



In the High Court of Punjab and Haryana, at Chandigarh

Criminal Writ Petition No. 2205 of 2025

Reserved On: 04.09.2025
Pronounced On: 29.10.2025

Anuj Dhawan and Another

... Petitioner(s)

Versus

Union of India and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Surya Partap Singh.

Present: Ms. Sangita Bhayana, Advocate
for the petitioner(s).

Mr., Sourabh Goel, Senior Standing Counsel with
Ms. Samridhi Jain, Advocate, for respondents No.1 to 3.

Mr. Sunish Bindlish, Mr. Vishal Sharma and
Mr. Abhav Sharma, Advocates, for respondent No.4.

Surya Partap Singh, J.

1. This petition under Article 226 of the Constitution of India seeking for a directions to the respondents in the form of a writ in the nature of *habeas corpus* has been filed by the petitioners, who are the residents of Delhi, hereinafter referred to as “the detenus” only. The petitioners were arrested by the Directorate of Revenue Intelligence, Zonal Unit, Ludhiana, for the commission of offence punishable under Section 135 of the Customs Act, 1962, hereinafter being referred to as “the 1962 Act” only, and thereafter, by virtue of impugned orders, they have been detained under the ‘Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974’ (for short “COFEPOSA”).

It has been pleaded by the petitioners that they are law abiding

and peace-loving citizens, and that they have been detained in view of an opinion formed by the authorities that they had a vital role in smuggling of gold from other country, i.e. China. As per petitioners, in the grounds of detention, it has been claimed that on different occasions in the past around 200 kgs. of gold was brought to India through several residents of Ladhak, who are co-detenus in the present case, and that the petitioners were involved in selling of gold in local market of Delhi, and that there is propensity in selling of said gold in local market in future also.

3. While referring to the grounds of detention, it has been pleaded by the petitioners that the panchnama dated 12.09.2024 shows that respondent No.3 conducted search at the residence of detenu No.1, 4th floor, F-272, Mansarovar Garden, New Delhi, but no incriminating material was recovered, and thereafter, the petitioner No.1 was arrested at New Delhi and was produced before the Court of learned Judicial Magistrate 1st Class, Ludhiana, on 14.09.2024, after obtaining transit remand order dated 13.09.2024, from the Court of learned Additional Chief Judicial Magistrate, Patiala House, New Delhi. According to petitioners, a bare perusal of the grounds of detention makes it abundantly clear that nothing related to the alleged offence has been recovered from the residence of petitioner No.1, and that but he has been illegally detained.

4. The petitioners have further pleaded that as per the grounds of arrest at the time of seizure of 108 Kg of gold bars, by a patrol party of 21st battalion, ITBP, near Sirigapale in East Ladakh, being smuggled from China by 2 porters, namely Tenzin Dhargyal & Tsering Chamba, the petitioners, were not present there, and that in fact, the Petitioners/Detenus No.1 & 2,

were present at Delhi, when the above said offence took place. As per petitioners, without application of mind the respondents, in mechanical manner, have issued the impugned order dated 06.11.2024 and therefore, the detention order deserves to be set aside on this sole ground itself.

5. With regard to detention of the petitioner No.2, it has been alleged by the petitioners that the petitioner No.2 himself had surrendered before the Directorate of Revenue Intelligence, Ludhiana, pursuant to summons received under Section 108 of the 1962 Act. According to petitioners, even the petitioner No.2 was illegally arrested for the commission of offence punishable under Section 108 of the 1962 Act. The petitioners have further alleged that the grounds of detention supplied to them shows that it has been claimed by the respondents that the petitioner/detenus No.1 and 2 on various occasions had sold the smuggled gold to one Piyush jain (Co-Detenu), who runs jewelry shop in New Delhi, and that Mr. Piyush Jain has been granted bail by the learned Chief Judicial Magistrate, Ludhiana, vide order dated 16.11.2024. As per petitioners, similarly, both the petitioners had filed the regular bail applications before the learned Chief Judicial Magistrate, Ludhiana, but the said bail applications, filed by both the petitioners were dismissed vide orders dated 28.10.2024 and 12.11.2024, respectively.

6. The petitioners have further pleaded that for the detention of petitioners under the COFEPOSA, a proposal was sent to the respondent No.3, by the respondent No.4, and that the respondent No.3, vide order dated 06.11.2024, ordered the detention of petitioners under the COFEPOSA, while ignoring the fact that the petitioners were already in custody at the

time of above mentioned order. However, it has been admitted by the petitioners that the above-mentioned detention order has later on been confirmed by the Joint Secretary, Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau, COFEPOSA Wing, New Delhi.

7. While alleging that the detention order has been passed without any reasonable basis and also that the proper procedure, before passing the impugned order of detention, was not followed, the petitioners have claimed that a prejudice has been caused to them and their fundamental rights have been violated. The petitioners have alleged that the above-mentioned detention order is blatantly illegal, arbitrary, vindictive, and hence, the present petition for habeas corpus.

8. A detailed reply to the above-mentioned petition has been filed by the respondent No.4. The respondent No.4, while defending the detention order, has alleged that the writ petition preferred by the petitioners is liable to be rejected out-rightly on the ground that this Court is not having a territorial jurisdiction to deal with the above mentioned case. According to respondent No.4, the smuggling activities, including receipt, distribution, and payments for smuggled gold, occurred primarily at Ladakh and Delhi, with no part of the cause of action arising within the territorial jurisdiction of this Hon'ble Court, and that the impugned detention orders were issued by the Central Government COFEPOSA Cell, at New Delhi.

9. The respondent No.4 has further alleged that similarly the orders confirming the Detention orders were also passed by the authorities at New Delhi, and that the petitioners' arrest and investigation were conducted

by DRI Ludhiana only because the case was transferred to above mentioned unit for specialized handling, and not because of any smuggling activity within the States of Punjab/Haryana. As per respondent No.4, there is no material connection between the alleged illegal acts and the jurisdiction of this Hon'ble Court, and that any activity, which could be termed to be related to the case of petitioners, has taken place within the territorial jurisdiction of this Court. According to respondent No.4, in view of above, the writ petition under reply is liable to be rejected on the ground of lack of territorial jurisdiction.

10. In the present case, the contents of petition and the reply filed by the respondent No.4 leads to the conclusion that following are the points which need determination in the present case:-

- i) Whether this Court has a territorial jurisdiction to entertain and decide the above mentioned petition?
- ii) If point No.(i) is answered in affirmative, as to whether the impugned order deserves to be set aside on the grounds mentioned in the writ petition?

11. Heard.

12. It has been contended by learned counsel for the petitioners that the present petition is the perfect example of misuse and abuse of authority by the respondents who, without having any valid ground for preventive detention of the petitioners, under COFEPOSA, have passed the detention orders, and while passing the above-mentioned orders violated the entire procedure prescribed under the law. The learned counsel for the petitioners has contended that in the present case, the most glaring defect

which renders the detention orders to be *nonest*, is that the detention orders were passed at the time when the petitioners were already in judicial custody and their applications for bail were rejected by the Court of learned Judicial Magistrate.

13. As per learned counsel for the petitioners, once the bail application of the petitioners were already dismissed by the learned trial Court and the detaining authority, which passed the detention order, i.e. the respondent No.3 had not recorded a satisfaction that there was any apprehension/likelihood of release of the petitioners on bail in near future, the detention order could not have been passed.

14. In support of her above-mentioned arguments, the learned counsel for the petitioners has referred to the principles of law laid down by the Hon'ble Supreme Court of India in the case of *N.Meera Rani v. State of Tamil Nadu and Another (1989)4 Supreme Court Cases 418*. In the above-mentioned case, the husband of appellant, who was already in custody in connection with a bank dacoity case, was served with detention order wherein the detaining authority recorded its satisfaction that the detenu's preventive detention was necessary to prevent him from indulging into the activities prejudicial to the maintenance of public order in which he would indulge, if allowed to remain at large. In the above-mentioned case, the Hon'ble Supreme Court of India observed that since the detention order, read along with its annexure, nowhere indicated that the detaining authority was apprehending the likelihood of detenu being released on bail in dacoity case, the detention order was illegal.

15. In addition to above, the learned counsel for the petitioner has

also referred to the principles of law laid down by this High Court in the case of *Ramesh Kumar Wadhera v. Union of India 1993 SCC OnLine P&H 1119*, wherein also the view has been taken.

16. The observations made by the Hon'ble Supreme Court of India in the case of *Rivadeneyta Ricardo Agustin v. Government of the National Capital Territory of Delhi and Others 1994(Supp-1) SCC 597*, have also been referred, wherein it has been observed that if there is no material before the detaining authority upon which it could arrive at a satisfaction that the petitioner was likely to be released or that such release was eminent, order of detention was not sustainable.

17. The learned counsel for the petitioner, while relying upon the principles, has pointed out that in the above-mentioned case also the bail application of the petitioners was rejected by the criminal court, and therefore, without requisite satisfaction with regard to release on bail, the detention orders could not have been passed. According to learned counsel for the petitioners, the instant case is squarely covered with the factual matrix of the above-mentioned case.

18. With regard to same issue, the learned counsel for the petitioners has also referred to the principles of law laid down by the Hon'ble Supreme Court of India in the case case of *Shri Suganchand Kanhaiyayalal Chelawat through his daughter Kumari Archana Chelawat v. Union of India and Others Judgments today 1990(1) SC 184*, wherein the Hon'ble Supreme Court of India has observed that if the grounds of detention are not showing the apprehension of detaining authority that further remand would not be granted and the appellant would be released on

bail, the order of detention cannot sustain.

19. The learned counsel for the petitioner has also argued that in the present case, another lapse has been committed by the detaining authority which has failed to provide an opportunity to the petitioners to file a representation and consider the same. In this regard, the learned counsel for the petitioners has referred to the principles of law laid down by the Hon'ble Supreme Court of India in the case of *Ichhu Devi Choraria v. Union of India and Others (1980) 4 Supreme Court Cases 531* wherein the Hon'ble Supreme Court of India has observed that the detaining authority is duty bound to consider the detenu's representation without unreasonable delay. According to Hon'ble Supreme Court of India, the failure of the detaining authority in its duty in itself is sufficient to vitiate the detention order.

20. The observations made by the Hon'ble Supreme Court of India in the case of *Binod Singh v. District Magistrate, Dhanbad, Bihar and Others (1986) Supreme Court Cases 416* have also been referred by learned counsel for the petitioners, wherein the Hon'ble Supreme Court of India held the detention to be illegal on the ground that the detention order was an outcome of non-application of mind to the relevant factors as it was not considered that the detenu was already in jail at the time of service of order.

21. In addition to above the learned counsel for the petitioners has also argued that it has been mentioned in grounds of detention itself, that the main accused namely Mr. Tendu Tashi, on whose instance the alleged smuggling had taken place, had stated in his statement that since, the year 2023 he had no contact/connection with the petitioners/detenus, and that

the Respondents-DRI, Ludhiana, has failed to locate the person with whom Mr. Tendu Tashi had been dealing as per his statement before DRI, Ludhiana.

22. According to learned counsel for the petitioners, the impugned order has been passed just to cover up illegalities committed by the respondents, who illegally detained the petitioners/detenus, and that just to conceal all the illegalities committed by them, and snub the detenus, they have invoked stringent provisions of COFEPOSA. The learned counsel for the petitioner has further argued that this is also relevant to note that there are more than 100 cases which were detected during recent years and quantity of gold in those cases was much more than the quantity allegedly involved in the present case but in none of those cases the accused were detained under COFEPOSA. As per learned counsel for the petitioners the above said difference in the working of respondents speaks in volume against the bonafide of respondents.

23. It has been further argued by learned counsel for the petitioners that COFEPOSA is not a punitive law and that being a preventive law, it can be invoked in exceptional circumstances only. As per learned counsel for the petitioners, the detention order as well as grounds of detention nowhere show that there were exceptional circumstances which compelled the respondents to invoke draconian provisions of COFEPOSA against the petitioners/detenus. According to learned counsel for the petitioners, the respondents have acted in a very exceptional, casual & arbitrary manner and moreover just to cover up their illegalities for invoking the stringent provisions.

24. The learned counsel for the petitioner has also argued that since the petitioners have been detained in Central Jail, Ludhiana and they have been served with detention order at Ludhiana itself, this Court has got territorial jurisdiction to entertain the present petition.

25. The above mentioned arguments of learned counsel for the petitioners have been controverted by the learned counsel for the respondents. The learned counsel for the respondents at the threshold have raised the question of territorial jurisdiction of this Court to entertain and decide the above-mentioned petition . It has been argued by learned counsel for the respondents that the factual matrix of the present case makes it abundantly clear that the involvement of petitioners in the activities of smuggling of gold came into light when two persons were intercepted by the Indo-Tibetan Border Police at Indo-Tibet border, who were trying to smuggle 108 kgs. of gold from China to India. As per learned counsel for the respondents, the above-mentioned recovery led to filing of case under the 1962 Act and when the above said two persons were interrogated they spilled the beans and revealed the entire syndicate involved in the activities of illegal import & trading of gold. According to learned counsel for the respondents, in view of above-mentioned disclosure, the petitioners who were residing at Delhi and involved in the activities of purchase of illegally smuggled gold, and sale of the same, were detained. It has been clarified by learned counsel for the respondents that the investigation was entrusted to the branch of Directorate of Revenue Intelligence, Ludhiana only for the purpose of specialized handling of the case and not because of any smuggling activity within the territorial jurisdiction in the territory of the

States of Punjab or Haryana. According to learned counsel for the respondents, in such circumstances, this High Court has no jurisdiction to entertain the above-mentioned petition, as any part of the cause of action did not arise within the territorial jurisdiction of this Court.

26. In support of his arguments, the learned counsel for the respondents have placed reliance upon the principles of law laid down in the following cases:-

- i) ***Rajender Nanda v. Union of India 1998(1) RCR (Criminal) 155;***
- ii) ***Gurdeep Kaur v. The Union of India and Othdrs 1990(2) RCR (Criminal) 20;***
- iii) ***Arun Mahajan v. State of Haryana and Others [Criminal Writ Petition No. 340 of 2012, decided on 2308.2017];***
- iv) ***Brahm Pal Panchal v. Union of India and Others 2014(12) RCR(Criminal) 894;***
- v) ***Rajendra Bissani v. Union of India 1995(77) Excise Law Times 68; And***
- vi) ***Kimti Lal Sethi v. Union of India 1994(1) RCR (Criminal) 520.***

27. In addition to above, the learned counsel for the respondents have also argued that the serving of detention order upon a detenu at a time when he was in custody in itself is not illegal, and that on this ground, the detention order cannot be set aside. In support of his above mentioned argument, the learned counsel for the respondents has placed reliance upon

the principles of law laid down by the Hon'ble Supreme Court of India in the case of *Rameshwar Shaw v. District Magistrate AIR 1964 SC 334*, wherein the Hon'ble Supreme Court of India has observed that "as an abstract proposition of law, there may not be any doubt that Section 3(1)(a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail."

28. The learned counsel for the respondents have also referred to the principles of law laid down by the Hon'ble Supreme Court of India in the case of *Vijay Kumar v. State of Jammu and Kashmir (1982) 2 SCC 43*, wherein it has been observed that "if the detenu is already in jail charged with a serious offence, he is thereby prevented from acting in a manner prejudicial to the security of the State. May be, in a given case there yet may be the need to order preventive detention of a person already in jail. But in such a situation the detaining authority must disclose awareness of the fact that the person against whom an order of preventive detention is being made is to the knowledge of the authority already in jail and yet for compelling reasons a preventive detention order needs to be made."

29. The learned counsel for the respondents have further argued that in the present case, the entire procedure as prescribed under the law and various judicial pronouncements has been scrupulously followed by the respondent No.3 before passing the detention order on merit, and that the above-mentioned detention order has been duly affirmed by the **Board** and therefore, on merit also, there is no scope for indulgence or interference in the detention order.

30. The record has been perused carefully.

31. As far as the first point of determination is concerned, the relevant law has already been laid down in various judicial pronouncements.

32. In the case of *Arun Mahajan (supra)*, this High Court observed that if any part of cause of action does not arise within the territorial jurisdiction of this High Court, the *habeas corpus* petition is not maintainable.

33. Similar observations have been made by this Court in the case of *Gurdeep Kaur v. The Union of India and Othdrs 1990(2) RCR (Criminal) 20*, wherein the recovery of gold biscuits had been taken place at Ahmedabad and the writ petition was filed in this High Court only on the ground that the detenue was residing in Mohali and some enquiries were made, from her, at her residence at Mohali.

34. The High Court of Madhya Pradesh in the case of *Rajendra Bissani v. Union of India 1995(77) Excise Law Times 68* has observed that a High Court can issue writs where the cause of action arise wholly or in part within its territorial jurisdiction. As per above mentioned verdict mere enforcement or execution of a detention order within its territory does not by itself constitute a cause of action for quashing the order.

35. Similar view has been taken by this Court in the case of *Rajender Nanda (supra)*, wherein the seizure of goods has taken place at Delhi and Mumbai and order of detention was passed at Delhi, but the detention order was challenged in this Court on the ground that the detenu was the resident of Haryana. In the above-mentioned case, this High Court held that this Court has no jurisdiction to entertain the writ jurisdiction.

36. Similar view has been taken by the High Court of Allahabad in

the case of ***Brahm Pal Panchal***(*supra*) wherein the notice of detention was issued by the authority of Maharashtra government, but the writ petition was filed before the Allahabad High Court by raising a contention that the detenu was residing at Ghaziabad. In the above-mentioned case, the Allahabad High Court observed that for want of any part of the cause of action within the territorial jurisdiction of the Allahabad High Court, it had no jurisdiction. According to Allahabad High Court, in the above-mentioned case, the territorial jurisdiction was with the Bombay High Court only.

37. In the case of ***Kimti Lal Sethi*** (*supra*), the petitioner was arrested at Delhi and foreign currency notes were recovered from his possession. Since the petitioner was resident of Punjab, he filed a writ petition before this High Court. In the above mentioned case, this High Court observed that mere residence of the petitioner in Punjab did not entitle him to invoke jurisdiction of this Court.

38. Even the Hon'ble Supreme Court of India in the case of ***Lt. Col. Khajoor Singh v. Union of India 1961 AIR (SC) 532*** has ruled that the High Court can hear a petition only when infringement of right occurs within its territory. As per Hon'ble Supreme Court of India the High Court has jurisdiction only when the violation of individual's right takes place in its jurisdiction.

39. Similar view has been taken by the Hon'ble Supreme Court of India in the case of ***State of Rajasthan and Others v. M/s Swaika Properties and Another 1985(3) SCC 217***, wherein it has been propounded that the location where the cause of action arises, not just where notification is received, determines which High Court can hear a writ petition challenging a

government action.

39. In the light of above-mentioned legal proposition, if the factual matrix of the present case is analyzed it transpires that in the detention order it has been clearly recorded that on 09.07.2024, 108 Kgs of foreign origin gold was recovered near Sirigaple in Eastern Ladakh by patrolling party of 21" Battalion ITBP, while being smuggled from China on mules by two porters namely Tenzin Dhargyal and Tsering Chamba who were detained by the ITBP. The smuggled gold was later on handed over by ITBP to officers of Customs (Preventive) Commissionerate, Amritsar vide Inventory Sheet dated 10.07.2024. Thereafter, local goldsmith in Leh, vide his certificate dated 10.07.2024 submitted that, the 108 Nos. of gold bars weighed 108 Kilograms, each having 24 carat purity, and valuation of said gold was ₹78,84,00,000/- approximately as per market rate (i.e ₹7300/- per gram). On a reasonable belief that the aforesaid 108 Kgs of gold bars were smuggled into India from China, and hence would be liable for confiscation under provisions of Customs Act, 1962, the officers of Amritsar Customs seized the above foreign origin smuggled gold, vide Seizure Memo dated 10.07.2024 and Panchnama was drawn on 10.07.2024. It was found that the petitioners used to receive smuggled gold (through Indo-China Border) from Tendu Tashi and used to hand over the Forex and his remuneration in Cash (INR) to him in Delhi, and that the petitioners were active member of the gold smuggling syndicate of Tendu Tashi @ Ten, and that after receiving the smuggled gold, the petitioners used to sell the same to Piyush Jain S/o Praveen Jain located at Kuccha Mahajani, Delhi-110006 and in Karol Bagh at another jewellery shop by the name P.C. located in Gali no.8, Beganpura,

Karol Bagh, Delhi, on the directions of Shri Tendu Tashi, and that Piyush Jain used to hand over the money in Cash (in INR) to petitioner No.1-Anuj Dhawan in exchange of smuggled gold at Majnu Ka Tila and that he was in the business of Jewellery and Hawala, and that petitioner No.1-Anuj Dhawan had sold the smuggled gold to Shri Piyush Jain and at Karol Bagh (jewellery shop by the name P.C.) on 2-3 occasions; that Shri Piyush Jain used to hand over the money in Cash (in INR) to him and Sanjeev Aneja in exchange of smuggled gold at Majnu Ka Tila, and that the petitioners had received smuggled gold on 5-6 occasions either at Majnu ka Tila or at Lajpat Nagar, Delhi from Shri Tendu Tashi since 2023.

40. If the above-mentioned facts recorded in the detention order are taken into consideration, it transpires that there are very specific and categorical allegations against the petitioners that whatever transaction of smuggled gold had taken place with the petitioners, it was at Delhi and not even on a single occasion any such transaction had ever taken place within the territorial jurisdiction of this Court.

41. Now the situation in the present case arises that involvement of the petitioners came into light when two persons trying to illegally smuggle the gold within the territory of India were intercepted at Indo-Tibet border near Leh and the investigation in the above-mentioned case led to discovery of the fact that the petitioners were actively involved in the purchase and subsequent sale of illegally smuggled gold at Delhi. Thus, any part of the cause of action pertaining to instant case did not arise within the territorial jurisdiction of this Court.

42. In the present case, the petitioners have tried to build up their

case with regard to territorial jurisdiction of this Court on the ground that they were in Central Jail, Ludhiana, where the detention order was served upon them. However, in view of the fact that the only relevant factor with regard to territorial jurisdiction of this Court is the cause of action pertaining to instant case and any such cause of action has not arisen within the territorial jurisdiction of this Court, it is held that this Court lacks jurisdiction to entertain and decide the present writ petition.

43. In view of above-mentioned observations, once it has been held that any part of cause of action pertaining to instant case did not arise within the territorial jurisdiction of this Court, the point of determination No. (i) is hereby answered accordingly, i.e. against the petitioners.

44. Since the point of determination No.(i) has been answered against the petitioners, any finding on point No.(ii) shall be a futile exercise. Otherwise also for want of jurisdiction any finding cannot be referred on the point of determination No.(ii).

45. In view of the above-mentioned findings on the point of determination No.(i), wherein it has been held that this Court lacks territorial jurisdiction to entertain the present petition, this writ petition is hereby dismissed.

(Surya Partap Singh)
Judge

October 29, 2025

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No