelligence input at the Airport, the petitioner was not present. However, on the basis of the intelligence inputs, a search was conducted by the DRI in the premises of the petitioner and during the said search, petitioner was found present at his house. It is alleged by the detaining authority in the impugned order that on being asked about his involvement in smuggling of gold, petitioner admitted his involvement in smuggling of foreign origin gold through Gaya International Airport. It is also alleged during the search of his house, total 124000 US Dollar were recovered. On being asked about the said recovered foreign origin gold, the petitioner stated that he has earned the said foreign currency by smuggling the foreign origin gold. Further, it is contended by learned senior counsel that the petitioner was not present at the time of receiving of gold or for delivering the gold and the gold was not recovered from the possession of the petitioner. It is further submitted that on the basis of the so-called confessional statement of the petitioner recorded by the Customs Officers, he has been implicated.

4.1. It is contended that there is no antecedent of the petitioner and there was no apprehension on the part of the detaining authorities that the petitioner will continue with similar type of activity in future and, therefore, order of preventive detention passed by the respondent authorities is not tenable in law.

4.2. It is also contended that when the order of detention was passed, the petitioner was already in jail custody in connection with the complaint filed by the Customs Authorities against him. It was always open for the respondent authorities to oppose the bail application, if any, filed by the petitioner. However, when the petitioner was in jail custody, there was no apprehension on the part of the respondent authorities that the petitioner will indulge into similar type of activities, if he is released on bail. It is, therefore, contended that the subjective satisfaction of the detaining authorities has been vitiated.

4.3. Learned senior counsel also submitted that there is a delay in service of the order passed on 06.03.2024, which was communicated to the petitioner on 29.05.2024 and, therefore, on the ground of delay in communication of the order, the same be quashed and set aside.

4.4. Learned senior counsel lastly contended that the subjective satisfaction of the detaining authority is mechanical and does not satisfy the test prescribed by the various decisions rendered by the Hon'ble Supreme Court. He has placed reliance upon the following decisions of the Hon'ble Supreme Court: -

(I) ***Ayya v. State of U.P.***, reported in (1989) 1 SCC 374.

(II) ***Rajesh Gulati v. Govt. of NCT of Delhi***, reported in (2002) 7 SCC 129.

(III) ***Rekha v. State of T.N.***, reported in (2011) 5 SCC 244 and

(IV) ***Ameena Begum v. State of Telangana***, reported in (2023) 9 SCC 587.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS: -

5. On the other hand learned ASG has mainly made following submissions: -

5.1. The impugned detention order dated 06.03.2024 has been issued by the Detaining Authority under the COFEPOSA only after arriving at his subjective satisfaction based on relevant and sufficient materials and facts. Based on the documents and the materials placed before the Detaining Authority and considering the individual role of the petitioner, the Detaining Authority has satisfied itself as to his continued propensity and his inclination to indulge in acts of deceiving Customs Authorities in a planned manner to the detriment of the economic security of the country and thereafter concluded that there is a need to prevent the petitioner from smuggling of goods.

5.2. It is submitted that the said order of detention was executed on 11.03.2024 and the grounds of detention along with all the documents relied upon by the Detaining Authority for arriving at his subjective satisfaction were also served upon the petitioner on the very same day.

5.3. The petitioner was informed about his right to represent against his detention by the Detaining Authority to the Central Government as well as to the Advisory Board.

5.4. Learned ASG submits that the petitioner submitted two separate representations, both dated 04.04.2024, to the Detaining Authority and the Central Government, which were received on 12.04.2024 and 15.04.2024 respectively through the jail authorities. The Detaining Authority carefully examined the said representations and disposed of the same which was communicated to the petitioner on 25.04.2024.

5.5. It is further submitted that the Advisory Board considered the matter on 29.04.2024 and 13.05.2024 and opined that detention of the petitioner is justified. The said opinion of the Advisory Board has been considered by the Central Government and thereafter the Central Government has also confirmed the impugned detention order as conveyed to the petitioner vide order dated 29.05.2024. The Central Government also considered the representation dated 04.04.2024 addressed by the petitioner and disposed of the same on 25.04.2024, which was duly conveyed to the detenue/petitioner.

5.6. Learned ASG, therefore, contended that the respondent authorities have strictly complied with the procedural aspects within the stipulated time and the procedural formalities have been adhered to strictly in the present case.

5.7. Learned ASG has placed reliance upon the following decisions of the Hon'ble Supreme Court : -

(1) ***Naresh Kumar Goyal v. Union of India*****,** reported in **(2005) 8 SCC 276**;

(2) ***State of Maharashtra v. Bhaurao Punjabrao Gawande*****,** reported in **(2008) 3 SCC 613**;

(3) ***Haradhan Saha v. State of W.B.*****,** reported in **(1975) 3 SCC 198**;

(4) ***Ameena Begum v. State of Telangana*****,** reported in **(2023) 9 SCC 587**.

5.8. It is, therefore, urged that the present petition being devoid of any merit, be dismissed.

DISCUSSION AND REASONINGS: -

6. Having heard learned counsel for the parties and having gone through the materials placed on record, it would emerge that the respondent detaining authority has passed an order of detention dated 06.03.2024 against the present petitioner. It further transpires that the said order of detention was executed on 11.03.2024 along with the ground of detention and the documents upon which reliance has been placed by the respondent detaining authority. It would emerge from the impugned order of detention that it has been alleged that DRI received specific intelligence input that a syndicate involved in the smuggling of foreign origin gold from Yangoon (Myanmar) to Gaya (Bihar) through Gaya International Airport is operating and on the basis of the intelligence report, four persons, namely, Ko Ko Latt, Htin Linn Phyo, Arun Kumar and Pappu Kumar were apprehended on 13.12.2023 at Gaya International Airport and total 12004 grams of foreign origin gold were recovered and seized. It would further reveal that based on the intelligence report, simultaneous search was conducted by the officers of DRI at the premises of the petitioner, i.e., Kunal Kishore.

During the search, a total 124000 US Dollars were recovered from his residence in the presence of the petitioner and two independent witnesses. *Panchnama* of the said recovery and seizure memo dated 13.12.2023 was prepared on the spot. The petitioner and the independent witnesses put their signatures. It is specific case of the respondent that voluntary statement of the petitioner was recorded on 14.12.2023 under Section 108 of the Customs Act, wherein the petitioner has admitted his involvement in smuggling syndicate. It is the specific case of the respondent that the petitioner has not retracted from his statement given under Section 108 of the Customs Act.

6.1. It is the specific case of the respondents that the petitioner has further admitted in the said statement that around 200 kgs of foreign origin gold has been smuggled by him with the help of Arun Kumar and Pappu Kumar during last one year and that the petitioner used to get 1300 US Dollar for each kg. of foreign origin gold smuggled out of Gaya International Airport.

6.2. The respondent authorities filed the criminal complaint under the provisions of the Customs Act and proceedings for confiscation has also been initiated against the petitioner. The petitioner was arrested pursuant to the criminal complaint filed against him.

6.3. Now, it is the main contention of the petitioner that as he was in custody in connection with the aforesaid criminal complaint for the same incident, it was not open for the respondent authorities to pass the impugned order of detention under the provisions of the COFEPOSA Act. It is also contended on behalf of the petitioner that it was also open for the respondents to oppose the bail application and there was no apprehension on the part of the respondent authorities that the petitioner will indulge into similar type of activities if he is released on bail and, therefore, subjective satisfaction of the detaining authority is vitiated.

6.4. At this stage, we would like to refer the decisions upon which reliance has been placed by the learned Advocates appearing for the parties.

6.5. In the case of ***Ayya*** (supra), the Hon'ble Supreme Court has observed in paragraph 14 and 23 as under: -

> **14.** But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by the genius of its administration so as to strike the right balance between individual liberty on the one hand and the needs of an orderly society on the other. But the realities of executive excesses in the actual enforcement of the law

have put the courts on the alert, ever-ready to intervene and confine the power within strict limits of the law both substantive and procedural. The paradigms and value judgments of the maintenance of a right balance are not static but vary according as the "pressures of the day" and according as the intensity of the imperatives that justify both the need for and the extent of the curtailment of individual liberty. Adjustments and readjustments are constantly to be made and reviewed. No law is an end in itself. The "inn that shelters for the night is not journey's end and the law, like the traveller, must be ready for the morrow".

23. In the present case, we are not, however, impressed with the submission of Shri Garg that the detention was solely for the purpose of rendering nugatory the order of bail, the grant of which the detaining authority had then considered quite imminent. It is true that if the only ground or justification for the detention is the apprehension that the detenue was likely to be enlarged on bail, the detention might be rendered infirm. Shri Garg relied upon the following observations in *Ramesh Yadav case* [(1985) 4 SCC 232 : 1985 SCC (Cri) 514 : AIR 1986 SC 315] : [AIR p. 316 : SCC p. 234, SCC (Cri) p. 516, para 6]

> "On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenue was released on bail he would again

> carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an undertrial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed."

But, where, as here, there are other grounds, the reference by the detaining authority to the prospects of grant of bail could be no more than an emphasis on the imminence of the recurrence of the offensive activities of the detenue. Even a single instance of activity tending to harm "public order" might, in the circumstances of its commission, reasonably supply justification for the satisfaction as to a legitimate apprehension of a future repetition of similar activity to the detriment of "public order". Likewise, without merit, is the contention as to the impermissibility of an order of detention being made against a person already in judicial custody. Even if a prosecution against a person fails or bail is granted an order of detention could be passed drawing the satisfaction therefor from the facts and circumstances involved in the criminal proceedings. An offender might secure an acquittal by intimidating witnesses. It all depends upon the circumstances of each case. But it is necessary for the detaining authority to resist the temptation to prefer and substitute, as a matter of course, the easy expedience of a preventive detention to the more cumbersome one of punitive detention. In *Vijay Narain Singh case* [(1984) 3 SCC 14 : 1984 SCC (Cri) 361 : AIR 1984 SC 1334] this Court said: [AIR p. 1345 : SCC pp. 35-36, SCC (Cri) pp. 382-83, para 32]

> "It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution ... When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court."

6.6. In the case of ***Rajesh Gulati*** (supra), in paragraphs 12, 13 and 14, the Hon'ble Supreme Court has observed as under: -

12. *It cannot be overemphasized that the object of detention under the Act is not to punish but to prevent the commission of certain offences. Section 3(1) of the Act allows the detention of a person only if the appropriate detaining authority is satisfied that with a view to preventing such person from carrying on any of the offensive activities enumerated therein, it is necessary* *to detain such person. The satisfaction of the detaining authority is not a subjective one based on the detaining authority's emotions, beliefs or prejudices. There must be a real likelihood of the person being able to indulge in such activities, the inference of such likelihood being drawn from objective data.*

13. *In this case, the detaining authority's satisfaction consisted of two parts — one : that the appellant was likely to be released on bail and two : that after he was so released the appellant would indulge in smuggling activities. The detaining authority noted that the appellant was in custody when the order of detention was passed. But the detaining authority said that "bail is normally granted in such cases". When in fact the five applications filed by the appellant for bail had been rejected by the courts (indicating that this was not a "normal" case), on what material did the detaining authority conclude that there was "imminent possibility" that the appellant would come out on bail? The fact that the appellant was subsequently released on bail by the High Court could not have been foretold. As matters in fact stood when the order of detention was passed, the "normal" rule of release on bail had not been followed by the courts and it could not have been relied on by the detaining authority to be satisfied that the appellant would be released on bail. (See in this context Ramesh Yadav v. District Magistrate [(1985) 4 SCC 232 : 1985 SCC (Cri) 514 : AIR 1986 SC 315] , AIR at p. 316.)*

14. *Assuming that by some method of prescience the detaining authority foresaw* *the order of bail which was granted to the appellant on his sixth application, the question still remained, would the appellant again resort to smuggling goods into the country? It was not the detaining authority's case that the appellant was a diehard smuggler. In fact in the impugned detention order, the detaining authority noted that:*

> *"Though Shri Deepak Dhembla, the proprietor of M/s B.D. Denim had denied any association in that case, yet from the statement of Shri Rajesh Gulati i.e. you, it is clearly evident that Shri Dhembla was the brain behind the smuggling of mobile phones through your help and he was arranging for your ticket and other expenses for executing the process of smuggling of mobile phones in a clandestine manner."*

6.7. In the Case of ***Rekha*** (supra), in paragraphs 21 and 29, the Hon'ble Supreme Court has observed as under: -

*"**21.** It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of one year's imprisonment. What difference is it to the detenue. whether his imprisonment is called preventive or punitive?*

***29.** Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits*

> *preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal."*

6.8. In the Case of ***Ameena Begum*** (supra), in paragraphs 26 and 28, the Hon'ble Supreme Court has observed as under: -

> *"**26.** We, however, hasten to observe here that though the decision in Rekha [Rekha v. State of T.N., (2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] reflects on an important aspect of loss of liberty without trial by taking recourse to preventive detention laws, the decision of the Constitution Bench in Haradhan Saha [Haradhan Saha v. State of W.B., (1975) 3 SCC 198 : 1974 SCC (Cri) 816] still holds the field and to the extent the learned Judges in Rekha [Rekha v. State of T.N., (2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] sound a note discordant with the law laid down in Haradhan Saha [Haradhan Saha v. State of W.B., (1975) 3 SCC 198 : 1974 SCC (Cri) 816] ought not to be construed as acceptance by us as the correct exposition of law.*
>
> ***28.** In the circumstances of a given case, a constitutional court when called*

upon to test the legality of orders of preventive detention would be entitled to examine whether:

28.1. *The order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;*

28.2. *In reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;*

28.3. *Power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;*

28.4. *The detaining authority has acted independently or under the dictation of another body;*

28.5. *The detaining authority, by reason of self-created rules of policy or in any other manner not authorised by the governing statute, has disabled itself from applying its mind to the facts of each individual case;*

28.6. *The satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;*

28.7. *The satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct*

> *of a person and the imperative need to detain him or is based on material which is stale;*
>
> ***28.8.*** *The ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;*
>
> ***28.9.*** *The grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenue. the satisfaction for the detention, giving him the opportunity to make a suitable representation; and*
>
> ***28.10.*** *The timelines, as provided under the law, have been strictly adhered to.*"

6.9. In the case of ***Saraswathi Seshagiri versus State of Kerala***, reported in **1982 (e) PLJR-SC 25317**, the Hon'ble Supreme Court has observed in paragraph 9, 10 and 11 as under:

-

> "*9. From the aforesaid observation it is evident that an inference in each case will depend on the nature of the act and the attendant circumstances. In the present case the detenue. tried to export Indian Currency to the tune of Rupees 2,88,900.00 to a foreign country in a planned and pre-meditated manner by clever concealment of it in several parts of his baggage. This fully justified the detaining authority in coming to the conclusion that he*

might repeat his illegal act in future also and that his detention was necessary to preventing him from repeating the same in future. His past act in the circumstances might be an index of his future conduct.

10. It was next contended for the detenue. that detenue. could be prosecuted under the Customs Act and as such his preventive detention was uncalled for. The counsel for the detenue. in support of his argument strongly relied upon Smt. Hemlata Kantilal Shah V/s. State of Maharashtra, AIR 1982 SC 8. That case instead of supporting the detenue. goes against him. This Court dealing with the point held -"Possibility of a prosecution or the absence of it is not an absolute bar to an order of preventive detention, the authority may prosecute the offender for an isolated act or acts of an offence for Violation of any criminal law, but if it is satisfied that the offender has a tendency to go on violating such laws, then there will be no bar for the State to detain him under a Preventive Detention Act in order to disable him to repeat such offences. What is required is that the detaining authority is to satisfy the Court that it had in mind the question whether prosecution of the offender was possible and sufficient in the circumstances of the case. In some cases of prosecution it may not be possible to bring home the culprit to book as in case of a professional bully, a murderer or a dacoit, as witnesses do not come forward to depose against him out of fear, or in case of international smuggling it may not be possible to collect all necessary evidence without unreasonable delay and expenditure *to prove the guilt of the offender beyond reasonable doubt. The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed largely from prior events showing tendencies or inclinations of a person that an inference can be drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of supplies and services essential to the community or his act of violation of foreign exchange regulations and his smuggling activities are likely to have deleterious effect on the national economy."*

11. When the legislature has made only the subjective satisfaction of the authority making the order of detention; it is not for the court to question whether the grounds given in the order are sufficient or not for the subjective satisfaction of the authority."

6.10. In the Case of ***Haradhan Saha*** (supra), in paragraphs 19 and 26, the Hon'ble Supreme Court has observed as under: -

*"**19.** 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. The basis of detention is the satisfaction of the Executive of a reasonable probability of the likelihood of the detenue. acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other*

hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case a person is punished on proof of his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in Section 3 of the Act to prevent.

***26.** The opinion of the Board as well as the order of the Government rejecting the representation of the detenue. must be after proper consideration. There need not be a speaking order. There is also no failure of justice by the order not being a speaking order. All that is necessary is that there should be real and proper consideration by the Government and the Advisory Board."*

6.11. In the Case of ***State of Maharashtra v. Bhaurao Punjabrao Gawande*** (supra), in paragraphs 36 and 37, the Hon'ble Supreme Court has observed as under: -

*"**36.** Liberty of an individual has to be subordinated, within reasonable bounds, to the good of the people. The framers of the Constitution were conscious of the practical need of preventive detention with a view to striking a just and delicate balance between need and necessity to preserve individual liberty and personal freedom on the one hand and security and safety of the country and interest of the society on the other*

hand. Security of State, maintenance of public order and services essential to the community, prevention of smuggling and blackmarketing activities, etc. demand effective safeguards in the larger interests of sustenance of a peaceful democratic way of life.

37. *In considering and interpreting preventive detention laws, courts ought to show greatest concern and solitude in upholding and safeguarding the fundamental right of liberty of the citizen, however, without forgetting the historical background in which the necessity—an unhappy necessity—was felt by the makers of the Constitution in incorporating provisions of preventive detention in the Constitution itself. While no doubt it is the duty of the court to safeguard against any encroachment on the life and liberty of individuals, at the same time the authorities who have the responsibility to discharge the functions vested in them under the law of the country should not be impeded or interfered with without justification (vide A.K. Roy v. Union of India [(1982) 1 SCC 271 : 1982 SCC (Cri) 152] , Bhut Nath Mete v. State of W.B. [(1974) 1 SCC 645 : 1974 SCC (Cri) 300 : (1974) 3 SCR 315] , State of W.B. v. Ashok Dey [(1972) 1 SCC 199 : 1972 SCC (Cri) 128 : (1972) 2 SCR 434] and ADM v. Shivakant Shukla [(1976) 2 SCC 521 : 1976 Supp SCR 172]).”*

6.12. In the Case of ***Naresh Kumar Goyal*** (supra), in paragraph 8, the Hon'ble Supreme Court has observed as under: -

> *"**8.** It is trite law that an order of detention is not a curative or reformative or punitive action, but a preventive action, avowed object of which being to prevent the antisocial and subversive elements from imperilling the welfare of the country or the security of the nation or from disturbing the public tranquillity or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so. It, therefore, becomes imperative on the part of the detaining authority as well as the executing authority to be very vigilant and keep their eyes skinned but not to turn a blind eye in securing the detenue. and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority will defeat the very purpose of preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.*

> *Inordinate delay, for which no adequate explanation is furnished, led to the assumption that the live and proximate link between the grounds of detention and the purpose of detention is snapped. (See P.U. Iqbal v. Union of India [(1992) 1 SCC 434 : 1992 SCC (Cri) 184] , Ashok Kumar v. Delhi Admn. [(1982) 2 SCC 403 : 1982 SCC (Cri) 451] and Bhawarlal Ganeshmalji v. State of T.N. [(1979) 1 SCC 465 : 1979 SCC (Cri) 318])*"

6.13. From the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that the object of detention under the detention law is not to punish, but to prevent the commission of certain offences. Further, in the recent decision rendered by the Hon'ble Supreme Court in the case of ***Ameena Begum*** (supra), it has been specifically held by the Hon'ble Supreme Court that a constitutional court, when called upon to test the legality of orders of preventive detention, would be entitled to examine certain aspects referred in paragraph 28.1. to 28.10 of the said decision

6.14. In the case of ***Saraswathi Seshagiri*** (supra), the Hon'ble Supreme Court has observed that the concerned detenue tried to export Indian Currency to the tune of Rupees 2,88,900.00 to a foreign country in a planned and pre-meditated manner by clever concealment of it in several parts of his baggage and, therefore, the Hon'ble Supreme Court observed that the detaining authority was justified in coming to the conclusion that he might repeat his illegal act in future also. His past act in the circumstances might be an index of his future conduct. Thereafter, the Hon'ble Supreme Court observed that the authority may prosecute the offender for an isolated act or acts of an offence for violation of any criminal law, but if it is satisfied that the offender has a tendency to go on violating such laws, then there will be no bar for the State to detain him under a Preventive Detention Act. What is required is that the detaining authority is to satisfy the Court that it had in mind the question whether prosecution of the offender was possible and sufficient in the circumstances of the case. It has been further observed that in some cases of international smuggling where it may not be possible to collect all necessary evidence without unreasonable delay and expenditure to prove the guilt of the offender beyond reasonable doubt, the past conduct or antecedent history of a person can appropriately be taken into account while passing the detention order. Further, prior events showing tendencies or inclinations of a person that an inference can be drawn that he is likely in the future to act in a manner prejudicial to the maintenance of supplies and services essential to the community or his act of violation of foreign exchange regulations and his smuggling activities are likely to have deleterious effect on the national economy, the Hon'ble Supreme Court further observed that when the legislature has made only the subjective satisfaction of the authority making the order of detention necessary, it is not for the court to question whether the grounds given in the order are sufficient or not for the subjective satisfaction of the authority.

6.15. In the case of ***Rekha*** (supra), the Hon'ble Supreme Court has observed that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.

6.16. However, at this stage, it is relevant to observe that in a recent decision rendered by the Hon'ble Supreme Court in the case of ***Ameena Begum*** (supra), the Hon'ble Supreme Court has observed in paragraph 26 that though the decision in the case of ***Rekha*** (supra) reflects on an important aspect of loss of liberty without trial by taking recourse to preventive detention laws, the decision of the Constitution Bench in the case of ***Haradhan Saha*** (supra) still holds the field and to the extent the learned Judges in the case of ***Rekha*** (supra) sound a note discordant with the law laid down in ***Haradhan Saha*** (supra) it ought not to be construed as acceptance by the Hon'ble Supreme Court in the said case {***Ameena Begum*** (supra)} as the correct exposition of law.

6.17. Therefore, at this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of ***Haradhan Saha*** (supra), wherein the Constitution Bench of the Hon'ble Supreme Court in the year 1975 has observed in paragraphs 19, 32 and 34, as observed hereinabove, that an order of detention may or may not relate to an offence, it is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. Further, an order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. Further, pendency of prosecution is no bar to an order of preventive detention. Further, it has been specifically held by the Constitution Bench of the Hon'ble Supreme Court that merely because a detenue is liable to be tried in a criminal court for the commission of a criminal offence would not by itself debar the Government from taking action for his detention. Further, where the Police arrests a person and later on enlarges him on bail and initiates steps for prosecuting him under the Cr.P.C. and even lodges an FIR may be no bar against the detaining authority issuing an order under the preventive detention. Further, where the concerned person 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 jeopardize the security of the State or the public order. Further, the mere circumstance that a detention order is passed during the pendency of the prosecution would not vitiate the order.

6.18. Keeping in view the aforesaid principles laid down by the Hon'ble Supreme Court in various decisions, now, we would like to once again examine the contentions raised by learned senior counsel for the petitioner. The main contention of the petitioner is that criminal complaint has been lodged against him and in connection with the same he was already in custody when the impugned order of detention has been passed. Thus, there was no apprehension on the part of the detaining authority that petitioner will indulge into similar type of activity if he is released on bail. Thus, the subjective satisfaction of the detaining authority is vitiated. We are of the view that the aforesaid contention is misconceived in view of the decision rendered by the Hon'ble Supreme Court in the case of ***Haradhan Saha*** (supra) and observations made in paragraph 26 in the case of ***Ameena Begum*** (supra).

6.19. Whether the petitioner has been falsely implicated in the incident in question and whether his statement was forcibly recorded under Section 108 of the Customs Act by the concerned authorities cannot be gone into in the present proceedings.

6.20. Further, the detaining authority has considered the past activity of the petitioner relying upon his voluntary statement recorded under Section 108 of the Customs Act.

6.21. Another contention raised by the petitioner is that there was a delay in service of the order of detention by contending that the detention order has been passed on 06.03.2024, which was communicated to him on 29.05.2024. However, we are of the view that the aforesaid contention is also misconceived. From the records, it transpires that the order of detention was passed on 06.03.2024, which was duly executed on the petitioner on 11.03.2024. Thereafter, the petitioner made representation on 04.04.2024 to the detaining authority and the

Central Government, which was received on 12.04.2024 and 15.04.2024 respectively, which were duly considered by the concerned authorities and, in the meantime, the case of the petitioner was referred to the Advisory Board on 10.04.2024 and after conducting the proceedings on 29.04.2024 and 13.05.2024, the Advisory Board gave the opinion and opined that the detention of the petitioner is justified. The said opinion has been duly considered by the Central Government and thereafter the Central Government also confirmed the impugned detention order, which was communicated by the Deputy Secretary of the Government of India vide order dated 29.05.2024. Therefore, it cannot be said that the order of detention dated 06.03.2024 was communicated to the petitioner on 29.05.2024. Hence, the said contention is misconceived.

6.22. We are of the view that the decisions upon which reliance has been placed by learned senior counsel for the petitioner would not be applicable to the facts of the present case.

CONCLUSION: -

7. Further, upon closely examining the impugned order keeping in view the observations made by the Hon’ble Supreme Court in paragraph Nos. 28.1 to 28.10 of the decision

in the case of ***Ameena Begum*** (supra), we are of the view that in the present case, the respondent detaining authority has followed all the constitutional, statutory and procedural requirements as well as safeguards. The subjective satisfaction of the detaining authority does not vitiate, as has been contended by the petitioner. Therefore, we are of the view that when the detaining authority after satisfying itself subjectively after considering all the relevant material, passed the impugned order of detention, the same cannot be interfered with while exercising power under Article 226 of the Constitution of India.

7.1. Accordingly, the petition stands dismissed.

(Vipul M. Pancholi, J)

(Alok Kumar Pandey, J)

Pawan/-

U		T	