

(1997) 01 BOM CK 0066

Bombay High Court

Case No: Criminal Appeal No. 356 of 1997

Rafiq Abdul Karim Merchant

APPELLANT

Vs

Rajendra Singh, Secretary to
Govt. of Maharashtra

RESPONDENT

Date of Decision: Jan. 16, 1997

Acts Referred:

- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Section 3

Hon'ble Judges: Vishnu Sahai, J; A.V. Savant, J

Bench: Division Bench

Advocate: Sirish Gupte and Mrs. K.K. Pradhan, for the Appellant; Rajiv Patil, APP and R.M. Agarwal, for the Respondent

Judgement

Vishnu Sahai, J.

By means of this petition preferred under Article 226 of the Constitution of India the petitioner who is the brother of the detenu Arif Abdul Karim Merchant has impugned the detention order dated 17-1-1997 clamped against the detenu by respondent No. 1, detaining under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974), hereinafter referred to as COFEPOSA ACT.

2. The prejudicial activities of the detenu necessitating the passing of the detention order are spelt out in the grounds of detention, annexed as Annexure "B" to the petition.

The detention order as well as the grounds of detention were contemporaneously served on the detenu on 13-10-1995 while he was undergoing preventive detention in another case.

3. In short the grounds of detention read thus :-

(a) On 6-6-96 officers of the Customs Preventive Commissionerate, Mumbai, on the basis of specific information intercepted at about 1.15 a.m. one Zainab Momin Khan Aliyar Khan (hereinafter referred to "Zainab Khan"), at the entrance gate of security hold No. 8, Module II, NIPT, Sahar International Airport, Mumbai, while she was on her way to board Air India Flight No. AI-434 scheduled to leave for Singapore. She was intercepted while she was proceeding for security check up. At the time of interception she was found in possession of one piece of hand baggage viz. pink coloured jute bag. Her air ticket showed that she had checked in two pieces of baggage bearing identification tag Nos. AI 114257 and 114268. The same were retrieved with the help of Air India Traffic Staff. Zainab Khan was questioned by the Customs Officers, in the presence of witnesses, as to whether she was carrying any foreign currency, either in her baggage or on her person. She replied in the negative. The authorities were not satisfied with her reply and consequently examined her plastic bag and found that apart from clothes some currency notes incriminating her under COFEPOSA were contained in it. Her plastic bag revealed 28 bundles of US dollars.

Thereafter the authorities examined the black suit case which she was carrying and found in it, apart from some tobacco, 42 bundles of US dollars in the six plastic handles.

In the grounds of detention it has been averred that the value of the dollars seized was about Rs. 37,75,680/- in terms of Indian currency. Since Zainab Khan was neither in possession of nor produced any permit from Reserve Bank of India for taking out the seized currency and as the same was not declared the customs authorities seized it under the bona fide belief that it was being attempted to be smuggled out of India and hence liable for confiscation under the Customs Act, 1962 read its COFEPOSA Act, 1973.

(b) The statement of Zainab Khan was forthwith recorded u/s 108 of the customs Act and in the same she admitted the knowledge, possession, carriage and recovery of foreign currency seized. In her said statement she also admitted that she was residing at Chawl No. 8, Ground Floor, Aga Hall, Nesbit Road Mazagaon, Mumbai 10 and that the detenu had employed her and had given her the said currency for carrying it in a concealed manner to his contact person. Mr. Arif in Singapore, and doing the said work she was to be paid Rs. 2000/-, apart from the cost of the air ticket and on the expenses. Zainab Khan also admitted that the detenu was living at the top floor, Khoja Jamat Khana, Khadak, Dongri, Mumbai and on an earlier occasion on had also given her one hand bag and a zipper suit case to be handed over to the said Mr. Arif in Singapore and she had successfully executed the said mission and was paid for the same a sum of Rs. 2500/-, apart from the cost of aai tickets and expenses.

Zainab Khan further admitted in her said statement that on 6-6-1996 one Mr. Umer, a relative of the detenu had picked her up from her residence; as as per prior

arrangement, had handed over the suit case and the jute bag which were to be delivered to Mr. Arif in Singapore, to her; had then taken her to Sahar Airport in a taxi; and after leaving her at the entrance of the airport had left.

Zainab Khan had also stated that she would be able to identify the detainee if he was produced before her and that she was aware that to carry foreign currency out of India without legal authorization was an offence.

(c) On the basis of the information given by Zainab Khan that the detainee had employed her to smuggle the currency out of India, the residential premises of the detainee at Room No. 39, third floor, Logda Building, I.M. Merchant Road, Khadak Dongri, Mumbai 9 were searched on the same day i.e. 6-6-1996 by the Customs authorities, under a search warrant issued by the Assistant Commissioner of Customs, in the presence of two independent witnesses. During the course of the search 10 jute bags with hollow pipes as handles and 10 jute bags without hollow pipes as handles, 15 pieces of hollow plastic pipes to be used as handles and four plastic files and some documents were recovered.

In paragraph 9 of the grounds of detention it has been specifically mentioned that the pipes recovered were exactly similar to those seized from Zainab Khan, wherein foreign currency was concealed.

(d) Same day i.e., on 6-6-1996 the statement of the detainee u/s 108 of the Customs Act was recorded.

Zainab Khan was produced and the detainee was confronted and he recognized her as the same lady to whom he had handed over the foreign currency under seizure for being carried to Singapore and on an earlier occasion to Hongkong.

In his statement u/s 108 of the Customs Act the detainee admitted having handed over the jute bags with concealed currency to be carried to Singapore for monetary consideration to Zainab Khan; stated that he was doing so under the instructions of one Babubhai Shah of Singapore; one Used, representative of Babubhai Shah had come to his residence to collect US Dollars 1,41,400; and Used had handed over foreign currency to Zainab Khan.

(e) Paragraph 10 of the grounds of detention shows that in his statement u/s 108 of the Customs Act the detainee had stated that on an earlier occasion also he had sent foreign currency equivalent to Indian currency of Rs. 7 to 8 lakhs, concealed in the pipes used as handles of the jute bags, through Zainab Khan on the instructions of the aforesaid Babubhai Shah and that he possessed two passports, one in the name of Abdul Karim A. Rehman Lokhandwala and another in the name of Kasim Karim Lokhandwala.

(f) In this statement u/s 108 of the Customs Act the detainee had also stated that he was involved and arrested in a Customs Case in 1995.

(g) In the grounds of detention it has been mentioned that on investigation it was found that the detainee was the same person who was concerned in the smuggling of 61 bars of foreign marked gold in to India from Singapore and a case had been registered against him and a detention order under COFEPOSA Act was pending service upon him.

(h) In paragraph 11 of the grounds of detention it is mentioned that on 7-6-1996 the detainee had retracted from his statement u/s 108 of the Customs Act but the receives contained in the retraction were rebutted by the Customs Department on 28-6-1996.

On 21-11-1996 the further statement of the detainee was recorded u/s 108 of the Customs Act and in the same he admitted that he knew said Mr. Arif of Modern Guest House, Singapore. Since on 6-6-96 one of the documents seized from the residence of the detainee was a visiting card of M/s. Max Travels, enquiries were conducted with Max Travels and they showed that the air ticket of Zainab Khan was purchased from them. In this connection statement of Maqsood Abdul Wahid Kudia partner of the said firm was recorded u/s 108 of the Customs Act. In his statement he stated that he knew the detainee who used to regularly purchase air tickets for the last 2 years. He also stated that on 13-3-1996 the detainee had purchased air ticket of Mrs. Zainab Momin Khan Aliyar Khan from his travel agency and had made the payment in cash.

(j) In paragraph 17 the detaining authority has recorded the subjective satisfaction that the detainee had committed offences punishable under the Customs Act, 1962; was indulging in smuggling activities; consequently there was need to prevent him from committing such prejudicial activities in future; and hence his detention under COFEPOSA Act was imperative.

(k) In the grounds it has also been mentioned that since investigation was going on the matter was only placed before the screening committee on 6-9-1996; thereafter referred to the Home Department which asked for certain clarifications on 2-12-1996; and thereafter on 17-1-1997 the impugned detention order was issued.

(l) In the ground of detention the detainee has been appraised of his right to make representation to the various authorities and this is apparent from a perusal of paras 20, 21, 22 and 23.

4. We have heard Mr. Shirish Gupte with Mrs. K. K. Pradhan for the petitioner, Mr. Rajiv Patil for respondents 1 to 3 and Mr. R. M. Agarwal, for respondents 4 and 5.

Although in the petitioner number of grounds have been pleaded but only two grounds were urged before us viz.

(i) Delay in the issuance of the detention order;

(ii) Inordinate delay in the disposal of the detainee's representation to respondents 4 and 5 viz. Union of India and Shri S. D. Mohite, Additional Secretary to the Government of India.

Both the grounds have been replied to in affidavits filed on behalf of the respondents to which we would advert, while we deal with them individually.

5. We would first take up the first ground. It has been pleaded as ground No. (iv) in the petition and in short is that the seizure, investigation was practically over on 6-6-1996 itself and that being so, inasmuch as the impugned detention order was issued on 17-1-1997, after an inordinate time-lag of 7 1/2 months, the live link between the prejudicial activities of the detainee which warranted the issuance of the preventive detention order and the reasonable of detaining the detainee under the COFEPOSA Act has been snapped.

6. The ground of delay in the issuance of the detention order has been replied to in two separate returns to which now we propose adverting to.

The first is the return filed by the detaining authority. The relevant paragraphs are 10 and 11 of the said return; more particularly, the latter paragraph.

In paragraph 11, the detaining authority has stated that the proposal in respect of the detainee was received along with the documents in the Home Department on 27-9-1996. Some additional information regarding the show cause notice was received on 2-12-1996 and the Government of Maharashtra called for it by fax message bearing the same date and the fax message was received on 3-12-1996. It has also been averred that the copies of show cause were received on 4-12-1996 in the Home Department. It has been averred that he had some queries and called for some information on 9-12-1996 and 13-12-1996 and the clarification was received from the sponsoring authority on 19-12-1996. He also stated that after considering the proposal and scrutinising the documents he formulated the draft grounds of detention on 17-1-1997 and issued the order of detention on the same day.

7. A perusal of paragraph 11 also shows that in view of the factual matrix stated in the said paragraph there was no delay in the issuance of the detention order and considering the enormity of the prejudicial activities of the detainee there was no snapping of the live-link between the prejudicial activities of the detainee and the rationale of clamping a detention order on him, merely on account of efflux of time.

8. We may also mention that the ground of delay in issuance of the detention order has also been replied to in paras 7 and 8 of the return of Mr. R. S. Patil, Assistant Commissioner of Customs, (Preventive) COFEPOSA Cell, Bombay.

In paragraph 7 it has been averred that the Sponsoring Authority forwarded the proposal to the Detaining Authority on 25-9-1996; it was received by the Detaining Authority on 27-9-1996; and the proposal was sent along with the documents running into 158 pages. It has been mentioned in the said paragraph that after

examining the documents the Detaining Authority issued detention order on 17-1-1997.

In paragraph 8 of the return the averment that the investigation was over by 7-6-1996 has been denied. It has been averred that the investigation was concluded as late as 2-12-1996 when a show cause notice was issued to Zainab Khan. In it, it has also been averred that the statement of Zainab Khan u/s 108 of the Customs Act was recorded on 2-9-1996 and the detenu's second statement was recorded on 21-9-1996. In the said paragraph the need for issuing show cause notice to Zainab Khan has also been spelt out. It has also been mentioned therein that after issuing the proposal the Detaining authority raised queries vide letter date 2-12-1996 and the Sponsoring Authority replied to the said queries on 3-12-1996 and further queries were replied to on 17-12-1996.

It has been urged that in the said factual matrix there has been no delay in the issuance of the detention order.

9. On examining the averments contained in the returns of the detaining authority (respondent No. 1) and of Mr. R. S. Patil, we are implicitly satisfied that there has been no delay on the part of the detaining authority in issuing the detention order.

10. It should be borne in mind that delay simpliciter in the issuance of a detention order does not vitiate the same.

The general rule is that it would be vitiated if there is no explanation for the same. In this connection it would be pertinent to refer to the observations contained in paragraph 16 of the decision of the Apex Court in the case of [Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another](#), which read thus (at p. 155 of Cri LJ) :

"Delay ipso facto in passing an order of detention after an incident is not fatal to the detention after an incident is not fatal to the detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily examined by the detaining authority."

10A. But in a case of preventive detention under the COFEPOSA OR PITNDPS even unexplained delay in the issuance of the detention order, by itself would not vitiate the same. In such cases it will only be vitiated if on account of delay the live-link between the prejudicial activities of the detenu and the rationale of clamping a detention order on him is snapped.

For determining whether such a live-link has been severed or not the propensity and potentiality of the detenu to commit prejudicial activities would be very material. If there is no material to indicate that the detenu had propensity and potentiality to commit them, unexplained delay simpliciter in the issuance of the detention order would be fatal and the same would be vitiated because the live-link between the prejudicial activities of the detenu and the rationale of clamping a detention order

on him would be snapped.

On the converse if there is material to show that the propensity and potentiality of the detainee to commit prejudicial activities was there then despite the unexplained delay in the issuance of the detention order the live-link between the prejudicial activities of the detainee and the rationale of clamping a detention order on him would not be lost and the detention order would not be vitiated.

11. We wish to emphasise the question of delay in issuing a detention order cannot be approached with the same sensitivity and strictness in case of a preventive detention under the COFEPOSA or PITNDPS, as in a case under the National Security Act. A wider margin has to be given to the authorities in cases under the COFEPOSA and PITNDPS.

12. The view which we have taken in paragraphs 10, 10A and 11 is fortified by a plethora of decisions of the Apex Court but to eschew prolixity we are only referring to two of them, namely those reported in [Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others](#), and [Abdul Salam alias Thiyyan Vs. Union of India and others](#), . In [Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others](#), the Apex Court in paragraph 10 observed thus :

"It has been laid down by this Court in series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quiet obviously in cases of mere delay in making 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 person 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 Court 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 ground and the impugned order of detention."

In [Abdul Salam alias Thiyyan Vs. Union of India and others](#), in paragraph 14 it is observed as under :

"That apart, we are unable to agree with the learned counsel that because of this delay the necessary nexus got severed and that the grounds have become stale and illusory. In appreciating such a contention, the Court also has to bear in mind the nature of the prejudicial activities indulged by the detainee and the likelihood of his repeating the same. It is this potentiality in him that has to be taken into consideration and if the detaining authority is satisfied on the available material, then on mere delay as long as it is not highly unreasonable and undue the Court

should not normally strike down the detention on that ground."

13. A perusal of [Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others](#), and [Abdul Salam alias Thiyyan Vs. Union of India and others](#), would show that mere delay in issuance of the detention order would not be material and in determining whether the live-link between the prejudicial activities of the detainee and the time-lag in issuing the detention order has been snapped or not the pertinent thing to be borne in mind is the potentiality of the detainee.

14. This yardstick of propensity and potentiality was followed by two Division Bench decisions of our Court to each of which one of us was a party. The first was rendered by a Division Bench of this Court in the case of Mahindra D. Mathani v. Shri C. D. Singh, reported in 1996 (1) LJ 473 : 1997 AIHC 1701 (in Criminal Writ Petition No. 799 of 1995), to which one of us (A. V. Savant J.) was a party, and the second decision was rendered by a Division Bench in the case of Mohamed Aslam Musliya v. The State of Maharashtra, reported in 1997 All MR 1782 to which one of us (Vishnu Sahai J.) was a party.

14A. We are implicitly satisfied after going through the grounds of detention that the propensity and potentiality of the detenu was such that it could not have been frustrated by a mere delay of seven and half months in the issuance of the detention order.

In this connection it would be necessary to specifically advert to paras 10 and 12 of the grounds of detention. A perusal of para 10 would show that in his statement u/s 108 of the Customs Act, the detainee had admitted that on an earlier occasion also he had sent foreign currency equivalent to Rs. 7.2 lakhs through Zainab Khan. Para 12 shows that the detainee used to regularly purchase tickets through Max Travels and this is borne out from the statement recorded u/s 108 of the Customs Act of Maqsood Abdul Wahid Kudia, partner of the said firm.

A perusal of the grounds of detention unequivocally shows that an organized, and well planned manner, by employing carriers like Zainab Khan, the detainee, over a long time was carrying out his nefarious activities and such was their extent and impact that earlier also he had been detained under the COFEPOSA. In fact the present detention order had been served on him while he was in Jail in the earlier, COFEPOSA detention. We may mention that this has not been disputed by the counsel for the petitioner.

15. To repeat in our judgment the propensity and potentiality of the detainee was such that on account of the mere delay of 7 1/2 months in the issuance of the detention order the live-link between the prejudicial activities of the detainee and the rationale of clamping a detention order on him did not get snapped.

16. We make no bones in observing that the Division Bench decision of this Court in the case of [Sunil Baburao Shirsat Vs. Satish Sahney, Commissioner of Police for](#)

[Greater Bombay and others](#), cited by Mr. Gupte to buttress his submission that on account of delay simpliciter in issuance of detention order, the order would get vitiated, has no application for three reasons :

Firstly in that case the delay unlike in the present case was unexplained.

Secondly the said decision was rendered in a case of prevention detention under the National Security Act and the Apex Court in paragraph 10 in the decision reported in [Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others](#), has specifically observed that in preventive detention under the COFEPOSA the court should not assume that delay in issuance of the order must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such substantive satisfaction was not genuinely reached. In the said paragraph the Apex Court has observed that taking of such a view would not be warranted unless the court finds that the ground are stale or illusory or there is no real nexus between the grounds and the impugned order of detention.

Thirdly, in the said diction the question of propensity and potentiality of the detainee was not before the Court.

For the third reason we are also of the view that the two Division Bench decisions of our Court cited by Mr. Gupte, namely those rendered in Criminal Writ Petition No. 835 of 1996 Nasir Hussain Rehmatullah Sharbatwala v. C. D. Singh decided on 31st July 1997, by a Division Bench consisting of D. K. Trivedi and S. S. Parkar JJ and Criminal Writ Petition No. 46 of 1997 Shakil Ismail Kashmiri v. Shri C. D. Singh decided on July 30, 1997, by the same Division Bench, to substantiate his submission that on account of delay simpliciter in the issuance of the detention order, the same would get vitiated would have no bearing. We have gone through the said judgments and find that the issue of propensity and potentiality of the detainee was not before the court in them. That being so and in view of the decisions of the Apex Court reported in [Abdul Salam alias Thiyyan Vs. Union of India and others](#), and [Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others](#), the said decision would have no bearing.

17. For the said reasoned the first submission canvassed by Mr. Gupta fails.

18. We now taken up the second submission canvassed by Mr. Gupta, viz. the delay in the disposal of the representation of the detainee by respondent Nos. 4 to 5. The said ground is pleaded as ground No. (vii) in the petition. The short and long of the ground is that although the detainee made a representation through her counsel Mrs. K. K. Pradhan on 4th March, 1997 but the same was disposed off after an inordinate delay of more than 7 weeks on 24-4-1997, by the Secretary, Revenue of Union of India.

This ground has been replied to in two returns. The first sworn by Mr. M. S. Negi, Under Secretary to the Government of India, Ministry of Finance, Department of

Revenue, New Delhi and the second by S. C. Bhagure, Jailor, Group II, Nasik Road Central Prison, Nasik.

In order to adjudicate upon the said ground we have also perused the original file. That we can peruse it is evident from para 4 of the decision of the Apex Court rendered in the case of [Smt. Panna Waringe Vs. A.S. Samra and others](#), .

19. From a perusal of the averments made in ground No. (vii) of the petition, the two affidavits referred to in the preceding paragraph and the original file the date-wise position which emerges is thus :

(i) The representation dated 4-3-1997 was sent by post by Mrs. K. K. Pradhan to the detainee through the Jailor Mr. S. C. Bhagure, Group II, Nasik Road Central Prison, for getting the signatures of the detainee affixed on it. The same was received by S. C. Bhagure, Jailor, on 13-3-1997 and after obtaining the signatures of detainee he forwarded it to the Ministry the same day.

(ii) On 18-3-1997 the representation was received by Ministry;

(iii) On 19-3-1997 the comments were called by the Ministry.

(iv) On 21-3-1997 the comments were sent by the Sponsoring Authority to the Ministry.

(v) On 26-3-1997 comments were received in the COFEPOSA Unit of the Ministry;

(vi) On 27-3-1997 the comments and papers were processed by the Under Secretary;

(vii) 28-3-1997, 29-3-1997 and 30-3-1997 were holidays.

(viii) On 4-4-1997 the Joint Secretary passed an order calling for the report about the opinion of the Advisory Board on the second detention order. The same day the memo was issued.

(ix) On 7-4-1997 the memo dated 4-4-1997 was received by the Sponsoring Authority.

(x) On 9-4-1997 comments were submitted by the Sponsoring Authority.

(xi) On 17-4-1997 comments submitted on 9-4-1997 were received by Ministry of Finance.

(xii) 18-4-1997, 19-4-1997 and 20-4-1997 were holidays.

(xiii) On 22-4-1997 the comments were processed by the Under Secretary and submitted to the Joint Secretary.

(xiv) On 23-4-1997 they were referred to the Secretary, Revenue.

(xv) On 24-4-1997 the representation of the detainee was rejected by the Secretary, Revenue.

(xvi) On 25-4-1997 memo was issued by the Secretary, Revenue.

20. A perusal of the chronology given in the preceding paragraph would show that the only delay worth considering is that of four days, which has occurred between 31st March, 1997 and 3rd April, 1997. In the contention of Mr. Gupte this delay was inordinate and has vitiated the continued detention of the detainee. In order to fortify his submission Mr. Gupte has placed reliance on two decisions of the Apex Court viz. (i) [Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others](#), and (ii) : 1996CriLJ1981 Kundanbhai Dulabhai Shaikh v. Distt. Magistrate, Ahmedabad.

Mr. Gupte urged that the mandate of the Apex Court in [Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others](#), was that the representation should be disposed off with due promptitude and diligence and with a sense of urgency and without avoidable delay.

In : 1996CriLJ1981 (supra) Mr. Gupte invited our attention to the discussion from para 14 onwards and specifically referred to para 18 wherein the Apex Court has laid down that the representation has to be disposed off at the earliest and if there has been any delay in the disposal of the representation the reasons for the same must be indicated to the Court or else the unexplained delay or unsatisfactory delay in the disposal of the representation would fatally affect the order of detention and in that situation continued detention would become bad.

In Mr. Gupte's contention if the said norms are to be borne in mind the aforesaid delay of four days would vitiate the continued detention of the detainee.

Mr. Gupte also urged that the circumstance that on account of holidays the disposal of the representation was delayed at two stages; first from 28-3-1997 to 30-3-1997 and the second from 18-4-1997 to 20-4-1997, is no valid explanation in law, would not be an adequate ground for not disposing of a representation in preventive detention case.

21. We have considered the submission of Mr. Gupte and we are constrained to observe that we do not find any merit in it.

We would first like to take up Mr. Gupte's submission on the issue of holidays. We find that the same does not hold water in view of the observation contained in para 10 of the judgment of the Apex Court rendered in the very authority cited by Mr. Gupte, i.e. in [Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others](#), . Paragraph 10 of the said decision reads thus :

"In attempting to explain the delay from 17-10-1988 to 27-10-1988 it is stated in the counter affidavit filed on behalf of the third respondent that 18th, 20th, 22nd and 23rd October 1988 were the closed holidays, but no explanation is given as to why the representation was not attended to and disposed of on 17th, 19th, 21st, 24th to 26th October In explaining the delay in communicating the decision taken on

27-10-1988 it is stated that 29th and 30th October were holidays but the affidavit is silent as to why that decision had not been communicated to the detainee either on 27th or 28th October 1988."

A perusal of the said paragraph would show that the Supreme Court only frowned upon the delay in disposal of the representation on dates other than holidays.

22. We now take up the issue whether four days delay is so unduly long that it vitiates the continued detention of the detainee. Our answer is in the negative. In this connection we feel it pertinent to refer to a plethora of authorities cited by Mr. R. M. Agarwal, the learned counsel for respondents 4 and 5. He has cited before us the following decisions of the Apex Court :

(i) [Frances Coralie Mullin Vs. W.C. Khambra and Others](#), D. Mathani v. Shri C. D. Singh reported in 1996 1 LJ 473 : 1997 AIHC 1701 1997 AIHC 1701 (In Criminal Writ Petition No. 799 of 1995), to which one of us (A. V. Savant J.) was a party.

23. We have gone through the said authorities and we find that in substance the ratio laid down by the Apex Court and by our court in them is that the representation should be disposed of with utmost expedition, the time imperative in the disposal of a representation can never be absolute or obsessive, the law does not require that each day's delay in the disposal of the representation should be explained, there should be no negligence or callous inaction or avoidable red tapism in the disposal of the representation, and if there has been delay in the disposal of the representation the same should be satisfactorily explained.

24. Mr. Agarwal specifically invited our attention to the decisions rendered in [Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr](#), wherein as is apparent from para there was a delay of 6 days in the disposal of the representation, M. Mohammed Sultan v. The Joint Secretary to Govt. of India where again as is apparent from para 10 there was a delay of 6 days in the disposal of the representation and [Noor Salman Makani Vs. Union of India and others](#), where as evident from para 4 there was a delay of five days in the disposal of the representation.

In each of the said cases the Apex Court observed that the said delay was there but it was not sufficient to fault the continued detention of the detainee on the anvil of laches or indolence or red tapism in the disposal of the representation.

25. We feel that in view of the said three decisions of the Apex Court the four days delay, i.e. delay between 31st March 1997 and 3rd April 1997 in disposal of detainee's representation, cannot be castigated as unreasonable, vexatious or inordinate.

26. We may also mention that in : 1996CriLJ1981 (supra) and [Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others](#), the delay was inordinate and callous. As is apparent from a perusal of para 23 of AIR 1989 SC (supra), the delay

was 32 days and the only explanation offered was that further information was required from State Government and the same was received on 17-10-1988 after a delay of nearly 14 days and the representation of the detainee was disposed off on 27-10-1988 and in between there were certain holidays. In view of this delay the Apex Court faulted the disposal of the detainee's representation as belated.

A perusal of paragraphs 22 to 24 of : 1996CriLJ1981 (supra) would show that the delay unexplained was of nearly 4 weeks and that delay was castigated by the Apex Court as being unpardonable.

27. In our view since the delay in the case in hand was only of 4 days, the authorities cited by the petitioner's counsel, referred to in the preceding paragraph, would have no bearing and those cited by Mr. R. M. Agarwal, learned Counsel for Union of India, referred to in paragraph 24, wherein in two of them there was a delay of six days and in one there was a delay of five days in the disposal of the representation and still the Apex Court held that the delay did not vitiate the continued detention of the detainee, would have bearing.

28. Before parting with the second point we would like to emphasize that there can be no mathematical formula having universal application prescribing the time limit within which the representation of the detainee in a case under the preventive detention has to be disposed off. The law only requires :

(a) it should be disposed off with the utmost promptitude and there should be no indolence or lethargy on the part of the authorities in disposing off the same; and
(b) in case there is delay in disposal of the representation the same should be satisfactorily explained.

We feel that in the final analysis the detention order would not be vitiated on the consideration that the representation of the detainee was disposed off belatedly but on the ground that either there was complete absence of explanation or the explanation offered was untenable and unconvincing. In other words there may be cases where on account of satisfactory explanation a long delay in disposal of representation may not be fatal. On the converse there may be cases where the delay in the disposal of representation may be relatively short but still the detention order would be vitiated either because there is no explanation or that offered is unworthy of acceptance.

29. For the said reasons we hold that the second contention of Mr. Gupte also fails.

30. No other point was urged before us by Mr. Gupte.

31. In the result this petition stands dismissed Rule stands discharged.

32. Petition dismissed.