Niyaz Ahmed Ansari Vs State of Maharashtra and Others

Court: Bombay High Court

Date of Decision: March 19, 2015

Acts Referred: Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Section 3(1)
Constitution of India, 1950 - Article 22(5), 226
Customs Act, 1962 - Section 108, 124

Citation: (2015) ALLMR(Cri) 4701 : (2015) 2 BomCR(Cri) 567

Hon'ble Judges: A.S. Gadkari, J.; B.R. Gavai, J.

Bench: Division Bench

Advocate: Aisha Z. Ansari, for the Appellant; J.P. Yagnik, APP, Advocates for the Respondent

Final Decision: Allowed

Judgement

A.S. Gadkari, J.
The present Petition under Article 226 of the Constitution of India for a Writ of Habeas Corpus of one Mavin Keezhil

Mohamed Aslam, the detenu, has been preferred by the Petitioner, the friend of the said detenu, for quashing and setting aside the order of

detention bearing No. PSA-1214/CR-52/SPL-3(A) dated 16th December, 2014 and for a direction that the detenu may be set at liberty. By the

impugned order dated 16th December, 2014, the detenu was ordered to be preventively detained by the Respondent No. 2 in exercise of powers

under Section 3(1) of the Conservation Of Foreign Exchange and Prevention Of Smuggling Activities Act, 1974 (for brevity "the COFEPOSA

Act"). By the impugned order it has been further directed that the detenu shall be detained in the Nashik Road Central Prison.

2. Heard Mrs. Ansari, learned counsel appearing for the Petitioner and Mr. Yagnik, learned APP appearing for the Respondents. We have also

minutely perused the entire record produced by the learned APP including the various notings made by the concerned authorities in the file of the

Respondent Nos. 1 and 2.

3. At the outset, we may note here that though the Petitioner has taken various grounds in the Writ Petition thereby challenging the impugned order

of detention dated 16th December, 2014 passed by the Respondent No. 2, the learned counsel appearing for the Petitioner restricted her

arguments only to the point of delay in issuing the impugned detention order by the detaining authority i.e. the Respondent No. 2. She submitted

that the incident in question was dated 11th May, 2014, the detention order was issued on 16th December, 2014 and the detention order was

executed on the detenu on 8th January, 2015 at Kannur District, State of Kerala. She further submitted that the said point of delay in issuing the

detention order goes to the root of the matter and which according to her is fatal, vitiates the impugned order dated 16th December 2014, in

pursuance of which the detenu has been detained by the Respondents. The learned counsel appearing for the Petitioner submitted that the said

point is very vital and the most important point in her favour for the decision of the present Writ Petition.

4. Before we proceed to deal with the rival contentions of the parties herein, it is necessary to note the brief facts which leads to the issuance of the

present impugned order dated 16th December, 2014. The facts which emerge from the grounds of detention thereby prompting the Respondents

in issuing the impugned detention order dated 16th December, 2014 can briefly be summarised as under. It is stated that based on intelligence, the

detenu was intercepted by the Air Intelligence Officers of Customs, C.S.I. Airport, Mumbai on 11th May, 2014 at 08.15 hours. The detenu was

holding an Indian Passport and on his arrival from Dubai he had cleared himself through the green channel of Chhatrapati Shivaji International

Airport, Terminal-2, Sahar, Mumbai. The detenu was coming out by talking over phone and carrying only a shoulder bag. The Customs Officers

took the detenu''s passport and verified the arrivals and departures stamp/endorsement on the passport and found that the detenu had made 17

visits to Dubai during the period from December 2013 till his interception. It is noticed that the detenu had short stay in abroad during each visit.

The hand bag which the detenu was possessing was screened and a dark image appeared on the monitor indicating some heavy metal concealed in

the said shoulder bag. After following due procedure, the said hand bag was opened in the presence of the detenu, independent panch witnesses

and AIU officers. In the said hand bag 7 packets wrapped with cream coloured cellophane tape were found. On removing the wrapped tape, 6

packets were found to contain 12 gold bars each weighing 1 kg. i.e. 2 gold bars in each packet, totally weighing 12000 grams and one packet

contained 2 gold bars of 10 tolas each totally weighing 233.2 grams and collectively weighing 12233.2 grams valued at Rs. 3,14,13,268/-. One

cellular phone valued at Rs. 30,000/- was also found on the person of the detenu. The statement of the detenu as contemplated under Section 108

of the Customs Act, 1962 was recorded on 11th May, 2014. The detenu was arrested on 11th May, 2014. That the detenu was released on bail

by the Court of competent jurisdiction on 1st July, 2014. The learned counsel appearing for the Petitioner also pointed out that a show cause

notice under Section 124 of the Customs Act, 1962 before confiscation of goods was issued on 5th November, 2014 and after the detenu

answered to the said show cause notice, the impugned detention order dated 16th December, 2014 came to be issued which was executed on the

detenu on 8th January, 2015 as stated herein above.

5. After service of notice Dr. Kiran Kumar Karlapu, Assistant Commissioner of Customs, COFEPOSA Cell (AIU), CSI Airport, Mumbai on

behalf of the Respondent No. 3, the Sponsoring Authority has filed a detailed affidavit dated 3rd March, 2015 opposing the Petition. Mr. Sanjay

Dagadu Khedekar, Home Department, Government of Maharashtra, Mantralaya, Mumbai has filed a detailed affidavit dated 16th March, 2015

for and on behalf of the Respondent Nos. 1 and 2 i.e. the State of Maharashtra and the detaining authority.

6. As stated earlier, the learned counsel appearing for the Petitioner has restricted her arguments only to one point i.e. the delay in issuing the

detention order from the date of incident. She submitted that there is an inordinate delay of about seven months in issuing the detention order. She

further submitted that the Respondent Nos. 2 and 3 have failed to satisfactorily explain the delay in issuing the detention order even in the affidavits

filed by them. She, therefore, submitted that the impugned detention order dated 16th December, 2014 stands vitiated. She has taken a specific

ground in the memo of Petition as ground No. 5(i) to that effect. In the said ground, it has been contended that though the date of incident is 11th

May, 2014 and the inculpatory statement recorded by the Customs Authorities is also dated 11th May, 2014, the impugned detention order was

belatedly and leisurely issued on 16th December, 2014 i.e. after a lapse of seven months and after about five months from the date of release of

the Petitioner on bail. It has been contended in the said ground that the impugned order of detention is stale and remote in point of time and the

same is malafide, null and void. It has been further contended that because of the inordinate delay on the part of the Respondent authorities, the live

link having been snapped and the credible chain has been broken and on that ground also the detention order stands vitiated. In support of her

contention, she relied upon a decision of the Supreme Court in the case of T.A. Abdul Rahaman Vs. State of Kerala and others, and in particular,

paragraph Nos. 11 and 12 thereof, which read as under :

11. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to

pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of

detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be

applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or

mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and

long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has

satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon

to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case.

12. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the

detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a

legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to

preventing him from acting in a prejudicial manner.

7. The second decision relied upon by the learned counsel appearing for the Petitioner is a decision of the Supreme Court in the case of Adishwar

Jain Vs. Union of India (UOI) and Another, and in particular, relied upon paragraph Nos. 8, 11, 12 and 15 thereof. In paragraph Nos. 8, 11, 12

and 15 the Supreme Court held thus :

8. Indisputably, delay to some extent stands explained. But, we fail to understand as to why despite the fact that the proposal for detention was

made on 2.12.2004, the order of detention was passed after four months. We must also notice that in the meantime on 20.12.2004, the authorities

of the DRI had clearly stated that transactions after 11.10.2003 were not under the scrutiny stating:

...In our letter mentioned above, your office was requested not to issue the DEPB scripts to M/s. Girnar Impex Limited and M/s. Siri Amar

Exports, only in respect of the pending application, if any, filed by these parties up to the date of action i.e. 11.10.2003 as the past exports were

under scrutiny being doubtful as per the intelligence received in this office. This office never intended to stop the export incentives occurring to the

parties, after the date of action i.e. 11.10.2003. In the civil (sic), your office letter No. B.L.-2/Misc. Am-2003/Ldh dated 17.05.2004 is being

referred to, which is not received in this office. You are, therefore, requested to supply photocopy of the said letter to the bearer of this letter as

this letter is required for filing reply to the Hon"ble Court.

11. It was, therefore, difficult to appreciate why order of detention could not be passed on the basis of the materials gathered by them.

12. It is no doubt true that if the delay is sufficiently explained, the same would not be a ground for quashing an order of detention under

COFEPOSA, but as in this case a major part of delay remains unexplained.

15. Delay, as is well known, at both stages has to be explained. The court is required to consider the question having regard to the overall picture.

We may notice that in Sk. Serajul Vs. State of West Bengal, this Court opined : (SCC p. 80, para)

There was thus delay at both stages and this delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the

subjective satisfaction of the District Magistrate, Burdwan recited in the order of detention. It would be reasonable to assume that if the District

Magistrate of Burdwan was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to

detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude both in

making the order of detention as also in securing the arrest of the petitioner, and the petitioner would not have been allowed to remain at large for

such a long period of time to carry on his nefarious activities.

The learned counsel appearing for the Petitioner, therefore, urged before us that taking into consideration the delay occurred in the present case,

while issuing the detention order, the same is fatal and vitiates the issuance of detention order. She, therefore, submitted that the Petition may be

allowed and the detention order be quashed and set aside.

8. The learned APP on the other hand supported the order of detention passed by the Respondent No. 2 and submitted before us that the

sponsoring authority as well as the detaining authority have properly explained the alleged delay by way of filing their respective affidavits. The

learned APP after relying upon the statements made in reply submitted that the delay in issuing the impugned detention order is not inordinate and

assuming for the sake of argument that there was some delay in doing so, the same has been properly and satisfactorily explained in the said

replies. It is to be noted here that in response to the Petition Dr. Kiran Kumar Karlapu, Assistant Commissioner of Customs, COFEPOSA Cell

(AIU), CSI Airport, Mumbai has filed an affidavit in reply dated 3rd March, 2015 thereby explaining the alleged delay at the behest of the

Respondent No. 3. The said authority in paragraph 4 of its affidavit has stated as under :

4. With reference to paragraphs 5(i) of the Petition, I say that the Customs Commissionerate of CSI Airport, Mumbai is only the Sponsoring

Authority and it is the Home Ministry, Govt. of Maharashtra which is competent and authorized to issue any detention order. There is absolutely no

delay on our part. The case was booked on 11.05.2014 and the statement of the accused was recorded on 11.05.2014. The detenue was

arrested on the same date i.e. 11.05.2014 and produced before the CMM, Court, Mumbai on 12.05.2014. He retracted his statement before the

court on the same date while making application for bail. The Hon''ble CMM, Court remanded him to Judicial Custody upto 23.05.2014, further

extended upto 03.06.2014, again extended upto 17.06.2014, further extended upto 27.06.2014 and again extended till 01.07.2014. Meanwhile,

Department filed rebuttal to his retraction on 21.05.2014. Bail was granted to the detenue by the Hon''ble CMM Court on 01.07.2014.

After completion of the preliminary investigation, file was forwarded to COFEPOSA cell for making the proposal on 23.05.2014. The proposal

was prepared on 28.05.2014 and placed before the Chief Commissioner of Customs on 04.06.2014, approval of the same was received on

12.06.2014 from the Chief Commissioner''s office. Further, the proposal along with all relevant relied upon documents was forwarded to the

chairman of the COFEPOSA Screening Committee for consideration on 17.06.2014. The date for meeting COFEPOSA Screening Committee

was fixed on 17.06.2014. The minutes of the COFEPOSA Screening Committee meeting was issued on 18.06.2014 wherein the Screening

Committee approved our proposal and was received in Cofeposa Section on 20.06.2014. After getting approval of the Screening Committee, we

have submitted 4 sets of the proposal, brief facts and indexed relied upon documents in the office of the Detaining Authority i.e. Principal Secretary

(appeals and security), Home Department, Govt. of Maharashtra on 26.06.2014.

It is thus, to be noted here that the Respondent No. 3 has explained the delay on their behalf upto 26th June 2014.

9. Mr. Sanjay Dagadu Khedekar, Deputy Secretary, Home Department, Government of Maharashtra, Mantralaya, Mumbai, in his affidavit dated

16th March, 2015, in response to the ground 5(i) raised in the Petitioner has stated in paragraph 5 that after getting approval of the Screening

Committee, the Sponsoring Authority on 30th June, 2014 submitted four sets of proposal, brief facts and indexed replied upon documents in the

office of the detaining authority and the detention order was issued on 16th December, 2014 by the detaining authority after carefully perusing all

the documents including the further generated documents and after arriving at the conclusion that the detention order was necessary in view of the

possibility of the detenu to involve himself in the smuggling activities and in view of his frequent visits abroad and strong possibility of being habitual

offender. It has been stated in said paragraph No. 5 that the detention order was issued after a period of only six months which period was

necessary to verify the facts, clear all the doubts and to arrive at subjective satisfaction. The said authority has denied that there is an inordinate

delay of seven months in issuing the impugned detention order.

10. The Respondent Nos. 1 and 2 while explaining the delay in issuing the detention order and in response to the grounds taken by the Petitioner in

reference thereto in paragraph Nos. 5(ii) and (iii) of the Petition, in paragraph No. 6 of the said affidavit dated 16th March, 2015 has stated as

under :

I say that the seizure was affected on 11.05.2014. The proposal for detention of the detenu was placed before the Screening Committee on

17.06.2014. The proposal along with the relied upon documents running into page no. 1 to 97 forwarded vide letter dated 26.06.2014 were

received by the Detaining Authority on 30.06.2014. Scrutiny Note was submitted by concerned Assistant on 24.07.2014. The Detaining Authority

directed to get additional information on certain points on 28.07.2014. The additional information were called by letter dated 30.07.2014. The

Sponsoring Authority forwarded information by letter dated 18.08.2014 which were submitted by the concerned Assistant on 02.09.2014. The

Detaining Authority directed to discuss and after discussion, directed to get additional information on some points. The letter was sent to

Sponsoring Authority on 09.09.2014. Thereafter, reminder letters were sent to the Sponsoring Authority on 20.09.2014 and 17.10.2014. The

Sponsoring Authority vide letter dated 07.10.2014 informed that they had already communicated the information to the office of the Detaining

Authority vide their letters dated 30.07.2014 and 18.08.2014. But since this information was not the information called by the office of the

Detaining Authority, hence the Sponsoring Authority was once again informed by letter dated 20.10.2014 to send the information asked vide letter

dated 09.09.2014. Accordingly, Sponsoring Authority vide letter dated 05.11.2014 forwarded the information which was submitted for

consideration and appropriate orders placed before the Detaining Authority on 20.11.2014 by the concerned Assistant. The Section Officer and

the then Deputy Secretary endorsed the same on 20.11.2014. The Detaining Authority on 20.11.2014 after being subjectively satisfied with the

information received from the Sponsoring Authority noted that there are enough grounds to order the preventive detention in this case.

Accordingly, the Detaining Authority prepared and dictated the Detention Order, Grounds of Detention and the Annexures till 12.12.2014 and the

same were issued on 16.12.2014. In fact, the time which has been spent by the Detaining Authority shows the sincere efforts on its part to satisfy

itself as to the need of detaining the detenu and after his subjective satisfaction the Detention Order was issued. Hence the same cannot be casted

upon the Detaining Authority as a fault on its part.

11. The learned APP appearing for the Respondents in support of his contentions relied upon two decisions of the Supreme Court. The first

decision is in the case of Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others, and in particular, paragraph Nos. 10 and 12 thereof,

which read as under :

10. Viewed from this perspective, we wish to emphasise and make it clear for the guidance of the different High Courts that a distinction must be

drawn between the delay in making of an order of detention under a law relating to preventive detention like the Conservation of Foreign Exchange

and Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safeguards of Art. 22(5) of the Constitution. It

has been laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously, in

cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange and Prevention of Smuggling

Activities Act, 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who,

owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security of the nation, the Courts

should not merely on account of delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily

give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective

satisfaction was not genuinely reached. Taking of such a view would not be warranted unless the Court finds that the grounds are ''stale'' or illusory

or that there is no real nexus between the grounds and the impugned order of detention. The decisions to the contrary by the Delhi High Court in

Anil Kumar Bhasin v. Union of India and Ors., Cri. W. No. 410/86 dated 2.2.1987, Bhupinder Singh Vs. Union of India and Others, , Anwar

Esmail Aibani v. Union of India and Ors., Cri. W. No. 375/86 dated 11.12.1986, Surinder Pal Singh v. M.L. Wadhawan and Ors., Cri. W. No.

444/86 dated 9.3.1987 and Ramesh Lal v. Delhi Administration, Cri. W. No. 43/84 dated 16.4.1984 and other cases taking the same view do

not lay down good law and are accordingly overruled.

12. Even though there was no explanation for the delay between February 2 and May 28, 1987 it could not give rise to a legitimate inference that

the subjective satisfaction arrived at by the District Magistrate was not genuine or that the grounds were stale or illusory or that there was no

rational connection between the grounds and the impugned order of detention. There is a plethora of decisions of this Court as to the effect of

unexplained delay in taking actions. These are admirably dealt with in Durga Das Basu"s Shorter Constitution of India, 8th edn. at p. 154. We will

only notice to a few salient decisions. In Olia Mallick alias Oliruddin Mallick Vs. The State of West Bengal, it was held that mere delay in making

the order was not sufficient to hold that the District Magistrate must not have been satisfied about the necessity of the detention order. Since the

activities of the detenu marked him out as a member of a gang indulging systematically in the cutting of aluminium electric wire, the District

Magistrate could have been well satisfied, even after the lapse of five months that it was necessary to pass the detention order to prevent him from

acting in a manner prejudicial to the maintenance of the supply of electricity. In Golam Hussain alias Gama Vs. The Commissioner of Police

Calcutta and Others, , it was held that the credible chain between the grounds of criminal activity alleged by the detaining authority and the purpose

of detention, is snapped if there is too long and unexplained an interval between the offending acts and the order of detention. But no "mechanical

test by counting the months of the interval" was sound. It all depends on the nature of the acts relied on, grave and determined or less serious and

corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being

available only in the course of an investigation. The Court has to investigate whether the casual connection has been broken in the circumstances of

each case. In Odut Ali Miah Vs. The State of West Bengal, where the decision of the detaining authority was reached after about five months,

Krishna Iyer, J. repelled the contention based on the ground of delay as a mere "weed of straw" and it was held that the "time-lag" between the

dates of the alleged incidents and the making of the order of detention was not so large that it could be said that no reasonable person could

possibly have arrived at the satisfaction which the District Magistrate did on the basis of the alleged incidents. It follows that the test of proximity is

not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention.

In Vijay Narain Singh Vs. State of Bihar and Others, , one of us, Sen, J. observed:

On merits the impugned order cannot be said to be vitiated because of some of the grounds of detention being non-existent or irrelevant or too

remote in point of time to furnish a rational nexus for the subjective satisfaction of the detaining authority. It is usually from prior events showing

tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the

maintenance of public order.

See also: Gora Vs. State of West Bengal, ; Raj Kumar Singh Vs. State of Bihar and Others, and Smt. Hemlata Kantilal Shah Vs. State of

Maharashtra and another,

The second decision relied upon by the learned APP is in the case of Licil Antony v. State of Kerala and another reported in 2014 STPL (Web)

266 SC and relied upon paragraph 7 of the said decision which reads as under :

We have given our thoughtful consideration to the rival submissions and we have no doubt in our mind that there has to be live link between the

prejudicial activity and the order of detention. COFEPOSA intends to deal with persons engaged in smuggling activities who pose a serious threat

to the economy and thereby security of the nation. Such persons by virtue of their large resources and influence cause delay in making of an order

of detention. While dealing with the question of delay in making an order of detention, the court is required to be circumspect and has to take a

pragmatic view. No hard and fast formula is possible to be laid or has been laid in this regard. However, one thing is clear that in case of delay,

that has to be satisfactorily explained. After all, the purpose of preventive detention is to take immediate steps for preventing the detenu from

indulging in prejudicial activity. If there is undue and long delay between the prejudicial activity and making of the order of detention and the delay

has not been explained, the order of detention becomes vulnerable. Delay in issuing the order of detention, if not satisfactorily explained, itself is a

ground to quash the order of detention. No rule with precision has been formulated in this regard. The test of proximity is not a rigid or a

mechanical test. In case of undue and long delay the court has to investigate whether the link has been broken in the circumstances of each case.

12. There cannot be any quarrel about the ratio laid down by the Supreme Court in the present case. However, it is to be noted here that in

paragraph 9 of the said decision in the case of Licil Antony (supra), the Supreme Court has noted as under :

As stated by the respondents in the counter affidavit, the record of the sponsoring authority, the screening committee and other materials consisted

of over 1000 pages. As the final call was to be taken by the detaining authority, it was expected to scrutinise, evaluate and analyse all the materials

in detail. After the said process, the detaining authority decided on 15th of April, 2013 to detain the detenu and two others. The time taken for

coming to the decision has sufficiently been explained. After the decision to detain the detenu and two others was taken, draft grounds were

prepared and approved on 19th of April, 2013. As one of the detenue was a Tamilian, the grounds of detention were translated in Malyalam and

Tamil which took some time and ultimately sufficient number of copies and the documents relied on were prepared by 3rd of May, 2013.

Thereafter, the order of detention was passed on 6th of May, 2013.

13. Thus, in the case of Licil Antony (supra) after taking into consideration the said aspect, the grounds of detention were translated in Malyalam

and Tamil language which took considerable time and with other attending circumstances the Supreme Court came to the conclusion that it cannot

be said that there is undue delay in passing the order of detention in the said matter and the live nexus between the prejudicial activity has snapped

in view of the facts of the said case.

14. The learned counsel appearing for the Petitioner in response to the arguments advanced by the learned APP and the affidavits filed by the

concerned authorities relied upon a judgment of the Division Bench of this Court in the case of Keshav Jaru Salian Vs. Union of India, and in

particular, paragraph 5 of the said judgment, which reads as under :

5. The detaining authority has filed its affidavit in reply to this petition. The reply to this averment contains in paragraphs 5, 6 and 7 of the said

affidavit. Reading of this reply is very much amusing inasmuch as except by repeating time and again, some additional documents were called for

and, therefore, there has been delay. We have carefully gone through the affidavit in reply and in particular paragraphs 5, 6 and 7 and we are

satisfied that the delay sought to be explained by the detaining authority is nothing but a whitewash and such explanation can hardly be accepted in

cases where preventive orders are sought to be issued on the footing that the detaining authority was subjectively satisfied that the detenu is likely

to indulge in prejudicial activities under the COFEPOSA Act and with a view to preventing him the detention order must be issued. In our opinion

the delay in issuing the detention order in the present case must vitiate the subjective satisfaction of the detaining authority as regards the preventive

action sought to be taken against the detenu.

The learned counsel appearing for the Petitioner submitted that in the present case also except repetition of pleadings about the clarification and

demand of documents by the Respondent Nos. 1 and 2 from the Respondent No. 3, no expeditious steps were taken for issuing the detention

order.

15. In the present case, as stated herein above the sponsoring authority has tried to explain the delay on behalf on its behalf upto 26th June 2014.

It is necessary to note here that in the affidavit of the Respondent Nos. 1 and 2 the detaining authority as stated herein above in paragraph 6 of the

said affidavit has tried to explain the delay on its part. The affiant of the said affidavit has stated that the proposal sent by the sponsoring authority

along with 97 pages dated 26th June, 2014 was received by the detaining authority on 30th June, 2014. A scrutiny note was submitted by the

concerned assistant on 24th July, 2014. Here the delay of about 24 days has not at all been explained by the said deponent. It has further been

stated that the detaining authority directed to get additional information on certain points on 28th July, 2014 and the said information was called by

letter dated 30th July, 2014. That the sponsoring authority forwarded the information by letter dated 18th August, 2014. Here also the delay

between 30th July, 2014 and 18th August, 2014 of about 18 days has not at all been explained by the Respondent Nos. 1 and 2. It has further

been mentioned that on 2nd September, 2014 the concerned assistant submitted the information. At this stage also the delay of about 15 days has

not at all been explained as to what prevented the detaining authority from processing the file between the aforesaid total period of 57 days and the

said delay has not at all been explained by the Respondent Nos. 1 and 2 least to say properly explained. It has further been mentioned in the said

affidavit that reminder letters were sent to the sponsoring authority on 9th September, 2014, 20th September, 2014 and 17th October, 2014.

Here also the delay between 9th September, 2014 to 20th September, 2014 of about 11 days and between 20th September, 2014 to 17th

October, 2014 of about 27 days has not at all been explained so as to state what happened about the movement of the proposal for issuing the

detention order between the said period of 38 days. It has further been mentioned in the said affidavit that the sponsoring authority vide its letter

dated 7th October, 2014 informed that they had already communicated the information to the office of the detaining authority vide their letters

dated 30th July, 2014 and 18th August, 2014. The detaining authority has failed to explain as to what prevented them from 7th October, 2014 to

take expeditious steps in issuing the detention order despite the communication from the sponsoring authority. The affidavit further discloses that

the sponsoring authority vide its letter dated 5th November, 2014 forwarded the information which was submitted for consideration and

appropriate orders to the detaining authority on 20th November, 2014 and after being subjectively satisfied with the information received from the

sponsoring authority, noted that there are enough grounds to order the preventive detention in the present case. The detaining authority prepared

and dictated the detention order, grounds of detention and the annexures on 12th December, 2014 and the detention order was issued on 16th

December, 2014. Here also the Respondent Nos. 1 to 2 have failed to explain the delay of about 22 days between 20th November, 2014 to 12th

December, 2014 for dictation and preparation of the detention order. Further the Respondent Nos. 1 and 2 have also failed to explain the delay of

about four days from 12th December, 2014 to 16th December, 2014 for issuing the said order. Thus, it is clear that the detaining authority has

clearly failed to explain the delay on its part properly and satisfactorily.

16. After taking into consideration the aforesaid facts that the delay in issuing the detention order has occurred at every stage, we are of the

considered view that in the present case neither the sponsoring authority nor the detaining authority were serious enough in issuing the detention

order expeditiously to prevent the detenu in future from indulging into the smuggling of goods as well from engaging in transportation and concealing

and keeping smuggled goods.

17. Apart from the facts mentioned herein above, there is another facet to the present case in hand. In the affidavit of the Respondent Nos. 1 and 2

in paragraph No. 6 it has been stated that the sponsoring authority forwarded information by its letter dated 18th August, 2014 and the same was

submitted by the concerned assistant on 2nd September, 2014. The detaining authority thereafter directed to discuss the matter and after

discussion, it was directed to get additional information on some point and accordingly a letter was sent to the sponsoring authority on 9th

September, 2014 and reminder letters were sent on 20th September, 2014 and 17th October, 2014. It has been further stated that the sponsoring

authority vide its letter dated 7th October, 2014 itself informed the detaining authority that they had already communicated the information to the

office of the detaining authority vide their letters dated 30th July, 2014 and 18th August, 2014. The perusal of the affidavit discloses that on 18th

October, 2014 a noting has been put up by the Deputy Secretary that the sponsoring authority has informed its office that they had already

communicated the information to the detaining authority vide their letters dated 30th July, 2014 and 18th August, 2014 as stated in the earlier part

of this paragraph. The record further reveals that to a questionnaire sent to the sponsoring authority by the detaining authority, a specific question

was asked as to whether, after forwarding the proposal to the detaining authority till that date, the proposed detenue was found to be involved in

smuggling/adverse activities. The record further discloses that to the said query raised by the detaining authority the sponsoring authority has

specifically and categorically submitted an answer stating therein that the proposed detenu was not involved in any smuggling/adverse activities

subsequent to the sending of the proposal. It is to be noted here that the detaining authority in its affidavit dated 16th March, 2015 in its paragraph

6 except making passing reference to the aforesaid communication addressed by the sponsoring authority, has nowhere explained as to what

prevailed upon them for sending the letters to sponsoring authority again and again. The affidavit is also silent about the necessity of

correspondence entered into by the detaining authority with the sponsoring authority despite the fact that the sponsoring authority had categorically

stated by its communication dated 30th July, 2014 and 18th August, 2014 that they have already furnished the necessary and relevant information

to the detaining authority. It is further pertinent to note here that in view of the communication by the sponsoring authority to the questionnaire

submitted by the detaining authority that the proposed detenu was not found indulged into smuggling/adverse activities after submitting the

proposal, in our opinion, the live link between the date of incident in question i.e. 11th May, 2014 and the detention order dated 16th December,

2014 which came to be executed on 8th January, 2015 is snapped, coupled with the afore stated delay at the behest of the Respondents in issuing

the detention order.

18. For the reasons, stated herein above, we are of the considered opinion that the detention order is vitiated on the point of delay and therefore,

deserves to be quashed and set aside. Hence, the following order :

(I) The Petition is allowed;

(II) The impugned order dated 16th December 2014 is quashed and set aside. The Petitioner is directed to be released forthwith, if not required in

any other case.