* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Judgment reserved on: 08.12.2020**

**% Judgment delivered on: 16.02.2021**

\+ **W.P.(CRL.) 1166/2020 & CRL.M.A. 10239/2020**

HARMEET SINGH ..... Petitioner

Through: Mr. Siddharth Aggarwal, Mr. Arjun Dewan, Mr. Sowjahnya Shankaran and Mr. Shahryar Khan, Advocates

versus

UNION OF INDIA, THROUGH ITS SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, CENTRAL ECONOMIC INTELLIGENCE & ORS.

..... Respondent

Through: Mr. Amit Mahajan, CGSC with Mr. Dhruv Pande, Mr. Gitesh Chopra and Mr. Kritagya Kumar Kait, Advocates for R-1 and R-2.
Mr. Satish Aggarwal, Sr. Standing Counsel with Mr. Gagan Vaswani and Mr. Vineet Sharma Advocates for R-3 & R-4.

**CORAM:**
**HON'BLE MR. JUSTICE VIPIN SANGHI**
**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

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

**VIPIN SANGHI, J.**

1. The petitioner has preferred the present writ petition to assail the Detention Order bearing No. PD-12002/05/20-COFEPOSA dated 05.06.2020 (hereinafter referred to as the "**Detention Order")** issued against the petitioner by Respondent No. 2- Joint Secretary, COFEPOSA, Government of India under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "**COFEPOSA ACT").** The Respondent Authorities have not been able to execute the Detention Order prior to, and even after filing of the present writ petition. The Petitioner has, thus, not yet been served with either the Detention Order, or the Grounds of Detention, or the Relied upon Documents.

***Brief Factual Matrix***

2. On the night of 1st February, 2019, on the basis of certain specific intelligence that items, such as drones, gold and cigarettes would be smuggled in commercial quantities, one Mr. Gaganjot Singh and one Mr. Gurpreet Singh were interrupted at the IGI Airport upon their arrival from overseas. Contraband items such as drones, foreign branded cigarettes etc were recovered from both of them. On being questioned about the items, Mr. Gaganjot Singh admitted that he along with Mr. Gurpreet had bought the items to sell in the Indian market and gain profits, and revealed that his brother (Petitioner herein) would also be arriving with other people via the connecting flight no. KU 381 from Kuwait to Delhi, smuggling similar contraband items into the Indian Territory. Consequently, on the intervening night of 01.02.19 and 02.02.19, at around 1:30 am, the Petitioner and certain

other passengers, namely, Amarjeet Singh, Saurabh Chopra and Sumit Verma arrived at IGI Airport, from Dubai by Kuwait Airways flight No. KU381. While the Petitioner and other passengers were collecting their suitcases from the conveyer belt, the Petitioner was taken to Customs Arrival Hall at IGI Airport, New Delhi. A detailed examination of the bags belonging to the petitioner was conducted, from which the following items were recovered:

i. 112 Benson & Hedges Cigarette dandas kept in checked-in Fabric Zipper Baggage having tag No. KU 326359 and 108 Benson & Hedges Cigarette dandas kept in transparent polythene then wrapped with Black colour polythene (without any Tag) and one hand bag containing 18 Dandas of Benson & Hedges Cigarette (without tag);

ii. Boarding Pass of Flight No. KU 381 dated 01.02.2019 (Kuwait to Delhi) having seat No. 2H;

iii. Indian Passport No. Z5317414 issued on 16.01.2019.;

iv. One Vivo Y53 Mobile Phone having Vodafone Sim No. 8860253525 as disclosed by Pax;

v. AED 300/-

vi. 02 bottles of Chivas Regal 12 YO whisky.

vii. Personal effect – old and used

3. After effecting recoveries, a Panchnama was prepared and total value of Benson & Hedges cigarettes recovered from the Petitioner was Rs. 7,14,000/- (Seven Lakh Fourteen Thousand Rupees only). The total value of the recovered and seized goods from these four passengers was calculated to be Rs. 1,09,74,500/-.

4. On 2nd February, 2019, the Statements of the Petitioner, along with others were recorded under Section 108 of the Customs Act, 1962. The petitioner claims that his statement given on 2nd February, 2019 was self-incriminating in nature, and given under force and coercion. As per the Arrest Memo, the Petitioner was arrested on 3rd February 2019 at 10:15 pm, whereas the petitioner claims that he along with co-accused persons had been illegally detained since the intervening night of 1st -2nd February, 2019.

5. Vide order dated 04.02.19, the bail applications of the petitioner along with co-accused persons were dismissed by Metropolitan Magistrate, Patiala House Court, and they were remanded to judicial custody till 5th February, 2019. Their judicial custody was further extended to 19th February, 2019, vide order dated 05.02.19. The Petitioner retracted his statement recorded on 2nd February, 2019, vide letter dated 11.02.19.

6. The proposal for detention of the Petitioner was sent along with the proposal of his brother, i.e. Mr. Gaganjot Singh on 25th February 2019 by the Sponsoring Authority under Section 3 of the COFEPOSA Act. However, Respondent No.2 passed the Detention Order dated 11.03.2019 only qua Mr. Gaganjot Singh (who has since completed his period of detention), and not against the present Petitioner. Mr. Gaganjot Singh challenged his detention

by filing W.P.(CRL.) 1843/2019, which was dismissed by this Court on 24.11.19.

7. On 6th April 2019, the Petitioner was released on statutory bail as the Investigating Agency did not file the chargesheet within prescribed period of 60 days. The petitioner was then summoned to appear before Air Customs Superintendent on 22.04.19, when his statement under Section 108 of the Customs Act, 1862 was again recorded.

8. Separately, Show Cause Notice dated 22.07.19 w.r.t. the seized goods was issued to the petitioner, proposing confiscation of the goods and imposing penalty under Section 112 (A), 112 (B) and 114AA of the Customs Act, 1962.

9. As a part of the investigation, the respondents desired to unlock the mobile phone instrument of the petitioner to retrieve the materials/ documents therefrom. To open/ unlock the mobile phone instrument of the petitioner, the Respondents required the password of the mobile phone belonging to the petitioner, which led to issuance of various summons/letters to petitioner. The petitioner, it appears, desired that his mobile phone instrument be opened/ unlocked in his presence. Consequently, notices were issued to him to remain present. The respondents claim that the petitioner did not co-operate in the opening/ unlocking of his mobile phone instrument. It appears that the said instrument was eventually opened/ unlocked on 20.01.2020 at Mumbai and its forensic examination was conducted. The same led to the recovery of incriminating documents/materials, and the petitioner was summoned again. His statement was again recorded under

Section 108 of the Customs Act, 1962 on 31.01.20. Thereafter, a fresh proposal to preventively detain the petitioner was forwarded by the Sponsoring Authority, dated 13.03.2020. On 05 June, 2020, the impugned Preventive Detention Order bearing No. PD-12002/05/20-COFEPOSA was issued against the Petitioner by Respondent No.2 under Section 3 of the COFEPOSA Act.

10. Since the petitioner moved this petition at the pre-execution stage, he sought interim protection against execution of the Detention Order during pendency of this writ petition. We rejected the said application vide our order dated 04.08.2020, observing that the petitioner's statement – under Section 108 of Customs Act, 1962, recorded as late as on 31.01.2020, which he claimed was recorded under duress and coercion, had never been retracted. Moreover, the said statement had not been placed on record. Therefore, we prima-facie could not conclude that the Detention Order is belated, or that the live-link between the prejudicial activity - on the basis of which the Detention Order had been passed, and the object of detention i.e. the need to detain the petitioner to prevent him from undertaking similar prejudicial activity in future, has been snapped.

11. At the time of filing of this petition, the petitioner's representation under Section 11 of COFEPOSA was pending consideration with the Detaining Authority. On 28.09.20, we were informed that the reason for not considering the representation was the fact that the petitioner had not been taken into custody. It was stated that till the time he is not taken into custody, his representation would not be decided. The petitioner placed reliance on the decision of a Division Bench of this Court in ***Mansuk***

***Chhagan Lal Bhatt Vs. Union of India and Anr.*** 1994 (31) DRJ (DB) 317 which was subsequently relied upon in ***Bhavna Mehra Vs. Union of India and Ors.,*** W.P.(Crl) 274/2009 decided on 25.5.2009. This Court has taken the view in the aforesaid decisions, that the consideration of the representation cannot be withheld by the Detaining Authority for such like reasons. Even otherwise, on a reading of Section 11 of the COFEPOSA Act, 1974, it does not emerge that the consideration of the representation made by the detenu would be subject to his being detained, or his surrendering in pursuance of the Detention Order. On 28.09.20, we directed the Respondents to consider the representation and place the result of the said consideration before us, on the next date of hearing. On 07.10.20 we were informed that the said representation had been rejected and the rejection was placed on record.

***Petitioner's Submissions:***

12. The only submission advanced by Mr. Aggarwal on behalf of the petitioner is that the impugned Detention Order was issued after an inordinate delay of 1 year and 4 months, or about 490 Days, and that this long delay is fatal to the Detention Order. The contraband items found in the petitioner's belongings were seized on the intervening night of 1st and 2nd February 2019, whereas the present Detention Order was issued only on 5th June 2020. The initial proposal for detention of the petitioner was sent to the Joint Secretary, COFEPOSA on 25th February 2019. That proposal was not accepted, as the materials placed by the Sponsoring Authority were not found to be sufficient to justify the petitioner's preventive detention. It is argued that the delay in the passing of a Detention Order is fatal to the

consequent detention, as the nexus/ live link between the prejudicial activity and the purpose of detention snapped due to the delay which - in this case, is more than 16 months.

13. Reliance is placed on ***Licil Antony Vs. State of Kerala & An***r, (2014) 11 SCC 326. Our attention is also drawn to ***Rajinder Arora versus Union of India***, (2006) 4 SCC 796, wherein the Hon'ble Supreme Court had quashed the Detention Order, as there was delay of approximately 10 months.

14. Mr. Aggarwal further submits that the only justification now offered by the respondents is that they could unlock the mobile phone instrument of the petitioner only in January, 2020. The forensic examination of the mobile phone was conducted only on 20.01.2020, after being seized from the petitioner on the night of 1st February 2019. The submission of Mr. Aggarwal is that the inordinate time taken by the respondents to unlock the mobile phone instrument of the petitioner – when that facility was available with them, cannot be taken benefit of by the respondents to justify the immense delay. There is no explanation as to why steps were not taken earlier to open/ unlock the mobile instrument of the petitioner. Reliance is placed on ***Sumita Dev Bhatacharya Vs. Union of India and Ors***, (2015) CriLJ4287, where it was held:

> *"59. ....* ... ...
>
> *The petition must succeed even on the ground of not passing the Detention Order for a period of 8 months, after the proposal was accepted on 28.6.2013. The sole purpose of passing the Detention Order is that the live link between the occurrence and the order should not become stale. By the time the proposal is sent it is deemed that the investigation is complete, which is*

*enough to detain a person, and any additional investigation which may have been carried out, cannot be a ground to explain the delay."*

15. Mr. Aggarwal submits that since the initial proposal for detention was sent on 25th February 2019, the Sponsoring Authority i.e. Office of the Commissioner Customs (Airport & General) IGI Airport T-3, New Delhi, believed that they had enough material to seek detention of the petitioner under the Act, and, therefore there cannot be any justification for the delay between the proposal of detention, and the impugned Detention Order.

16. Mr. Aggarwal further submits that, admittedly, the Sponsoring Authority had all the incriminating material by 31st January 2020. As per the counter affidavit, a fresh proposal for detention was forwarded on 13th March 2020, but the approval was only received on 19th May 2020. However, there is no explanation for delay of one month in initiating the proposal. The nationwide lockdown on account of COVID-19 cannot be used as a justification for delay in matters pertaining to personal liberty. In this regard, reliance is placed on judgement of the Supreme Court in ***S.Kasi versus State*** [judgment dated 19 June 2020 in Crl. Appeal 452/2019]

***Respondent's Submissions:***

17. The Respondents have defended their action, and it is contended that there is no delay in either sending the fresh proposal for detention in January 2020, or in its consideration. They submit that they have been pursuing the matter with utmost diligence, and have been investigating the case against the petitioner with a proactive approach, and no delay has been caused. Mr. Mahajan, counsel for the Respondent 1 & 2 also submits that since the

challenge to the Detention Order is at pre-execution stage, firstly, the aspect of delay in passing the Detention Order should not be gone into, and secondly, in any event, there is no merit in the said pleas of the petitioner.

18. The timeline of the developments in the matter – from the initial stage of recovery of contraband items, to the last stage of the issuance of the impugned Detention Order is sought to be explained by the Respondents. The proposals of Sponsoring Authority for the preventive detention of the petitioner herein under the COFEPOSA Act, 1974 were initially sent in February 2019. They were considered by the Central Screening Committee (CSC) in its meeting held on 26.02.2019, and the Sponsoring Authority was apprised of the need to gather further evidence connected with the offences of smuggling of contraband items by the petitioner so as to consider the proposal in future. In this regard, letters dated 7.3.2019, 23.4.2019, 31.5.2019, 6.9.2019, 5.12.2019 and 2.1.2020 were sent to the Sponsoring Authority. The proposal was reconsidered by CSC in its meeting held on 05.02.2020 for its disposal, and that proposal was disposed off. The disposal was communicated to the Sponsoring Authority vide letter dated 13.2.2020. Thus, the said initial proposal did not fructify into a Detention Order.

19. Consequent upon the forensic examination of the mobile phone of the petitioner which unearthed additional facts, and incriminating materials, a fresh proposal dated 13.03.20 was forwarded by the Sponsoring Authority to the CEIB, Department of Revenue, Ministry of Finance, for preventive detention of petitioner for being a repeat offender for indulging in smuggling of foreign currency, cameras, cigarettes etc. The approval of the Chief

Commissioner of Customs (DZ), New Delhi for the preventive detention of the petitioner was delayed on account of nationwide lockdown, and finally the said approval came on 19.05.20. This proposal of Sponsoring Authority was then considered by CSC in its meeting held on 29.05.2020. Thereafter, the proposal was examined by Detaining Authority with reference to the recommendation of the CSC. After a careful consideration of the facts and circumstances of the case, the nature of activities, the material collected, the propensity and potentiality of the petitioner to indulge in further smuggling activities, the Detaining Authority passed the Detention Order on 05.06.2020.

20. Mr. Mahajan submits that the petitioner had not cooperated in the investigation, and consequently, forensic examination of his mobile phone was delayed. He submits that it is apparent from the conduct of the petitioner that since the date of his voluntary statement given on 22.04.2019, till the forensic examination of his phone on 20.01.2020, the major reason for the delay caused in the investigation was due to non- cooperation of the petitioner.

21. Mr. Mahajan submits that if the time lag in passing and executing the Detention Order is reasonably explained by the Respondents, then the same cannot be called "delay", and it cannot be a ground for quashing a Detention Order. Reliance is placed on the judgement in ***Union of India v. Muneesh Suneja***, (2001) 3 SCC 92, where the Hon'ble Supreme Court has held that an order of detention cannot be quashed either on the ground of delay in passing the impugned order, or delay in executing the said order, since mere delay either in passing the order or execution thereof is not fatal, if it stands

reasonably explained. The Supreme Court further observed in ***Licil Antony*** (supra), that even in a case of undue delay between the prejudicial activity and the passing of Detention Order, the order of detention is not vitiated if the delay is satisfactorily explained. The following extract of the judgment in ***Licil Antony*** (supra) is relied upon by the respondents:

> *"7. Mr Raghenth Basant, learned counsel for the appellant submits that there is inordinate delay in passing the order of detention and that itself vitiates the same. He points out that the last prejudicial activity which prompted the detaining authority to pass the order of detention had taken place on 17-11-2012; whereas the order of detention has been passed on 6-5-2013. He submits that delay in passing the order has not been explained.*
>
> *8. Mr M.T. George, learned counsel appearing on behalf of the respondents does not join issue and admits that the sponsoring authority wrote about the necessity of preventive detention in its letter dated 17-12-2012 for the prejudicial activity of the detenu which had taken place on 17-11-2012 and the order of detention was passed on 6-5-2013 but this delay has sufficiently been explained. He submits that mere delay itself is not sufficient to hold that the order of detention is illegal.*
>
> ***9. We have given our thoughtful consideration to the rival submissions and we have no doubt in our mind that there has to be a live-link between the prejudicial activity and the order of detention. COFEPOSA intends to deal with persons engaged in smuggling activities who pose a serious threat to the economy and thereby security of the nation. Such persons by virtue of their large resources and influence cause delay in making of an order of detention. While dealing with the question of delay in making an order of detention, the court is required to be circumspect and has to take a pragmatic view. No hard-and-fast formula is possible to be laid or has been laid in this regard. However, one thing is clear that in case of delay, that has to be satisfactorily explained. After all, the purpose of preventive***

***detention is to take immediate steps for preventing the detenu from indulging in prejudicial activity. If there is undue and long delay between the prejudicial activity and making of the order of detention and the delay has not been explained, the order of detention becomes vulnerable. Delay in issuing the order of detention, if not satisfactorily explained, itself is a ground to quash the order of detention. No rule with precision has been formulated in this regard. The test of proximity is not a rigid or a mechanical test. In case of undue and long delay the court has to investigate whether the link has been broken in the circumstances of each case.***

*11. Further, this Court had the occasion to consider this question in Rajinder Arora v. Union of India [(2006) 4 SCC 796 : (2006) 2 SCC (Cri) 418] in which it has been held as follows: (SCC pp. 802-03, paras 20-22)*

*"20. Furthermore no explanation whatsoever has been offered by the respondent as to why the order of detention has been issued after such a long time. The said question has also not been examined by the Authorities before issuing the order of detention.*

*21. The question as regards delay in issuing the order of detention has been held to be a valid ground for quashing an order of detention by this Court in T.A. Abdul Rahman v. State of Kerala [(1989) 4 SCC 741 : 1990 SCC (Cri) 76] stating: (SCC pp. 748-49, paras 10-11)*

> ***'10. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard-and-fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical***

***test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.***

*11. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner.'*

*22. The delay caused in this case in issuing the order of detention has not been explained. In fact, no reason in that behalf whatsoever has been assigned at all."*

***18. From what we have stated above, it cannot be said that there is undue delay in passing the order of detention and the live nexus between the prejudicial activity has snapped. As observed earlier, the question whether the prejudicial activity of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activity and the purpose of detention is snapped depends on the facts and circumstances of each case. Even in a case of undue or long delay between the prejudicial activity and the passing of detention order, if the same is satisfactorily explained and a tenable and reasonable explanation is offered, the order of detention is not vitiated. We must bear in mind that***

***distinction exists between the delay in making of an order of detention under a law relating to preventive detention like COFEPOSA and the delay in complying with procedural safeguards enshrined under Article 22(5) of the Constitution. In view of the factual scenario as aforesaid, we are of the opinion that the order of detention is not fit to be quashed on the ground of delay in passing the same.***

*19. The conclusion which we have reached is in tune with what has been observed by this Court in M. Ahamedkutty v. Union of India [(1990) 2 SCC 1 : 1990 SCC (Cri) 258] . It reads as follows: (SCC p. 8, para 10)*

> *"10. ... Mere delay in making of an order of detention under a law like COFEPOSA Act enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence, have been posing a serious threat to the economy and thereby to the security of the nation, the courts should not merely on account of the 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 was no real nexus between the grounds and the impugned order of detention. In that case, there was no explanation for the delay between 2-2-1987 and 28-5-1987, yet it could not give rise to legitimate inference that the subjective satisfaction arrived at by the District Magistrate was not genuine or that the grounds were stale or illusory or that there was no rational connection between the grounds and the order of detention."*(emphasis supplied)

22. Mr. Mahajan submits that the Supreme Court in ***Licil Antony*** (supra) was mindful of the ratio laid down in ***Rajinder Arora*** (supra), and yet held that delay in passing of Detention Order would not be fatal. He also submits that the facts of ***Rajinder Arora*** (supra) were completely different from the present case, since in the said case, the Detention Order was quashed on the ground of delay in execution of the Detention Order – for which no reasonable explanation was tendered, and not on the ground of delay in passing of the order.

23. Reliance is also placed by Mr. Mahajan on ***T.A. Abdul Rahman vs State of Kerala***, (1989) 4 SCC 741, where the Supreme Court held that:

> *"10. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case.* ***No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention****. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case."*
> (emphasis supplied)

***Analysis and Conclusion:***

24. We have given our thoughtful consideration to the entire matter. We have examined the submissions made, the documents and case law relied upon by learned counsels.

25. A Detention Order can validly be assailed even at the pre-execution stage, though on limited grounds. This position was recognized by the Supreme Court in ***Additional Secretary to Government of India and Others Vs. Smt. Alka Subhash Gadia and An***r, (1992) Supp 1 SCC 496, which enlists some of the grounds on which the Detention Order could be assailed even prior to execution. Those grounds are illustrative, and not exhaustive as held in ***Deepak Bajaj v. State of Maharashtra and Another***, (2008) 16 SCC 14. At the same time, the Supreme Court in ***State of Maharashtra & Ors. v. Bhaurao Punjabrao Gawande***,(2008) 3 SCC 613, noted:

> "*As a general rule, an order of detention passed by a Detaining Authority under the relevant "preventive detention" law cannot be set aside by a writ court at the pre-execution or pre-arrest stage unless the court is satisfied that there are exceptional circumstances specified in Alka Subhash Gadia [1992 Supp (1) SCC 496 : 1992 SCC (Cri) 301] . The Court must be conscious and mindful of the fact that this is a "suspicious jurisdiction" i.e. jurisdiction based on suspicion and an action is taken "with a view to preventing" a person from acting in any manner prejudicial to certain activities enumerated in the relevant detention law. Interference by a court of law at that stage must be an exception rather than a rule and such an exercise can be undertaken by a writ court with extreme care, caution and circumspection. A detenu cannot ordinarily seek a writ of mandamus if he does not surrender and is not served with an order of detention and the grounds in support of such order*."

26. Mr. Siddharth Agarwal, learned counsel on behalf of the petitioner, has argued that there is inordinate and unexplained delay in passing of the Detention Orders. In support of this submission, our attention is drawn to the fact that the petitioner was intercepted on the intervening night of 1st and 2nd February, 2019, and as per the arrest memo, he was apprehended on 3rd February, 2019. Yet, the Detention Order came to be passed only on 05.06.2020. On the other hand, Mr. Mahajan argues that firstly, the issue of delay cannot be gone into at this pre-execution stage, and secondly, that if the apparent delay time has been satisfactorily been explained, then quashing of the Detention Order is not warranted.

27. In ***Muneesh Suneja*** (supra), the Supreme Court after noticing ***Alka Subhash Gadia*** (supra), held as follows:

> *"7. ... ... ...* ***This Court has been categorical that in matters of pre-detention cases interference of court is not called for except in the circumstances set forth by us earlier. If this aspect is borne in mind, the High Court of Punjab and Haryana could not have quashed the order of detention either on the ground of delay in passing the impugned order or delay in executing the said order, for mere delay either in passing the order or execution thereof is not fatal except where the same stands unexplained. In the given circumstances of the case and if there are good reasons for delay in passing the order or in not giving effect to it, the same could be explained and those are not such grounds which could be made the basis for quashing the order of detention at a pre-detention stage.*** *Therefore, following the decisions of this Court in Addl. Secy. to the Govt. of India v. Alka Subhash Gadia [1992 Supp (1) SCC 496 : 1992 SCC (Cri) 301] and Sayed Taher Bawamiya v. Jt. Secy. to the Govt. of India [(2000) 8 SCC 630 : 2001 SCC (Cri) 56], we hold that the order made by the High Court is bad in law and deserves to be set aside."* (emphasis supplied)

28. At this stage, we may take note of the timeline of events as produced before us by the Respondents 1 & 2 in their Counter Affidavit. The recovery of contraband items from the petitioner and co-accused persons was done on the intervening night of 1st and 2nd February. On 3rd February, Respondent No. 3 (DRI) arrested the petitioner. The petitioner was released on statutory bail on 6th April 2019, due to non-filing of chargesheet within 60 days. The petitioner was then summoned to appear before Air Customs Superintendent on 22.04.19, where the Statement of the petitioner under Section 108 of the Customs Act, 1862 was recorded. The Respondents needed the password of the mobile phone belonging to the petitioner to be able to unlock the same and retrieve any relevant and incriminating material, which would further establish his involvement in the acts of smuggling. This led to issuance of summons to the petitioner dated 21.05.19, but the petitioner failed to appear. Hence, summons dated 06.06.19 was issued, in response to which the petitioner appeared on 12.06.19. The petitioner appeared, but claimed that he did not remember the password of his mobile phone. Hence forensic examination of the same could not be conducted.

29. Since the password to the mobile phone belonging to the petitioner could not be recovered, efforts were made to find a laboratory capable of unlocking and conducting forensic examination of the contents of the petitioner's mobile phone, even in absence of the password. Letter dated 20.11.19 was issued, informing the petitioner about the forensic examination to be conducted at DRI, Mumbai, on 25.11.19. The letter remained unserved since the petitioner could not be found at his given address. After the petitioner gave his new address, another letter dated 17.01.20 was issued

informing him about the date of the forensic examination i.e. 20.01.20. The letter also mentioned that in case the petitioner, or his authorized representative does not appear on the said date, it will be presumed he is not willing to participate in the same. The petitioner failed to turn up and forensic examination of his mobile phone was finally conducted on 20.01.20. The same led to the recovery of incriminating documents/materials, and the petitioner was summoned again and his statement was recorded under Section 108 of the Customs Act, 1962 on 31.01.20.

30. Consequently, a fresh proposal dated 13.03.20 was forwarded by the Sponsoring Authority to the CEIB, Department of Revenue, Ministry of Finance for preventive detention of petitioner, for being a repeat offender indulging in smuggling of foreign currency, cameras, cigarettes etc. The Chief Commissioner of Customs (DZ), New Delhi could not grant his approval on account of nationwide lockdown, and finally gave its approval on 19.05.20. This proposal of the Sponsoring Authority was considered by CSC in its meeting held on 29.05.20. Thereafter, the proposal was examined by Detaining Authority with reference to the recommendation of the CSC. The impugned Detention Order came to be finally passed on 05.06.20 by the Detaining Authority.

31. On a careful examination of all the facts present before us, we find that the aforesaid timeline satisfactorily explains and justifies the time taken by the Respondents in undertaking investigation, which finally culminated in passing of the impugned Detention Order. The initial proposal sent by the Sponsoring Authority in February, 2019 was not found sufficient to justify

the petitioner's detention under Section 3 of the COFEPOSA Act. The Sponsoring Authority, therefore, continued with its efforts to conduct further investigation and, for that purpose, retrieval of the contents of the mobile phone of the petitioner was crucial. Vide his letter dated 23.04.19, the petitioner desired that the forensic examination of his phone be done in his presence. Vide summons dated 21.05.19, he was asked to appear on 30.05.19. He did not appear. Another summons dated 06.06.19 was issued on 12.06.19. He appeared on 12.06.19. However, the petitioner did not cooperate. He did not provide the code to unlock his mobile phone on his own. He feigned ignorance and loss of memory with respect to the password/ code that left the respondents with no other option but to look for avenues to unlock the mobile phone even without the petitioner providing the password/ code. The respondents have stated that, ultimately, it was found that the mobile phone of the petitioner could be unlocked at the Cyber Laboratory of DRI, Mumbai. The respondents have stated that DRI, Mumbai is not a part of Air Customs. Thus, the submission that the respondents ought to have been aware of the existence of its facility at DRI, Mumbai to unlock the mobile phone of the petitioner, cannot be accepted on the basis of assumptions that the petitioner would like us to draw. The petitioner was sent a letter dated 20.11.2019 – informing that Forensic Examination of his mobile phone would be conducted at DRI, Mumbai on 25.11.2019. That letter could not be served on the petitioner, since he was not found residing on the given address. The fact that the petitioner did not intimate the change of his address or his definite address where he could be found, itself shows that the conduct of the petitioner was evasive. The petitioner was sent another letter dated 17.01.2020 at his new address in Ramesh Nagar

informing him that forensic examination of his mobile phone would be undertaken at DRI, Mumbai on 20.01.2020. He was put to notice that, in case, he did not appear, either himself, or through his authorized representative, the forensic examination of his mobile phone would be conducted in the presence of other witnesses. Despite receipt of this notice, the petitioner failed to appear in the office of the DRI, Mumbai and, therefore, the forensic examination got conducted in the presence of other witnesses on 20.01.2020.

32. In case, the petitioner was really interested in participating in the forensic examination, he should have appeared at DRI, Mumbai on 20.01.2020. His non-appearance on that day, and non-appearance of even his authorized representative shows that the endeavor of the petitioner was merely to drag the matter and delay the forensic examination of his mobile phone for as long as it could be done. Thus, the delay in the forensic examination of the petitioner's mobile phone is primarily attributable to the petitioner, and not to the respondents. We, therefore, reject the submission of the petitioner that there was any unexplained delay on the part of the respondents in the forensic examination of his mobile phone between 1-2.02.2019 and 20.01.2020.

33. The fresh proposal for preventive detention of the petitioner was forwarded on 13.03.2020 by the Sponsoring Authority to the CEID, Department of Revenue, Ministry of Finance. Considering the fact that the forensic examination of the petitioner's mobile phone was undertaken on 20.01.2020, whereafter the documents retrieved therefrom would have been studied and analyzed, in our view, it cannot be said that there was any

inordinate delay in sending the fresh proposal by the Sponsoring Authority for the petitioner's preventive detention. The respondents have explained that after the proposal was sent, consideration of the same by the Central Screening Committee was delayed due to the nation-wide Lockdown on account of the Covid-19 Pandemic. The proposal was approved by the CSC on 29.05.2020 and the Detaining Authority, after careful consideration of the facts and circumstances of the case and the material placed before it, passed the Detention Order on 05.06.2020. In view of this prevalent circumstance, in our view, it cannot be said that there was inordinate delay in consideration of the matter by the CSC, or even by the detaining authority.

34. We are also of the view that in the facts and circumstances of this case, it cannot be concluded that the livelink between the prejudicial activity in which the petitioner was found involved on 1-2.02.2019 and the purpose and object of detention, when the detention order was passed on 05.06.2020, was broken. Mere passage of time between the date of the prejudicial activity and the date on which the detention order came to be passed – when the said passage of time has been sufficiently explained by the respondents, cannot lead to the definite conclusion with regard to the snapping of the nexus between the two.

35. Mr. Agarwal has sought to rely upon the judgement of ***Sumita Dev Bhatacharya*** (supra) where this court had proceeded to quash the Detention Order on the ground of gross delay in passing of the Detention Order, since the delay remained to be unexplained from the counter affidavit and submission of the Respondent Authorities. There cannot be any hard and fast rule in relation to the time period within which the order of detention

should necessarily be passed from the date of discovery of the continued involvement of the detenue in the prejudicial activity. Each case would have to be examined on its own merits – both in relation to the involvement of the detenue/ proposed detenue, its nature and scale, the period for which the detenue/proposed detenue is involved in the prejudicial activity, and the explanation furnished by authorities concerned for the time lapse between the date of the discovery of prejudicial activity and the date of the passing of the Detention Order. A perusal of paragraph 58 of the decision in ***Sumita Dev Bhatacharya*** (supra) shows that the Court found that in that case, the respondents were "*blissfully silent with regard to the delay in passing the order of detention*……". That cannot be said about the present case. If the case of the respondents is to be accepted – and we have no reason to reject the same at this stage in these proceedings, the petitioner is a part of the same group/ syndicate which consists of his brothers and others, who are involved in smuggling of goods from overseas. According to the respondents, the seizure made from the petitioner and his associates on 1-2.02.2019 was valued at over Rs.1.09 crores. The respondents have also stated on record that the petitioner is a habitual offender. He had been arrested by the Officers of the DRI on 03.09.2016 while attempting to smuggle foreign currency out of India equivalent to Rs. 1.86 Crores. He was granted bail subject to conditions. He had threatened the Investigating Officer and bail was cancelled by the Court. In the adjudication proceedings, currency amounting to Rs. 37,32,450/- was confiscated absolutely and penalty was imposed upon the petitioner and his brother. Prosecution has already been filed in that case, booked by DRI on 07.08.2020. When one looks at the fact that the petitioner was found to be

involved in similar prejudicial activity, in the year 2016, and again in February, 2019, that is over a period of three years, there is no reason to assume that the petitioner would not indulge in similar activity after his involvement discovered in February, 2019. This also shows that the petitioner is habituated and a hardened violator of laws relating to customs.

36. The petitioner also cannot take shelter of the argument regarding the time lapse between the detention order passed against his brother Mr. Gaganjot Singh, and the detention order passed against himself. The brother of the petitioner is purported to be the kingpin of the smuggling ring which allegedly caused immense economic loss to the country. The CSC and the Detaining Authority found the evidence against him to be sufficient to proceed against him in 2019 itself, which resulted in the passing of the Detention Order dated 11.03.19 against him. To justify the preventive detention of the petitioner in the assessment of the Detaining Authority, the Respondents had to collect evidence against the present petitioner, including recovering the relevant data from his mobile phone instrument, which took considerable time for reasons attributable primarily to the petitioner himself.

37. In our recent decision in ***Mohd. Nashruddin Khan v. Union of India & Ors***, W.P.(CRL). Nos. 786/2020, decided on 11.09.20, we have rejected similar arguments on behalf of the petitioners, relying on ***Licil Antony*** (supra) and ***Muneesh Suneja*** (supra). The relevant paragraph is reproduced hereinbelow:

> ***"69. In our view, the aforesaid satisfactorily explains and justifies the time consumed in mooting the proposal for detention of the petitioners under the COFEPOSA Act and for***

***consideration of the said proposal, firstly, by the Central Screening Committee, and thereafter, by the Detaining Authority. The time lapse, in our view, is not such as to lead to the inference that the live-link between the prejudicial activity of the petitioners, which was discovered in April 2019, and the object of detention, namely, to prevent them from indulging in such prejudicial activity, stood snapped. Pertinently, it is not the case of either of these petitioners that they have discontinued their ostensible business of dealing in gold and gold jewellery. In our view, the observations in Muneesh Suneja (supra) is attracted in the facts of these cases. We also agree with the submission of Mr. Mahajan that petitioners' reliance on Rajinder Arora (supra) is misplaced for the reasons advanced by Mr. Mahajan and recorded hereinabove. Therefore, we reject this submission of Mr. Chaudhri."*** (emphasis supplied)

38. The above-mentioned reasoning is squarely applicable to the present case as well. For the aforesaid reasons, we do not find any merit in the assertions of the petitioner. We, accordingly, dismiss the petition leaving the parties to bear their respective costs.

**(VIPIN SANGHI)**
**JUDGE**

**(RAJNISH BHATNAGAR)**
**JUDGE**

**FEBRUARY 16, 2021**