

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2016 of 2024

Arising Out of PS. Case No.- Year-0 Thana- District- Gaya

Mohammad Hassan @ Md. Hassan S/o Md. Abbas R/o Near Nadvi Manzil,
Baniya Pokhar, P.S. - Civil Line, Distt. - Gaya

... .. Petitioner

Versus

1. The Union of India through the Joint Secretary, Gov. of India, Ministry of Finance Department of Revenue, Central Economic Intelligence Bureau COFEPOSA wing
2. The Joint Secretary, Gov. of India, Ministry of Finance Deptt. of Revenue Central Economic Intelligence Bureau COFEPOSA wing
3. The Deputy Secretary, Gov. of India, Ministry of Finance Deptt. of Revenue Central Economic Intelligence Bureau COFEPOSA wing
4. The Additional Director General, DRI, Lucknow Zonal Unit Lucknow (UP) Bihar
5. The Directorate of Revenue Intelligence, MALAYNIL Buddha Colony, Regional Unit, Patna through its Senior Intelligence Officer Abhishek Kamal
6. The Informant Intelligence Officer, Anup Kumar Gupta DRI, Regional Unit, Patna Bihar
7. The State of Bihar through the Principal Secretary, Dept. of Home, Gov. of Bihar, Patna Bihar

... .. Respondents

Appearance :

For the Petitioner :	Mr. Shri Prakash Tiwari
For the Respondent UoI :	Dr. K.N Singh, Senior Advocate (A.S.G)
	Mr. Alok Kumar, C.G.C. UoI
	Mr. Amit Pandey, D.R.I.
	Mr. Abhishek Kumar, J.S.C., DRI
For the respondent State:	Mr. P.K.Verma, AAG-3
	Dr. Anand Kumar, AC to AAG-3
	Ms. Divya Verma, AC to AAG-3

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

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

5 17-02-2025 The present petition has been filed under Article 226
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. The petitioner has stated that, as per the case of the prosecution, specific intelligence input was received that a syndicate was involved in the smuggling of foreign origin gold from Yangoon (Myanmar) to Gaya through Gaya International Airport with active involvement of Marshals deputed in the flight as well as the flight handling executive working at Gaya International Airport. As per the said intelligence input, a consignment of foreign origin gold has been planned to be smuggled on 13.12.2023 via two Myanmar International Flights UB-7001 and 8M-601 coming to Gaya from Yangoon. It is alleged that the kingpin the said syndicate is Md. Salim, 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 Marshals in the flight and deliver it to Kunal Kishore, who is a former employee of Air India Airport Service Ltd., for further delivery to Md. Hassan (petitioner), who used to deliver it to the customers as per directions of the kingpin of the syndicate, i.e., Md. Salim.

2.2. It has been further stated that on the basis of the said intelligence input received by the DRI, on 13.12.2023, the said authority along with the other officers formed three teams, one team for interception of the incoming consignment of the foreign origin gold at Gaya International Airport; second team for conducting search at the residence of Kunal Kishore and the third team for conducting search at the residence of the petitioner.

2.3. It is also stated in the petition that the first team, which was keeping surveillance at Gaya International Airport, apprehended four persons, namely, Ko Ko Latt, Htin Linn Phyto, Arun Kumar and Pappu Kumar, from whose possession 25 gold bars were recovered weighing 12004 grams valued at Rs.7,38,24,600.00, which were seized and a seizure list was prepared.



2.4. It is further state that the second team conducted raid at the residence of Kunal Kishore from where, 124000 US Dollar were recovered, which were alleged to have been given by Mr. Hassan (petitioner) as commission from the sale proceeds of the smuggled gold.

2.5. It is further stated that immediately, to ascertain the involvement of the petitioner in the alleged episode, search was made by the third team at his house. However, nothing incriminating could be recovered except Rs.8,40,000.00, which is hard earned money of the petitioner's father, who is suffering from several ailments. However, it has been falsely urged by the prosecution that the said amount was the sale proceeds of the smuggled gold and on that count, the petitioner was made an accused along with others in the complaint filed by the respondent authorities under the provisions of the Customs Act and he was sent to judicial custody on 15.12.2023.

2.6. It is further stated that the Joint Secretary, Government of India, issued the impugned order of detention dated 06.03.2024 against the petitioner. It is also stated that the Advisory Board considered the case of the petitioner and thereafter, on the basis of the report given by the Advisory Board and after considering the relevant material, the Central



Government confirmed the order of detention, which was communicated by the Deputy Secretary, Government of India (respondent No.3) by communication dated 29.05.2024, whereas, in fact, the petitioner was detained on 11.03.2024.

2.7. It is also stated by the petitioner that the petitioner preferred Cr. Misc. No. 18604 of 2024 with a prayer that he may be released on bail in connection with the criminal complaint filed by the concerned respondent authorities under the provisions of Section 135 of the Customs Act. The High Court vide order dated 20.08.2024 passed an order in favour of the petitioner, whereby he was directed to be released on bail.

3. We have heard Mr. Shri Prakash Tiwari, 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. Learned counsel for the petitioner submits that there is no antecedent of the petitioner and, therefore, the petitioner cannot be termed to be a habitual offender. Hence, the exercise of power by the respondent detaining authority under the provisions of the COFEPOSA Act is illegal, arbitrary and,



therefore, the impugned order be quashed and set aside.

4.1. It has been submitted by learned counsel for the petitioner that the petitioner has been implicated in the present case on the basis of the confessional statement of co-accused Kunal Kishore and except that there is no material available against the petitioner with the respondent authorities. He submits that recovery of Rs.8,40,000.00 from the house of the petitioner has no connection with the incident in question, which, in fact, is the hard earned money of the father of the petitioner, who receives monthly pension and since he is suffering from serious ailments, the said money was kept for medical treatment in case of emergency. However, the respondent authorities have wrongly presumed that the said amount is sale proceeds of smuggled gold.

4.2. It is also submitted that the statement of the petitioner is not his voluntary statement, rather the same has been recorded at the dictates of the DRI authorities and he was forced to put his signature under duress and coercion only.

4.3. Learned counsel submits that so far as the statement of Jeweller Ranjeet Kumar is concerned, who during investigation allegedly admitted that he received gold from the petitioner, however, neither foreign origin gold was recovered



from the possession of the said person nor any incriminating goods/documents were recovered in connection with the said syndicate. It is, therefore, contended that no evidence was collected from Ranjeet Kumar to connect the petitioner with the said smuggling or delivery of foreign origin gold except his confessional statement.

4.4. Learned counsel further submitted that the Customs officers have been clothed with the powers of police officers under the Customs Act. Therefore, it does not deal only with the imposition of penalty and or of confiscation of the property under the Act, but also with the offences of serious consequences and, therefore, in such circumstance, the statement given by the petitioner under coercion before the said authority has got no evidentiary value.

4.5. It has been contended on behalf of the petitioner that the defence reply submitted by the petitioner before the State Advisory Board was not dealt with properly.

4.6. Lastly, learned counsel submitted that the impugned order of detention is absolutely in colourable exercise of powers by the concerned authorities since the provisions of the COFEPOSA Act is supposed to be applied only against the professional offenders. However, the petitioner is having no



antecedent and now he has been released on bail by the High Court in connection with the criminal case filed against him.

4.7. Learned counsel, therefore, urged that the impugned order of detention be quashed and set aside.

4.8. Learned counsel 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.

4.9. He has also placed reliance on the decision of the Hon'ble Supreme Court in the case of *Noor Aga vs. State of Punjab and another* [Cri. Appeal No. 1034 of 2008, arising out of SLP (Cri.) No. 5597 of 2006].

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. Learned ASG has specifically submitted that though 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, however, as per the records available with the respondents, the petitioner has not



exercised his rights under the Constitution of India to represent before the Central Government and the Detaining Authority. For the first time, it has been submitted on behalf of the petitioner in course of hearing that the petitioner has filed his defence reply before the State Advisory Board. Learned ASG has also contended that without exhausting the statutory remedies available to the petitioner, he has directly approached the High Court seeking bail.

5.4. 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.

5.5. 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.

5.6. 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.

5.7. It is, therefore, urged that the present petition being devoid of any merit, the same 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 Yangon (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., Md. Hassan. During the search, Rs.8,40,000.00 were recovered from his residence and a *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. 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.



6.2. Now, it is the main contention of the petitioner that even though he has been released on bail by the High Court in connection with the aforesaid criminal complaint for the same incident, because of the impugned order of detention under the provisions of the COFEPOSA Act, he is continuing in detention for no purpose, which is illegal and arbitrary.

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

6.4. 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 detainee 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 detainee 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 detainee. 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.”

6.5. 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 Dhembala, 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 Dhembala 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.”

6.6. 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 detainee. 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.”

6.7. 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.”*

6.8. 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."

6.9. 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 detainee 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.”

6.10. 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]).”

6.11. 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])”*

6.12. 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

6.13. In the case of **Saraswathi Seshagiri** (supra), the Hon’ble Supreme Court has observed that the concerned detainee 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.

6.14. 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.

6.15. 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.

6.16. 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 detainee 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.

6.17. 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).

6.18. 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.

6.19. 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.

6.20. 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. Though the petitioner was made aware of his right to represent, he did not avail the same by making representation to the detaining authority and the Central Government and when the case of the petitioner was referred to the Advisory Board on 10.04.2024, he filed his defence statement there and the Advisory Board, after conducting the proceedings on 29.04.2024 and 13.05.2024, gave its opinion and opined that the detention of the petitioner is justified. The said



opinion has been 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.

6.21. We are of the view that the decisions upon which reliance has been placed by learned 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	
---	--	---	--

