



2024 INSC 683

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 3083 OF 2024**

**JASEELA SHAJI**

**...APPELLANT(S)**

**VERSUS**

**THE UNION OF INDIA & ORS.**

**...RESPONDENT(S)**

**J U D G M E N T**

**B.R. GAVALI, J.**

1. The appellant, who is the wife of one Appisseril Kochu Mohammed Shaji (Shaji A.K.)<sup>1</sup>, has approached this Court being aggrieved by the judgment and order dated 4<sup>th</sup> March 2024 passed by the Division Bench of the High Court of Kerala at Ernakulam in Writ Petition (Criminal) No. 1271 of 2023<sup>2</sup>, vide which it has dismissed the said habeas corpus petition filed by

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<sup>1</sup> Hereinafter referred to as “detenu”.

<sup>2</sup> “habeas corpus petition”

the appellant for production of the detenu, who was detained pursuant to the order of detention dated 31<sup>st</sup> August 2023<sup>3</sup> passed under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974<sup>4</sup>.

**2.** By order dated 31<sup>st</sup> of July 2024, this Court allowed the present appeal; quashed and set aside the impugned judgment and order of the High Court dated 4<sup>th</sup> March 2024 in Writ Petition (Criminal) No.1271 of 2023 so also the order dated 31<sup>st</sup> August 2023 passed by the Joint Secretary (COFEPOSA), COFEPOSA Unit, Central Economic Intelligence Bureau, Department of Revenue, Ministry of Revenue, Government of India<sup>5</sup> to the Government of India directing the detention of the detenu and the order dated 28<sup>th</sup> November 2023 passed by the Under Secretary, COFEPOSA Wing, Central Economic Intelligence Bureau, Department of Revenue, Ministry of Finance, Government of India<sup>6</sup> confirming the detention order of the detenu. We have directed that the detenu be released forthwith,

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<sup>3</sup> Hereinafter referred to as “detention order”

<sup>4</sup> Hereinafter referred to as “COFEPOSA”

<sup>5</sup> Hereinafter referred to as “Detaining Authority”

<sup>6</sup> Hereinafter referred to as “Central Government”

if not required in any other case. The reasons for the same are as under:

**3.** Shorn of details, the facts giving rise to the present appeal are as under:

**3.1** The detention order dated 31<sup>st</sup> August 2023 was passed by the Detaining Authority under Section 3(1) of the COFEPOSA, thereby directing detention of the detenu with a view to prevent him from acting in any manner prejudicial to the augmentation of foreign exchange in future.

**3.2** The detenu was taken into custody on 2<sup>nd</sup> September 2023 and put in detention in Central Prisons, Poojapura, Trivandrum, Kerala.

**3.3** The grounds of detention and the relied upon documents were served on the detenu on 6<sup>th</sup> September 2023.

**3.4** A perusal of the grounds of detention served on the detenu would reveal that there are 12 grounds on the basis of which the detention order dated 31<sup>st</sup> August 2023 came to be passed. The Detaining Authority has relied on the following material for arriving at its subjective satisfaction:

a) Statements of the detenu recorded on 20<sup>th</sup> June 2023,

11<sup>th</sup> July 2023 and 17<sup>th</sup> July 2023 under Section 37 of FEMA;

b) Statement of Shri Suresh Babu recorded on 7<sup>th</sup> July 2023;

c) WhatsApp chats, voice calls, images recovered from the mobile phone as also ‘paper slips’ allegedly recovered from the detenu;

d) Statements of Ms. Preetha Pradeep recorded on 5<sup>th</sup> July 2023 and 6<sup>th</sup> July 2023.

**3.5** In the grounds of detention, the detenu was further informed about his right to make representation to the Detaining Authority as well as the Chairman, COFEPOSA, Advisory Board, High Court of Kerala<sup>7</sup> and the Central Government through Jail Authorities.

**3.6** Accordingly, the detenu had made representations to the concerned Authorities i.e. the Detaining Authority, the Central Government and the Advisory Board. It appears that the Jail Authorities sent the said representations to the concerned

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<sup>7</sup> Hereinafter referred to as “Advisory Board”

Authorities through the ordinary post. However, neither the Detaining Authority nor the Central Government received the said representations. Insofar as the representation made by the detenu to the Advisory Board is concerned, the Advisory Board opined that there was sufficient cause for detention of the detenu. Hence the Central Government vide order dated 28<sup>th</sup> November 2023 confirmed the detention order and further directed that the detenu be detained for a period of one year from the date of his detention i.e. from 2<sup>nd</sup> September 2023.

**3.7** Being aggrieved by the detention of the detenu, the appellant herein approached the Kerala High Court by way of habeas corpus petition being Writ Petition (Criminal) No. 1271 of 2023. By the impugned judgment and order dated 4<sup>th</sup> March 2024, the said writ petition came to be rejected.

**3.8** Being aggrieved thereby, the appellant has approached this Court by way of present Appeal by special leave.

**4.** We have heard Shri Gaurav Aggarwal, learned Senior Counsel appearing for the appellant and Shri Nachiketa Joshi, learned Senior Counsel appearing for the respondent(s).

**5.** Shri Gaurav Aggarwal, learned Senior Counsel, submits

that in the present case, the material against the detenu could not have led any reasonable person to come to the conclusion that there was a case made out against the detenu to detain him. The Detaining Authority has not applied his/her mind to the material in proper perspective resulting in an unsustainable order of preventive detention. The learned Senior Counsel in this respect relied on the judgment of this Court in the case of ***Ameena Begum vs. State of Telangana and others.***<sup>8</sup>

6. Shri Gaurav Aggarwal further submits that a perusal of the grounds of detention dated 31<sup>st</sup> August 2023 would clearly show that the statements of Ms. Preetha Pradeep were relied upon by the Detaining Authority while arriving at its subjective satisfaction. He submits that the said statements were admittedly not provided to the detenu. It is, therefore, submitted that non-supply of the material on which the subjective satisfaction was arrived at would affect the right of the detenu guaranteed under Article 22(5) of the Constitution of India to make an effective representation. It is, therefore, submitted that

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<sup>8</sup> (2023) 9 SCC 587

the detention order is liable to be set aside on the said ground. The learned Senior Counsel in this respect has relied on the following judgments of this Court in the cases of:

- (i) ***M. Ahamedkutty vs. Union of India and another***<sup>9</sup>;
- (ii) ***Radhakrishnan Prabhakaran vs. State of T.N. and others***<sup>10</sup>;
- (iii) ***J. Abdul Hakeem vs. State of T.N. and others***<sup>11</sup>
- (iv) ***State of Tamil Nadu and another vs. Abdullah Kadher Batcha and another***<sup>12</sup>; and
- (v) ***Union of India vs. Ranu Bhandari***<sup>13</sup>.

7. Shri Gaurav Aggarwal further submits that the detenu had submitted his representation on 27<sup>th</sup> September 2023 to the Jail Authorities for onward transmission to the Detaining Authority and the Central Government. He submits that a perusal of the counter affidavit of the respondents would reveal that the Jail Authorities sent the representations of the detenu by ordinary post, which could not be traced. He submits that, in the counter

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<sup>9</sup> (1990) 2 SCC 1

<sup>10</sup> (2000) 9 SCC 170

<sup>11</sup> (2005) 7 SCC 70

<sup>12</sup> (2009) 1 SCC 333

<sup>13</sup> (2008) 17 SCC 348

affidavit it is admitted that the said representations dated 27<sup>th</sup> September 2023 were not received by the Detaining Authority and the Central Government, but after notice was issued in the present matter, records were called for from the Jail Authorities and the representations were rejected on 11<sup>th</sup> June 2024 and 12<sup>th</sup> June 2024 respectively. He submits that the delay in transmitting the representations as well as the delay caused in deciding the representations would also adversely affect the right of the detenu for effective and speedy disposal of the representations and on this count also the detention order is liable to be set aside. In support of his submission, the learned Senior Counsel relied on the following judgments of this Court:

- (i) ***Tara Chand vs. State of Rajasthan and others***<sup>14</sup>;
- (ii) ***Rattan Singh vs. State of Punjab and others***<sup>15</sup>;
- (iii) ***Vijay Kumar vs. State of Jammu & Kashmir and others***<sup>16</sup>;
- (iv) ***Aslam Ahmed Zahire Ahmed Shaik vs. Union of***

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<sup>14</sup> (1981) 1 SCC 416

<sup>15</sup> (1981) 4 SCC 481

<sup>16</sup> (1982) 2 SCC 43



***India and others*<sup>17</sup>;**

(v) ***B. Alamelu vs. State of T.N. and others*<sup>18</sup>;**

8. Shri Gaurav Aggarwal further submits that a perusal of the Memorandum passed by the Central Government rejecting the representation of the detenu would show that there was no real and proper consideration. He submits that no reasons are recorded in the Memorandum and, therefore, it does not reflect that there was a real or proper consideration by the Government. He, therefore, submits that the impugned order is liable to be quashed and set aside.

9. Shri Aggarwal further submits that the High Court has erroneously held that the Detaining Authority could have arrived at its subjective satisfaction even after the statement of said Ms. Preetha Pradeep was eschewed. It is submitted that the statement of Ms. Preetha Pradeep was a pertinent material which, from the perusal of the detention order would reveal, was duly taken into consideration by the Detaining Authority. He, therefore, submits that the High Court has erred in holding that

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<sup>17</sup> (1989) 3 SCC 277

<sup>18</sup> (1995) 1 SCC 306

non-supply of the statements of Ms. Preetha Pradeep to the detenu did not vitiate the detention order. The learned Senior Counsel, therefore, submits that the impugned judgment and order is liable to be quashed and set aside.

**10.** Shri Nachiketa Joshi, learned Senior Counsel appearing for the respondents, on the contrary, submits that the Detaining Authority after taking into consideration the statement of Suresh Babu and the exchange of WhatsApp messages between Suresh Babu and the detenu has rightly come to a subjective satisfaction that the detenu was engaged in illegal transactions by way of purchase and sale of illegally collected foreign currencies from NRIs and other foreign exchange dealers. He submits that the perusal of the material on record would show that the detenu has indulged himself in hawala dealings, illegal purchase, sale and carriage of foreign currencies.

**11.** Shri Nachiketa Joshi further submits that as per the provisions contained in Section 8(b) of the COFEPOSA, the case of detention of the detenu was referred to the State Advisory Board, Kerala High Court. The Advisory Board, after hearing the detenu and considering the material, had opined that there were

sufficient grounds for the detention of the detenu.

**12.** The learned Senior Counsel submits that the High Court has rightly held that even if the statements of Preethi Pradeep is eschewed, the Detaining Authority could have arrived at the subjective satisfaction that the detention of the detenu was necessary.

**13.** The learned Senior Counsel relies on the judgment of this Court in the case of ***Vakil Singh vs. The State of J & K and another***<sup>19</sup> in support of his submission that the grounds must contain the pith and substance of primary facts but not subsidiary facts or evidential details.

**14.** The learned Senior Counsel further submits that in view of Section 5A of the COFEPOSA, even if the detention order was not sustainable on one ground, if it can be sustained on other grounds, the detention order would not be vitiated. In this respect, he relies on the judgment of this Court in the case of ***A. Sowkath Ali vs. Union of India and others***<sup>20</sup>.

**15.** Shri Nachiketa Joshi further submits that it is not

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<sup>19</sup> (1975) 3 SCC 545

<sup>20</sup> (2000) 7 SCC 148

necessary to furnish copy of each and every documents to which casual or passing reference may be made in the course of narration of facts and which are not relied upon by the Detaining Authority in making the order of detention. In this respect, he relies on the judgment of this Court in the case of ***L.M.S. Ummu Saleema vs. B.B. Gujaral***<sup>21</sup>.

**16.** Insofar as the delay in deciding the representation by the Detaining Authority and the Central Government is concerned, Shri Nachiketa Joshi, learned Senior Counsel submits that representations made by the detenu on 27<sup>th</sup> September 2023 were never received by the Detaining Authority and the Central Government. However, after the notice was issued by this Court in the present matter, the record was called from the Jail Authorities and they decided the representations on 11<sup>th</sup> June 2024 and 12<sup>th</sup> June 2024 respectively. He, therefore, submits that there is no delay in deciding the representations by the Detaining Authority or the Central Government.

### **CONSIDERATION**

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<sup>21</sup> (1981) 3 SCC 317

**17.** Though the detention order is assailed on several grounds, we propose to consider only two grounds, viz.,

(a) As to whether the non-supply of the statements of Ms. Preetha Pradeep has affected the right of the detenu to make an effective representation under Article 22(5) of the Constitution of India.

(b) As to whether non-receipt of the representation and the delay in deciding the representation by the Detaining Authority and the Central Government would also affect the right of the detenu under Article 22(5) of the Constitution.

**(a) As to whether the non-supply of the statement of Ms. Preetha Pradeep has affected the right of the detenu to make an effective representation under Article 22(5) of the Constitution of India**

**18.** In the case of *M. Ahamedkutty vs. Union of India and another* (supra), this Court was considering the issue as to whether non-supply of the copies of the bail application and the bail order vitiated the right of the detenu under Article 22(5) of the Constitution of India. After taking the survey of the earlier judgments, this Court observed thus:

“**19.** The next submission is that of non-supply of the bail application and the bail order. This Court, as was observed in *Mangalbai Motiram Patel v. State of Maharashtra* [(1980) 4 SCC 470: 1981 SCC (Cri) 49: (1981) 1 SCR 852] has ‘forged’ certain procedural safeguards for citizens under preventive detention. **The constitutional imperatives in Article 22(5) are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention. The right is to make an effective representation and when some documents are referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. The detenu has, therefore, the right to be furnished with the grounds of detention along with the documents so referred to or relied on. If there is failure or even delay in furnishing those documents it would amount to denial of the right to make an effective representation.** This has been settled by a long line of decisions: *Ramachandra A. Kamat v. Union of India* [(1980) 2 SCC 270: 1980 SCC (Cri) 414: (1980) 2 SCR 1072] , *Frances Coralie Mullin v. W.C. Khambra* [(1980) 2 SCC 275: 1980 SCC (Cri) 419: (1980) 2 SCR 1095] , *Ichhu Devi Choraria v. Union of India* [(1980) 4 SCC 531: 1981 SCC (Cri) 25: (1981) 1 SCR 640] , *Pritam Nath Hoon v. Union of India* [(1980) 4 SCC 525: 1981 SCC (Cri) 19: (1981) 1 SCR 682] , *Tushar Thakker v. Union of India* [(1980) 4 SCC 499:

1981 SCC (Cri) 13] , *Lallubhai Jogibhai Patel v. Union of India* [(1981) 2 SCC 427: 1981 SCC (Cri) 463] , *Kirit Kumar Chaman Lal Kundaliya v. Union of India* [(1981) 2 SCC 436: 1981 SCC (Cri) 471] and *Ana Carolina D'Souza v. Union of India* [1981 Supp SCC 53 (1) : 1982 SCC (Cri) 131 (1)] .

**20.** It is immaterial whether the detenu already knew about their contents or not. In *Mehrunissa v. State of Maharashtra* [(1981) 2 SCC 709: 1981 SCC (Cri) 592] it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of the seizure list was held to be fatal. To appreciate this point one has to bear in mind that the detenu is in jail and has no access to his own documents. In *Mohd. Zakir v. Delhi Administration* [(1982) 3 SCC 216: 1982 SCC (Cri) 695] it was reiterated that it being a constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention *pari passu* the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of constitutional safeguards enshrined in Article 22(5).”

[emphasis supplied]

**19.** It can thus be seen that this Court, in unequivocal terms, has held that the constitutional requirements under Article 22(5)

of the Constitution of India are twofold, viz., (1) the Detaining Authority must, as soon as practicable, after the detention communicate to the detenu the grounds on which the order of detention has been made, and (2) the Detaining Authority must afford the detenu the earliest opportunity of making the representation against the order of detention. It has further been held that the right is to make an effective representation and when some documents are referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. In unequivocal terms, it has been held that the detenu has the right to be furnished with the grounds of detention along with the documents so referred to or relied on. It has been held that failure or even delay in furnishing those documents would amount to denial of the right to make an effective representation.

**20.** This Court further went on to hold that it is immaterial whether the detenu already knew about their contents or not. This Court reiterated the position that it being a constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention *pari passu* the



grounds of detention. It has been held that there is no question of demanding the documents.

**21.** The High Court in the impugned judgment and order has relied on the judgments of this Court in the cases of ***Vakil Singh vs. State of J. & K. and another*** (*supra*) and ***L.M.S. Ummu Saleema vs. B.B. Gujaral*** (*supra*).

**22.** Insofar as the judgment of this Court in the case of ***Vakil Singh*** (*supra*) is concerned, the detention order was challenged on the following grounds:

- (i) The impugned order was passed without application of mind;
- (ii) Neither the grounds of detention nor the confirmation thereof were communicated and explained to the detenu;
- (iii) The grounds are vague; and
- (iv) The order of detention, assuming it was served, was a colourable act as the petitioner was already in jail.

**23.** It could thus be seen that the said case was not concerned with the issue with regard to non-supply of the material which was relied on by the Detaining Authority in the grounds of

detention. As such the said judgment would not be of any assistance to the case of the respondents.

**24.** Insofar as the reliance on the judgment of this Court in the case of ***L.M.S. Ummu Saleema*** (supra) is concerned, the High Court relied on the following observations of this Court:

“**5.** ....It is only failure to furnish copies of such documents as were relied upon by the detaining authority, making it difficult for the detenu to make an effective representation, that amounts to a violation of the fundamental rights guaranteed by Article 22(5). In our view it is unnecessary to furnish copies of documents to which casual or passing reference may be made in the course of narration of facts and which are not relied upon by the detaining authority in making the order of detention.”

**25.** There can be no doubt that it is not necessary to furnish copies of each and every document to which a casual or passing reference may be made in the narration of facts and which are not relied upon by the Detaining Authority in making the order of detention. However, failure to furnish copies of such document/documents as is/are relied on by the Detaining Authority which would deprive the detenu to make an effective representation would certainly amount to violation of the fundamental right guaranteed under Article 22(5) of the

Constitution of India.

**26.** We may also gainfully refer to the following observations of this Court in the case of ***Radhakrishnan Prabhakaran*** (supra):

“**8.** We may make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him...”

**27.** It could thus be seen that though this Court held that a copy of every document mentioned in the order is not required to be supplied to the detenu, copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary are required to be supplied to him.

**28.** In the case of ***J. Abdul Hakeem*** (supra), the position was reiterated by this Court by observing thus:

“**8.** ...From the aforesaid authorities it is clear that the detenu has a right to be supplied with the material documents on which reliance is placed by the detaining authority for passing the detention order but the detention order will not be vitiated, if the document although referred to in the order is not supplied which is

not relied upon by the detaining authority for forming of its opinion or was made the basis for passing the order of detention. The crux of the matter lies in whether the detenu's right to make a representation against the order of detention is hampered by non-supply of the particular document.”

**29.** In the case of ***Abdullah Kadher Batcha and another*** (supra), again the position was reiterated by this Court thus:

“7. The court has a duty to see whether the non-supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non-supply of the documents called for had any effect on the detenu and/or whether the non-supply was prejudicial to the detenu. Merely because copies of some documents have (*sic not*) been supplied, they cannot by any stretch of imagination be called as relied upon documents. While examining whether non-supply of a document would prejudice a detenu, the court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non-supply thereof would prejudice the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced.”

**30.** This Court reiterated that, primarily, the copies which form the ground for detention are to be supplied and non-supply

thereof would prejudice the detenu. It has been further held that the documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced.

**31.** In the case of ***Ranu Bhandari*** (supra), this Court observed thus:

“**25.** Keeping in mind the fact that of all human rights the right to personal liberty and individual freedom is probably the most cherished, we can now proceed to examine the contention advanced on behalf of the parties in the facts and circumstances of this case. But before we proceed to do so, it would be apposite to reproduce hereinbelow a verse from a song which was introduced in the cinematographic version of Joy Adamson's memorable classic *Born Free* which in a few simple words encapsulates the essence of personal liberty and individual freedom and runs as follows:

“Born free, as free as the wind blows,  
As free as the grass grows,  
Born free to follow your heart.  
Born free and beauty surrounds you,  
The world still astounds you,  
Each time you look at a star.  
Stay free, with no walls to hide you,  
You're as free as the roving tide,  
So there's no need to hide.  
Born free and life is worth living,  
It's only worth living, if you're born free.”

***The aforesaid words aptly describe the***

**concept of personal liberty and individual freedom which may, however, be curtailed by preventive detention laws, which could be used to consign an individual to the confines of jail without any trial, on the basis of the satisfaction arrived at by the detaining authority on the basis of material placed before him.** The courts which are empowered to issue prerogative writs have, therefore, to be extremely cautious in examining the manner in which a detention order is passed in respect of an individual **so that his right to personal liberty and individual freedom is not arbitrarily taken away from him even temporarily without following the procedure prescribed by law.**

**26.** We have indicated hereinbefore that the consistent view expressed by this Court in matters relating to preventive detention is that while issuing an order of detention, the detaining authority must be provided with all the materials available against the individual concerned, both against him and in his favour, to enable it to reach a just conclusion that the detention of such individual is necessary in the interest of the State and the general public.

**27.** *It has also been the consistent view that when a detention order is passed all the material relied upon by the detaining authority in making such an order, must be supplied to the detenu to enable him to make an effective representation against the detention order in compliance with Article 22(5) of the Constitution, irrespective of whether he had knowledge of the same or not.* These have been recognised by this Court as the minimum safeguards to ensure that

preventive detention laws, which are an evil necessity, do not become instruments of oppression in the hands of the authorities concerned or to avoid criminal proceedings which would entail a proper investigation.”

[emphasis supplied]

**32.** A perusal of the aforesaid judgment would reveal that for emphasizing the importance of personal liberty and individual freedom, this Court has reproduced Joy Adamson’s memorable classic *Born Free*. This Court observed that though the concept of personal liberty and individual freedom can be curtailed by preventive detention laws, the Courts have to ensure that the right to personal liberty and individual freedom is not arbitrarily taken away even temporarily without following the procedure prescribed by law. It has been held that when a detention order is passed all the material relied upon by the detaining authority in making such an order must be supplied to the detenu to enable him to make an effective representation. This Court held that this is required in order to comply with the mandate of Article 22 (5) of the Constitution, irrespective of whether the detenu had knowledge of such material or not.

**33.** It is thus a settled position that though it may not be

necessary to furnish copies of each and every document to which a casual or passing reference has been made, it is imperative that every such document which has been relied on by the Detaining Authority and which affects the right of the detenu to make an effective representation under Article 22(5) of the Constitution has to be supplied to the detenu.

**34.** In the light of this legal position, let us examine the impugned order.

**35.** The grounds on which the detention order dated 31<sup>st</sup> August 2023 has been made read thus:

***“The following facts have been brought to my attention by the Sponsoring Authority of this COFEPOSA proposal i.e. the Directorate of Enforcement, Kochi Zonal Unit and I have gone through the facts presented by the Sponsoring Authority as mentioned below:-***

- i. A search was conducted on 19-06-2023 at the residence of Shri Appisseril Kochu Muhammed Shaji @ Payasam Shaji i.e you, Appisseril House, Nadakkal PO, Erattupetta, Kottayam 686121 from where Shri Appisseril Kochu Muhammed Shaji i.e. you are operating your foreign currency exchange business. You stated that you were doing trading of fruits to nearby areas. During the course of search, unaccounted Indian currency amounting to Rs 6,70,100/-, unaccounted Gold in the



form of coins and biscuits weighing 110 35 Grams valued at Rs.6,08,028.5/-, unaccounted Silver weighing 1781 Grams in the form of balls and pieces valued to Rs 136246.5/- totally valuing to the tune of Rs 14,14,375/- (Fourteen Lakh Fourteen Thousand Three Hundred Seventy Five Only) were found and seized under the FFMA, 1999.

- ii. During the course of search, statement of you i.e. Shri Shaji A K was recorded on 20.06.2023 under Section 37 of Foreign Exchange Management Act, 1999, wherein Mr. Shaji A.K. i.e. you have admitted that the cash in Indian currencies which was seized from your house are unaccounted and the paper slips were taken from your residence in which you noted the details of forex transactions of your work as a carrier of foreign currencies; that you were working as a commission agent for various Foreign Exchange Racketeers and handed over the illegally collected foreign currencies as well as Indian currencies to various persons inside and outside Kerala mainly at Chennai; that you were collecting foreign currencies from your customers and clients without obtaining KYC details, licenses and no invoices were generated against receipts of foreign currency; that you are doing these illegal activities on behalf of various Foreign Exchange Racketeers; that you were only concerned about the commissions which you received from such illegal activities; that the most part of your income was generated out of these illegal transactions by way of purchase and sale of illegally

collected foreign currencies from NRIs and other forex dealers mainly from Suresh Babu at Kottayam, who was also operating the unaccounted foreign currency business.

- iii. Further, Shri Suresh Babu in his statement recorded on 07.07.2023 also admitted having illegal foreign currency dealings with Shri Shaji A.K. i.e. you. Furthermore, corroborative evidences in respect of illegal foreign exchange transactions between Shri Suresh Babu and Shri Shaji A.K. i.e. you have been recovered by way of analysis of WhatsApp chat, voice calls and images recovered from Shri Shaji A.K.'s i.e. your mobile which was seized during search. Shri Suresh Babu in his statement recorded on 07.07.2023 has inter alia stated that after fixing the rates through phone call, Shaji i.e. you or the person appointed by you will come to the office and collect FC with Shri Suresh Babu and also give the equivalent INR for the currency; that you also purchase FC kept by him; usually you purchase in month interval and having transaction worth of 30 lakhs for the past 2 years; that within these 2 years you had transactions worth of 2 Crores.
- iv. During the Statement of Smt. Preetha Pradeep recorded on 05.07.2023, on being asked about Shaji or Payasam Shaji, a native of Eratupetta, she replied that Shaji's person will come to the shop and that they will pay him the required currency which will be collected from Suresh sir's house through Binu; that

mostly the same person will come; that's why she can recognize him; that without any doubt, they will pay the cash; that Suresh sir will arrange everything; that mostly she or Binu will receive the amount brought by Shaji; that they collect that and later it will be counted; that if any shortages are found in the bundle that will be informed to Suresh sir, that not only the person who goes there with the money but many others, who came to return the money to their office through Shaji; that it is about 20 lakh rupees sent to Shaji and Rs 30 lakhs is the maximum amount Shaji brought to their office.

- v. Statement of Preetha Pradeep was recorded on 06.07.2023, wherein she replied that M/s Suresh Forex Services Pvt Ltd receives INRs minimum 2 times in a month from Mr. Shaji; that each transactions contains approximately Rs 20 Lakhs to 30 Lakhs; that in return to that Suresh will give one packet and direct her to hand over the same to the representative of Mr. Shaji.
- vi. Statement of Shri Shaji A.K. i.e. you were recorded on 11.0.7.2023 wherein you, inter-alia, stated that you buy foreign currencies from foreign currency dealers and buy from people who are NRI's in Kerala when they come home; that these are done without any documents; that you mainly purchase foreign currency from traders like Suresh of Suresh Forex at Kottayam, Native of Parur Shambu, Simon from Kottayam, etc.; that you have also given currencies to people going abroad

from Kerala; that mainly you sell currency to Khader from Chennai; that the currency collected from Kerala will be sent to Chennai via Madhurai by bus; that this will be given to Khader's shop or you will inform Khader that you reached Chennai and he will come to the lodge where you are staying, or Khader's people will come and collect the foreign currency from you and give you the equivalent INR; that these are also done without any documents; that other than Khader, you used to sell to Anas; that Khader's firm is at Chennai Paris and Burma Bazar, that to date, you purchased around Rs 25 crores worth of foreign currency from Kerala and sold that to Khader, that usually you used to go to Chennai; that other than you, your son Hyder Shaji, Anas Erattupetta, Siraj Erattupetta, etc. are the carries of foreign currency to Chennai by bus; that this will be given to Khader, that all these are done without keeping any accounts and documents; that the calculations prepared for your knowledge will be destroyed after the transaction is completed; that was the foreign currency transaction you made and its calculations; that the first page indicates the value of Indian currency equivalent to the rate of foreign currency; that the second page indicates the details of the persons who carry foreign currency to Chennai and the quantity of currency sent; that those were written on white paper and took its images; that 1416 means your niece Faris, next photo is Anas from Erattupetta, both of them will carry currency for you to Chennai; that the third page indicates the images of Rs 500 notes,

those are damaged notes, that the next one marked us 16-6 means the transaction of Rs 9,12,167/- dated 16.06.2023; that the next page indicates the transaction done by you on 17.6.2023 and the value of INR equivalent to the foreign currency trading, that the thing written as Faris indicates the amount of Rs 24,25,750/- that Faris exchanged from Chennai and its value in INR, that SR mean the amount of Rs. 15 lakhs, you paid as per the instructions of Suresh Babu of Suresh Forex at Kottayam to SANGVI STEEL at Chennai, that this amounts you received from the staff Preetha at Suresh Forex as per the instructions of Suresh Babu; that Hyder 34 indicates the amount of Rs 34 lakhs worth of foreign currency he exchanged from Chennai; that this foreign currency was given by you; that Siraj 24 means the value of the foreign currency exchanged by Siraj from Chennai.

- vii. Another statement of you i.e. Shaji A.K. was recorded on 17.07.2023, wherein you, inter-alia, stated as under:

Answer 1: I heard the voice calls in above said Hash value marked as CD-36. The voice in this call which belongs to Suresh Babu and myself. The first number in call details which was the mobile number of Suresh Babu and this number belongs to me.

Answer 2 : I heard the voice calls in above said Hash value marked as CD-37. The voice in this call which belongs to Suresh Babu and myself. The first number in call

details which was the mobile number of Suresh Babu and this number belongs to me.

Answer 3: I heard the voice calls in above said Hash value marked as CD-38. The voice in this call which belongs to Suresh Babu and myself. The first number in call details which was the mobile number of Suresh Babu and this number belongs to me.

Answer 4 : I heard the voice calls in above said Hash value marked as CD-32. The voice in this call which belongs to Suresh Babu and myself. The first number in call details which was the mobile number of Suresh Babu and this number belongs to me.

Question 5 : To whom you are selling the illegal foreign currency received from Kerala other than Khader from Chennai you mentioned in your previous statement?

Answer 5 : I sell the collected illegal foreign currency from Kerala to a person named Manikannan from Thrishnapalli in Tamil Nadu other the Khader in Chennai.

Question 6 : Do you have any authorized license or permit or acknowledgement to carry foreign currency exchange business?

Answer 6 : I don't have any authorized license, permit, acknowledgement to carry foreign currency exchange business.

- viii. Further Shri Shaji A.K. @ Payasam Shaji i.e. you have disclosed the names of other carriers i.e. (i) Hyder Shaji (your son) (ii) Shri Anas from Erattupetta, (iii) Shri Siraj from Erattupetta. You further disclosed that they used to go Chennai on your directions with unaccounted foreign currencies where they handed over the currency to the Chennai based racketeers and in exchange of foreign currency, they receive Indian currency. All these transactions are unaccounted as per your admission and the records were disposed of once the transactions were completed. The entire illegal transactions to the tune of Rs 25 Crores were carried out by Shri Shaji A.K. @ Payasam Shaji i.e. you with the help of your close relatives and friends.
- ix. Thus, Shri Appisseril Kochu Muhammed Shaji @ Payasam Shaji i.e. you have indulged yourself in hawala dealings, illegal purchase, sale and carriage of foreign currencies.
- x. Chapter II of Foreign Exchange Management Act, 1999 provides for "Regulation and Management of Foreign Exchange". Section 3 of Foreign Exchange Management Act, 1999, specifically prohibits dealing in foreign exchange without the general or special permission of the Reserve Bank of India. It reads thus:
- "3 Dealing in foreign exchange, etc. Save as otherwise provided in this Act, rules or regulations made there under, or with the general or special permission of the Reserve Bank, no person shall-(a) deal in

or transfer any foreign exchange or foreign security to any person not being an authorized person;

(b) make any payment to or for the credit of any person resident outside India in any manner;

(c) receive otherwise through an authorized person, any payment by order or on behalf of any person resident outside India in any manner.

Explanation- For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorized person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorized person;

(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person

Explanation- For the purpose of this clause "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging



any debt. 4 Holding of foreign exchange, etc. -Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India."

- xi. Further, Section 4 of Foreign Exchange Management Act, 1999, specifically provides that no person resident in India shall acquire, hold, own or possess or transfer any foreign exchange, foreign security or any immovable property situated outside India, except as otherwise provided under the Act. For the contravention of the Act, rules and regulations, penalty is provided under Section 13 of the Act. This would mean that dealing in foreign exchange de hors the statutory provisions, rules and regulations would be illegal. For violation of foreign exchange regulations, penalty can believe (*sic*) and such activity is certainly an illegal activity, which is prejudicial to conservation or augmentation of foreign exchange.
- xii. Shri Appisseril Kochu Muhammed Shaji @ Payasam Shaji i.e. you have indulged yourself in hawala dealings, purchase and sale of foreign currencies from retail customers without raising any invoice and has generated unaccounted income in Indian rupees and foreign currencies to the tune of Rs 25 crores. Thus, you have contravened the Section 3 and Section 4 of Foreign Exchange Management Act, 1999 and indulged in the act prejudicial to the

conservation or augmentation of foreign exchange.

**2. *In view of the foregoing, I have no hesitation in arriving at the conclusion that you have been engaging yourself in activities, which have adversely affected the augmentation of foreign exchange resources of the country.*** Considering the nature and gravity of the activities, your role therein and the well-laid out manner in which you have been indulging in such prejudicial activities, all of which reflect your high potentiality and propensity of engaging yourself in such prejudicial activities in future, I am satisfied that unless detained, you are likely to continue to engage in the aforesaid prejudicial activities in future also. Therefore, it is necessary to detain you under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to prevent you in future from acting in any manner which is prejudicial to the augmentation of foreign exchange.”

[emphasis supplied]

**36.** It could thus be seen that 8 factual aspects have been taken into consideration by the Detaining Authority while arriving at its subjective satisfaction that the detenu has been engaging himself in activities which have adversely affected the augmentation of foreign exchange resources of the country.

**37.** A perusal of the narration at clauses (iv) and (v) would reveal

that the said clauses refer to the statements of Preetha Pradeep recorded on 5<sup>th</sup> July 2023 and 6<sup>th</sup> July 2023. In the said statements, she has stated that Shaji's person will come to the shop and that they will pay him the required currency which will be collected from Suresh sir's house through Binu. She has further stated that mostly the same person will come; that's why she can recognize him. She has further stated that, without any doubt, they will pay the cash and that Suresh sir will arrange everything. She has stated that mostly she or Binu will receive the amount brought by Shaji. She has further stated that M/s Suresh Forex Services Pvt. Ltd. receives INRs minimum 2 times in a month from Mr. Shaji and that each transaction contains approximately Rs.20 Lakhs to Rs. 30 Lakhs. She further stated that in return to that Suresh will give one packet and direct her to handover the same to the representative of Mr. Shaji.

**38.** It could thus be seen that apart from the above two statements of Preetha Pradeep dated 5<sup>th</sup> July 2023 and 6<sup>th</sup> July 2023, the Detaining Authority has taken into consideration one statement of Suresh Babu recorded on 7<sup>th</sup> July 2023; three statements of the detenu recorded on 20<sup>th</sup> June 2023, 11<sup>th</sup> July

2023 and 17<sup>th</sup> July 2023; and two other factual aspects respectively.

**39.** It could thus also be seen that the said Preetha Pradeep is a vital link for transactions between the said Suresh Babu and the detenu. It, therefore, cannot be said that the statements of Preetha Pradeep are just a casual or a passing reference. On the contrary, the said statements, as has been seen from the preamble of the grounds of detention as well as the beginning of paragraph 2 of the detention order dated 31<sup>st</sup> August 2023, formed the basis for arriving at a subjective satisfaction by the Detaining Authority. It is difficult to determine as to whether in the absence of the said statements of Preetha Pradeep the subjective satisfaction arrived at by the Detaining Authority could have been arrived at or not. However, the very recording of the factum of the statements of Preetha Pradeep make them a relevant aspect taken into consideration by the Detaining Authority for arriving at its subjective satisfaction.

**40.** Insofar as the reliance placed by the learned Senior Counsel appearing for the respondents on the provisions of section 5A of the COFEPOSA is concerned, no doubt that if the detention order

is made on several grounds and if the said order is vitiated on one of the grounds and it can be sustained on the other grounds, the detention would not be vitiated. However, a distinction will have to be drawn between the detention order passed on various grounds and the detention order passed on one ground relying on various materials. If the detention order is passed on one ground taking into consideration 8 factual aspects, the question would be as to whether non-supply of the material containing the factual aspects relied on by the Detaining Authority would vitiate the detention order or not. The question, therefore, for our consideration is as to whether though the grounds of detention could be severed, whether the materials which have been relied on by the Detaining Authority for arriving at its subjective satisfaction could also be severed.

**41.** No doubt, as has been reiterated time and again by this Court, it may not be necessary to supply each and every document to which a passing or casual reference is made. However, all such material which has been relied on by the Detaining Authority while arriving at its subjective satisfaction will imperatively have to be supplied to the detenu.

**42.** In our view, the documents relied on by the Detaining Authority which form the basis of the material facts which have been taken into consideration to form a chain of events could not be severed and the High Court was not justified in coming to a finding that despite eschewing of certain material taken into consideration by the Detaining Authority, the detention order can be sustained by holding that the Detaining Authority would have arrived at such a subjective satisfaction even without such material.

**43.** In this respect, we may gainfully refer to the following observation of this Court in the case of **A. Sowkath Ali** (supra):

**“27.** ...Section 5-A applies where the detention is based on more than one ground, not where it is based on a single ground. Same is also the decision of this Court in the unreported decision of *Prem Prakash v. Union of India* [ Crl. A. No. 170 of 1996 dated 7-10-1996 (see below at p. 163)] decided on 7-10-1996 relying on *K. Satyanarayan Subudhi v. Union of India* [1991 Supp (2) SCC 153 : 1991 SCC (Cri) 1013]. Coming back to the present case we find really it is a case of one composite ground. ***The different numbers of the ground of detention are only paragraphs narrating the facts with the details of the document which is being relied on but factually, the detention order is based on one ground, which is revealed by Ground (1)(xvi) of the grounds of***

***detention which we have already quoted hereinbefore. Thus on the facts of this case Section 5-A has no application in the present case”.***

[emphasis supplied]

**44.** In that view of the matter, we have come to a considered conclusion that non-supply of the statements of Preetha Pradeep has affected the right of the detenu to make an effective representation under Article 22(5) of the Constitution of India and as such, the detention is vitiated on the said ground.

**(b) As to whether non-receipt of the representation and the delay in deciding the representation by the Detaining Authority and the Central Government would also affect the right of the detenu under Article 22(5) of the Constitution.**

**45.** It is undisputed position that the detenu has submitted his representation on 27<sup>th</sup> September 2023 to the Jail Authorities for onward transmission of the same to the Detaining Authority and the Central Government.

**46.** It will be relevant to refer to certain averments made in the counter affidavit filed on behalf of respondents Nos. 1 and 2, which would show that how the representation of the detenu was dealt with.

“The contents of the ground C taken in the

instant petition are incorrect and denied. It is submitted that the office of Director General (DG), CEIB never received any representation from or on behalf of the detenu/the husband of the petitioner. However, after receipt of this petition, the office of the jail authorities was contacted. The jail authorities informed that three representations dated 27.09.2023 addressed to the Joint Secretary (COFEPOSA), Director General, CEIB and the Chairman, COFEPOSA Advisory Board were submitted by the detenu/the husband of the petitioner. The jail authorities sent the said representations to the concerned authorities through Ordinary Post. However, neither the Joint Secretary (COFEPOSA) nor the Director General, CEIB received the said representations. Since the said representations were sent by the ordinary post, they cannot be tracked to know where the said ordinary posts have stuck. Hence the question of non-disposal of the representations by the concerned authorities do not arise.”

**47.** It is thus clear that the detenu had made representations on 27<sup>th</sup> September 2023, addressed to the Detaining Authority, Central Government and the Advisory Board. The Jail Authorities had merely forwarded the said representations through ordinary post. The said representations neither reached the Detaining Authority nor the Central Government. The perusal of the statements made in the counter affidavit would clearly show that since the said representations were sent by



ordinary post, they also could not be tracked. It is further stated in the counter affidavit that after the notice was issued by this Court in the present matter, the ground with regard to non-disposal of the representations of the detenu came to the notice of the concerned Authorities. As such, the representations were sought from the Jail Authorities through email. After receiving the same from the Jail Authorities, the same were placed before the concerned authorities, which were rejected on 11<sup>th</sup> June 2024 and 12<sup>th</sup> June 2024 respectively. It is further averred in the counter affidavit that the Memoranda dated 12<sup>th</sup> June 2024 to that effect were sent to the detenu/the husband of the appellant.

**48.** It is thus clear that the representations dated 27<sup>th</sup> September 2023 of the detenu was rejected by the Detaining Authority and the Central Government on 11<sup>th</sup> June 2024 and 12<sup>th</sup> June 2024 respectively i.e. after a period of almost 9 months from the date of making the same.

**49.** In this respect, it will be apposite to refer to the observation of this Court in the case of ***Tara Chand vs. State of Rajasthan***

**and others**<sup>22</sup> wherein this Court was considering the delay of one month and five days in communicating the representation of the detenu from the jail to the detaining authority. This Court observed that:

“9. In spite of these evasive answers contained in para 21, it is clear that the representation dated February 23, 1980 of the detenu made by him through the jail authorities reached the detaining authority only on March 27, 1980. It was substantially in the same terms as the representation addressed to the Central Government for revocation of the detention under Section 11. ***This delay of one month and five days in communicating the representation of the detenu from the jail to the detaining authority demonstrates the gross negligence and extreme callousness with which the representation made by the detenu was dealt with by the respondents or their agents.*** Even after this huge delay, the representation was sent to the Collector for comments, and no intimation has been sent to the detenu about the fate of his representation dated February 23, 1980, addressed to the detaining authority. In fact, as it appears from the counter, the detaining authority refused to consider the same merely because the detenu had requested that this representation be forwarded to the Advisory Board, also. ***The mere fact that the meeting of the Advisory Board had been held earlier was not a valid excuse for the detaining authority in not***

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<sup>22</sup> (1981) 1 SCC 416

*considering the representation of the detenu at all.*

**10. It is well settled that in case of preventive detention of a citizen, Article 22(5) of the Constitution enjoins that the obligation of the appropriate Government or of the detaining authority to afford the detenu the earliest opportunity to make a representation and to consider that representation speedily is distinct from the Government's obligation to constitute a Board and to communicate the representation, amongst other materials, to the Board to enable it to form its opinion and to obtain such opinion. In the instant case, there has been a breach of these constitutional imperatives.”**

[emphasis supplied]

**50.** This Court in unequivocal terms held that the delay of one month and five days in communicating the representation of the detenu from the jail to the detaining authority demonstrates the gross negligence and extreme callousness with which the representation made by the detenu was dealt with by the respondents or their agents. It has been further held that Article 22(5) of the Constitution enjoins that the obligation of the appropriate Government or of the detaining authority to afford the detenu the earliest opportunity to make a representation and to consider that representation speedily is distinct from the

Government's obligation to constitute a Board and to communicate the representation, amongst other materials, to the Board to enable it to form its opinion and to obtain such opinion.

**51.** It is thus clear that merely because the Advisory Board opined that the order of detention was sustainable, it does not absolve the agents of the Detaining Authority/the Central Government to immediately forward the representation to the Competent Authority and the Detaining Authority or the Central Government to consider and decide such a representation speedily.

**52.** In the case of *Rattan Singh vs. State of Punjab and others* (supra), this Court found that the representation of the detenu made to the State Government was decided expeditiously. However, insofar as the said representation made to the Central Government is concerned, either it was not forwarded or someone tripped somewhere. The inevitable result was that the detenu was deprived of a valuable right to defend and assert his fundamental right to personal liberty. Chief Justice Y.V. Chandrachud, speaking for the Bench, observed thus:

“**4.** There is no difficulty insofar as the

representation to the Government of Punjab is concerned. But the unfortunate lapse on the part of the authorities is that they overlooked totally the representation made by the detenu to the Central Government. The representations to the State Government and the Central Government were made by the detenu simultaneously through the Jail Superintendent. The Superintendent should either have forwarded the representations separately to the Governments concerned or else he should have forwarded them to the State Government with a request for the onward transmission of the other representation to the Central Government. Someone tripped somewhere and the representation addressed to the Central Government was apparently never forwarded to it, with the inevitable result that the detenu has been unaccountably deprived of a valuable right to defend and assert his fundamental right to personal liberty. Maybe that the detenu is a smuggler whose tribe (and how their numbers increase) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenus. Section 11(1) of COFEPOSA confers upon the Central Government the power to revoke an order of detention even if it is made by the State Government or its officer. That power, in order to be real and effective, must imply the right in a detenu to make a representation to the Central Government against the order of detention. The failure in this case on the part either of the Jail Superintendent or the State

Government to forward the detenu's representation to the Central Government has deprived the detenu of the valuable right to have his detention revoked by that Government. The continued detention of the detenu must therefore be held illegal and the detenu set free.

**5.** In *Tara Chand v. State of Rajasthan* [(1980) 2 SCC 321 : 1980 SCC (Cri) 441] it was held by this Court that even an inordinate delay on the part of the Central Government in consideration of the representation of a detenu would be in violation of Article 22(5) of the Constitution, thereby rendering the detention unconstitutional. In *Shyam Ambalal Siroya v. Union of India* [(1980) 2 SCC 346 : 1980 SCC (Cri) 447] this Court held that when a properly addressed representation is made by the detenu to the Central Government for revocation of the order of detention, a statutory duty is cast upon the Central Government under Section 11, COFEPOSA to apply its mind and either revoke the order of detention or dismiss the petition and that a petition for revocation of an order of detention should be disposed of with reasonable expedition. Since the representation was left unattended for four months, the continued detention of the detenu was held illegal. In our case, the representation to the Central Government was not forwarded to it at all.”

**53.** This Court observed that, maybe the detenu was a smuggler whose tribe (and how their numbers increase) deserved no sympathy since its activities had paralysed the Indian economy, but the laws of preventive detention afforded only a modicum of

safeguards to persons detained under them. It has been observed that it was essential that at least those safeguards are not denied to the detenus. This Court observed that the failure in that case either on the part of the Jail Superintendent or the State Government to forward the detenu's representation to the Central Government had deprived the detenu of the valuable right to have his detention revoked by that Government.

**54.** Relying on the earlier judgments, this Court held that since the representation was left unattended for four months, the continued detention of the detenu was illegal.

**55.** In the case of ***Vijay Kumar vs. State of Jammu & Kashmir and others*** (supra), this Court observed thus:

“**13.** ....There are two time-lags which may be noticed. Representation admittedly handed in to the Superintendent of Jail on July 29, 1981, at Jammu reached Srinagar, the summer capital of the State on August 12, 1981, which shows a time-lag of 14 days. The second time-lag is, from our point of view, more glaring. Even though the concerned office was made aware of the fact by the wireless message of the Superintendent of Jail, Jammu, dated July 29, 1981, that a representation of the detenu has been sent by post, the first query about its non-receipt came as per the wireless message dated August 6, 1981. That can be overlooked, but it has one important message. The concerned office was

aware of the fact that a representation has already been made and a duplicate was sent for. With the background of this knowledge trace the movement of the representation from the date of its admitted receipt being August 12, 1981. If the representation was received on August 12, 1981, and the same office disposed it of on August 31, 1981, there has been a time-lag of 19 days and the explanation in that behalf in the affidavit of Shri Salathia is far from convincing. In our opinion, in the facts of this case this delay, apart from being inordinate, is not explained on any convincing grounds.”

**56.** This Court found that the delay of 14 days in transmitting the representation from Jammu to Srinagar and 19 days in deciding the same vitiated the detention order.

**57.** In the case of ***Aslam Ahmed Zahire Ahmed Shaik vs. Union of India and others*** (supra), this Court was again considering a similar factual scenario. The detenu had handed over the representation to the Superintendent of Central Prison on 16<sup>th</sup> June 1988, who callously ignored it and left the same unattended for a period of seven days and forwarded the same to the Government on 22<sup>nd</sup> June 1988. This Court surveyed the earlier decisions and observed thus:

“**5.** This Court in *Sk. Abdul Karim v. State of W.B.* [(1969) 1 SCC 433] held: (SCC p. 439, para 8)



“The right of representation under Article 22(5) is a valuable constitutional right and is not a mere formality.”

**6.** This view was reiterated in *Rashid Sk. v. State of W.B.* [(1973) 3 SCC 476 : 1973 SCC (Cri) 376] while dealing with the constitutional requirement of expeditious consideration of the petitioner's representation by the Government as spelt out from Article 22(5) of the Constitution observing thus: (SCC p. 478, para 4)

“The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty — the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.”

**7.** It is neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases within which period the representation of detenu has to be disposed of with reasonable expedition but it must necessarily depend on the facts and

circumstances of each case. The expression “reasonable expedition” is explained in *Sabir Ahmed v. Union of India* [(1980) 3 SCC 295 : 1980 SCC (Cri) 675] as follows: (SCC p. 299, para 12)

“What is ‘reasonable expedition’ is a question depending on the circumstances of the particular case. No hard and fast rule as to the measure of reasonable time can be laid down. But it certainly does not cover the delay due to negligence, callous inaction, avoidable red-tapism and unduly protracted procrastination.”

**8.** See also *Vijay Kumar v. State of J&K* [(1982) 2 SCC 43 : 1982 SCC (Cri) 348] and *Raisuddin v. State of U.P.* [(1983) 4 SCC 537 : 1984 SCC (Cri) 16] .

**9.** Thus when it is emphasised and re-emphasised by a series of decisions of this Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5) of the Constitution.

**10.** A contention similar to one pressed before us was examined by this Court in *Vijay Kumar*

*case* [(1982) 2 SCC 43 : 1982 SCC (Cri) 348] wherein the facts were that the representation of the detenu therein dated 29-7-1981 was forwarded to Government by the Superintendent of Jail on the same day by post followed by a wireless message, but according to the Government, the representation was not received by them. Thereafter, a duplicate copy was sent by the Jail Superintendent on being requested and the same was received by the Government on 12-8-1981. Considering the time lag of 14 days in the given circumstances of that case, this Court though overlooked the same and allowed the writ petition on the subsequent time lag, made the following observation: (SCC pp. 49-50, para 12)

“The jail authority is merely a communicating channel because the representation has to reach the Government which enjoys the power of revoking the detention order. The intermediary authorities who are communicating authorities have also to move with an amount of promptitude so that the statutory guarantee of affording earliest opportunity of making the representation and the same reaching the Government is translated into action. The corresponding obligation of the State to consider the representation cannot be whittled down by merely saying that much time was lost in the transit. If the Government enacts a law like the present Act empowering certain authorities to make the detention order and also simultaneously makes a statutory

provision of affording the earliest opportunity to the detenu to make his representation against his detention, to the Government and not the detaining authority, of necessity the State Government must gear up its own machinery to see that in these cases the representation reaches the Government as quickly as possible and it is considered by the authorities with equal promptitude. Any slackness in this behalf not properly explained would be denial of the protection conferred by the statute and would result in invalidation of the order.”

**11.** Reverting to the instant case, we hold that the above observation in *Vijay Kumar case* [(1982) 2 SCC 43 : 1982 SCC (Cri) 348] will squarely be applicable to the facts herein. Indisputably the Superintendent of Central Prison of Bombay to whom the representation was handed over by the detenu on 16-6-1988 for mere onward transmission to the Central Government has callously ignored and kept it in cold storage unattended for a period of seven days, and as a result of that, the representation reached the Government eleven days after it was handed over to the Jail Superintendent. Why the representation was retained by the Jail Superintendent has not at all been explained in spite of the fact that this Court has permitted the respondent to explain the delay in this appeal, if not before the High Court.

**12.** In our view, the supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably

delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant's representation by the Government which received the representation eleven days after it was handed over to the Jail Superintendent by the detenu. This avoidable and unexplained delay has resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible.”

**58.** It could thus be seen that this Court in unequivocal terms held that the intermediary authorities who are communicating authorities are also required to move with an amount of promptitude so that the statutory guarantee of affording earliest opportunity of making the representation and the same reaching the Government is translated into action. This Court expressed the need of the State Government to gear up its own machinery to see that in these cases the representation reaches the Government as quickly as possible and it is considered by the authorities with equal promptitude. It has been held that any slackness in this behalf not properly explained would be denial of the protection conferred by the statute and would result in invalidation of the order.

**59.** The position of law as laid down in the case of ***Aslam***

**Ahmed Zahir Ahmed Shaik** (supra) was reiterated by a bench of 3 learned Judges of this Court in the case of **B. Alamelu vs. State of T.N. and others** (supra).

60. In the present case, it is an admitted position that though the detenu had made a representation on 27<sup>th</sup> September 2023 to the Jail Authorities for onward transmission of the same to the Detaining Authority and the Central Government, it is merely stated in the counter affidavit that the Jail Authorities informed that the representations dated 27<sup>th</sup> September 2023 were submitted by the detenu. The Jail Authorities had sent the said representations to the concerned authorities through ordinary post. It is stated that however, neither the Detaining Authority nor the Central Government received the said representations. It is further stated that the said representations were sent by the ordinary post and since the said representations were sent by ordinary post, they could not be tracked to know where the said ordinary posts have stuck. It is further averred that only after a notice was issued in the present matter, the said representations were sought from the Jail Authorities and the same came to be rejected on 11<sup>th</sup> June 2024 and 12<sup>th</sup> June 2024 respectively.

**61.** Memoranda dated 12<sup>th</sup> June 2024 further show that the Director General, CEIB being the Central Government received the representation of the detenu through Superintendent, Central Prison & Correctional Home, TVPM-12 vide his letter dated 11<sup>th</sup> May 2024 and the representation was received by the Detaining Authority through email on 22<sup>nd</sup> May 2024. However, there is no mention in the counter affidavit as to when the said representations were in fact received by the Central Government and the Detaining Authority. Presumably, if it is held that the representation would have been received by the Central Government within 2 or 3 days from the date of dispatch thereof that will bring the date of receipt on 14/15<sup>th</sup> May 2024.

**62.** Even if it is presumed that the said representations were received on 15<sup>th</sup> May 2024 and 22<sup>nd</sup> May 2024 respectively, even then there is a delay of about 27 days in deciding the said representation by the Central Government and 20 days by the Detaining Authority.

**63.** No explanation as to what caused such a delay in deciding the said representations of the detenu is offered in the counter affidavit.

**64.** Firstly, we find that the Superintendent of the Central Prison & Correctional Home has acted in a thoroughly callous and casual manner. In spite of there being catena of judgments by this Court that it is the duty of the transmitting authorities to transmit the representation of the detenu promptly and it is the corresponding duty of the concerned authorities to consider the said representation and to decide it swiftly, the same has been followed only in breach in the present matter.

**65.** In the present case, it has been casually stated that though the Jail Authorities had informed that the representations of the detenu were sent through ordinary post, the same were neither received by the Detaining Authority nor the Central Government. We deprecate the practice of the Prison Authorities in dealing with the valuable right of the detenu in such a casual manner.

**66.** In spite of this Court clearly observing in the case of **Vijay Kumar** (supra) that the State Government must gear up its own machinery to ensure that the representation is transmitted quickly; it reaches the Central Government as quickly as possible and is decided expeditiously. In the present case, the law laid down by this Court has been given a go-bye.



**67.** The Jail Authorities ought to have ensured that the representation of the detenu reaches the concerned Authorities at the earliest. In the present era of technological advancement, the Jail Authorities could have very well sent the copies of the representation to the Detaining/Appropriate Authority either by email or at least a physical copy could have been sent by Speed Post (acknowledgment due) so that there could have been some evidence of the said being sent to the competent authority and could have been tracked.

**68.** We are of the considered view that merely because there has been a casual or callous and, in fact, negligent approach on the part of the Jail Authorities in ensuring that the representation of the detenu is communicated at the earliest, the valuable right available to the detenu to have his representation decided expeditiously cannot be denied.

**69.** As already discussed herein above, there has been a delay of almost about 9 months in deciding the representations made by the detenu. Even otherwise, from the Memoranda dated 12<sup>th</sup> June 2024, as already discussed herein above, there would be at least 27/20 days' delay on the part of the Central Government

and the Detaining Authority in deciding the representation of the detenu after it reached them subsequent to the filing of the present appeal.

**70.** We may only reiterate what has been laid down in the earlier judgments of this Court that the Prison Authorities should ensure that the representations are sent to the Competent Authorities immediately after the receipt thereof. In the present era of technological development, the said representation can be sent through email within a day. It is further needless to reiterate that the Competent Authority should decide such representation with utmost expedition so that the valuable right guaranteed to the detenu under Article 22(5) of the Constitution is not denied. In the matters pertaining to personal liberty of the citizens, the Authorities are enjoined with a constitutional obligation to decide the representation with utmost expedition. Each day's delay matters in such a case.

**71.** In the present matter, we find that on account of casual, callous and negligent approach of the Prison Authorities, the representation of the detenu could not reach to the Detaining Authority and the Central Government within a reasonable

period. There has been about 9 months' delay in deciding the representation. Even otherwise, accepting the stand of the respondents as made in the counter affidavit, there has been a delay of 27/20 days on the part of the Central Government and the Detaining Authority in deciding the representation when it was called from the Prison Authorities after notice was issued in the present matter. We further find that the detention order is liable to be quashed and set aside on this ground also.

**72.** In the result, we pass the following order:

- (i) The appeal is allowed;
- (ii) The judgment and order of the High Court dated 4<sup>th</sup> March 2024 in Writ Petition (Criminal) No. 1271 of 2023 is quashed and set aside.
- (iii) The order dated 31<sup>st</sup> August 2023 passed by the Joint Secretary (COFEPOSA) to the Government of India directing the detention of the detenu is quashed and set aside.
- (iv) The order dated 28<sup>th</sup> November 2023 passed by the Under Secretary, Government of India confirming the detention order of the detenu – Appisseril Kochu

Mohammed Shaji (Shaji A.K.) is quashed and set aside.

- (v) The detenu is directed to be released forthwith, if not required in any other case.

.....J  
(B.R. GAVAI)

.....J  
(PRASHANT KUMAR MISHRA)

.....J  
(K.V. VISWANATHAN)

**NEW DELHI;  
SEPTEMBER 12, 2024.**