

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24<sup>TH</sup> DAY OF JANUARY 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

**W.P.H.C. NO.123 OF 2021**

BETWEEN:

MRS. KIRAN ICHHA KAUR BHASIN  
AGED 39 YEARS  
W/O JASPREET SINGH BHASIN  
R/AT. PIONEER HOUSE  
PLOT NO.716, 3RD FLOOR  
12TH ROAD, NEAR KHAR TELEPHONE EXCHANGE  
KHAR WEST, MUMBAI-400052.

... PETITIONER

(BY MR. KIRAN S. JAVALI, SR. COUNSEL FOR  
MR. CHANDRASHEKARA K, ADV.,)

AND:

1. THE DIRECTOR GENERAL  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
CENTRAL ECONOMIC  
INTELLIGENCE BUREAU  
6TH FLOOR, "B" WING  
JANPATH BHAVAN  
JANPATH, NEW DELHI-110001.
2. JOINT SECRETARY (COFEPOSA)  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

CENTRAL ECONOMIC  
INTELLIGENCE BUREAU  
6TH FLOOR, "B" WING  
JANPATH BHAVAN  
JANPATH, NEW DELHI-110001  
REP. BY SHRI RAVI PRATAP SINGH.

3. SENIOR SUPERINTENDENT  
CENTRAL PRISON  
BANGALORE-560100.

... RESPONDENTS

(BY MR. MADHUKAR DESHPANDE, CGSC FOR R1 & R2  
MR. THEJESH P, HCGP FOR R3 )

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THIS WPHC IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF HABEAS CORPUS OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION DECLARING THE DETENTION OF SHRI GURUMET SINGH KOHLI S/O JAILMAL SINGH KOHLI BY ORDER F.NO.PD-12001/11/2021 COFEPOSA DATED 23.02.2021 (ANNEXURE-E) AS ILLEGAL AND VOID ABINITIO.

THIS WPHC COMING ON FOR ORDERS, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

### **ORDER**

This writ petition has been filed by daughter of the detenu viz., Gurmeet Singh Kohli (hereinafter referred to as the 'detenu'), in which challenge has been made to order of detention dated 23.02.2021 passed under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'the Act' for short). In order

to appreciate the petitioner's challenge to the impugned order, relevant facts need mention, which are stated infra.

2. The detenu claims to be an exporter of 'Indian Hand Knotted Silk Carpets'. The officers of Directorate of Revenue Intelligence, Bengaluru gather specific intelligence to the effect that M/s Terrain Overseas India, M/s Truecom Multi Ventures Pvt. Ltd. and M/s Sunvistaa Trading Pvt. Ltd. were mis-declaring the description and value of goods in the shipping bills filed by them for export of the same in order to fraudulently claim duty drawback and IGST refund benefits. Thereafter, on 06.01.2020 a search was conducted at the residential premises of the detenu and during the course of the search, the statement of detenu was recorded. During the course of the search, the detenu voluntarily handed over his three mobile phones to the officers of Directorate of Revenue Intelligence for investigation. An order of detention

under Section 3(1) of the Act was passed on 23.02.2021 against the detenu with a view to prevent him from smuggling goods, abetting the smuggling of goods and dealing in smuggled goods otherwise than by engaging in transporting of concealing or keeping smuggled goods.

3. The order of detention was served on the detenu. The grounds of detention along with documents and copies of statements were supplied to the detenu on 19.09.2021. Being aggrieved by the order of detention, the detenu submitted a representation before the Advisory Board, which in its report dated 21.10.2021 opined that reasons recorded by the detaining authority was sound and proper. During the pendency of the writ petition, the Central Government by an order dated 08.11.2021 has confirmed the order of detention. In the aforesaid factual background, this petition has been filed.

4. Learned Senior counsel for the petitioner submitted that the documents from which the subjective satisfaction was derived by the authority were required to be supplied to the detinue and the same were not supplied to the detinue. It is also urged that documents which were taken into consideration while forming the subjective satisfaction were not furnished to the detinue. It is also urged that vital material which was required to be placed for consideration before the detaining authority to enable it to form the subjective satisfaction was not placed before it and therefore, the order of detention is vitiated in law. It is also submitted that passing of the order of detention in the fact situation of the case amounts to slip shod manner of exercise of power and the order of detention is violative of Article 22(5) of the Constitution of India. In support of aforesaid submissions, reliance has been placed on decisions in **'MRS. TSERING DOLKAR VS. THE ADMINISTRATOR, UNION TERRITORY OF DELHI**

***AND OTHERS', AIR 1987 SC 1192, 'ASHADEVI VS. SHIVARAJ AND ANOTHER', AIR 1979 SC 447, 'GANGA RAMCHAND VS. UNDER SECRETARY', AIR 1980 SC 1744 and 'SMT.ICCHU DEVI CHORARIA VS. UOI', AIR 1980 SC 1983.***

5. On the other hand, learned counsel for the respondent has invited the attention of this court to the grounds of detention and has submitted that admittedly, the grounds of detention and the documents relied upon by the detaining authority were supplied to the detenu. It is further submitted that order of detention has been passed in accordance with law after due application of mind and the subjective satisfaction has been derived from the material facts available on record. It is also urged that the detaining authority has relied on the quasi judicial orders, which have been retrieved from mobile of the detenu. It is also urged that subjective satisfaction of the detaining authority has been elaborated in detail in the grounds of detention. It is

also urged that the requirements of law as laid down in the Act as well as the constitution has been fulfilled. It is also urged that the order of detention is legal and valid and does not call for any interference.

6. We have considered the submissions made on both sides and have perused the record. It is well settled in law that the reasonableness of satisfaction of detaining authority cannot be questioned in a court of law for the reason that satisfaction of detaining authority to which Section 3(1)(a) of the Act refers to be subjective satisfaction of the Authority. [See: **'RAMESHWAR SHAW VS. DISTRICT MAGISTRATE, BURDWAN & ANR., AIR 1964 SC 334**]. The Supreme Court while dealing with provisions of Preventive Detention Act, 1950 has held that power to issue an order of detention under the Act depends on the subjective satisfaction of the Authority. The sufficiency of the grounds upon which satisfaction purports to be based should have a rational probative value and should

not be extraneous to the scope and purpose of legislative provision. The sufficiency of the grounds on which subjective satisfaction is based cannot be challenged in a court of law except on the grounds of malafides. It is equally well settled legal proposition that court does not interfere with the subjective satisfaction reached by the detaining authority except in exceptional and extremely limited grounds and the court cannot substitute its opinion for that of the detaining authority.

[See: '**SUBRAMANIAN VS. STATE OF TAMIL NADU & ANR.**', (2012) 4 SCC 699]. The Supreme Court while dealing with the provisions of the Act in '**UNION OF INDIA AND ANOTHER VS. DIMPLE HAPPY BHAKAD**', (2019) 20 SCC 609 has reiterated that the court must be conscious that the satisfaction of the detaining authority is subjective in nature and the court cannot substitute its opinion for the subjective satisfaction of the detaining authority and interfere with the order of detention. It does not mean that the



subjective satisfaction of the detaining authority is immune from judicial reviewability.

7. In the backdrop of aforesaid well settled legal principles, we may advert to the facts of the case. In the instant case, admittedly the relied upon documents which consist of 614 pages were supplied to the detenu. The details of some of the relevant documents are reproduced below for the facility of reference:

Sl. No.	Document Detail
1.	Xxxxx
2.	Mahazar dated 02.01.2020 for search conducted at CHA Premises M/s Oceanic Enterprises India P Ltd., situated at M/s Say Global Logistics Solutions
4.	Statement dated 02.01.2020 of Shri.Yatesh Raju K R, Partner (CHA) for M/s Terrain Overseas, M/s Truecom Multiventures P Ltd and M/s Sunvistaa Trading P Ltd.
6.	Mahazars datd 06.01.2020 for searches conducted at Bangalore branch addresses of M/s Terrain Overseas, M/s Truecom Multiventures P Ltd and M/s Sunvistaa Trading P. Ltd.
7.	Mahazar dated 06.01.2020 for searches conducted at residential address of Shri Gurmeet Singh Kohli at 701, Le Orchid Building 7th Floor, 15th Road, Opposite Gymkhana Ground, Khar West Mumbai
8.	Statement dated 06.01.2020 of Shri.Gurmeet

	Singh Kohli
11.	Mahazar dated 07.01.2020 for search conducted at Garage No.1 Homeo House, 15th Road, Plot No.F-14, Khar west Next to Jain Mandir, Mumbai
22.	Mahazar dated 20.01.2020 for seizure of Mobile voluntary submitted by Shri.Gurmeet Singh Kohli vide letter dated 06.01.2020
23.	Mahazar dated 30.01.2020 drawn at premises of M/s Balaji Traders Shop No.4, Kashi Kunj, 3rd Road, Khar West, Mumbai - 400 052 and Rent Agreement copy of premises of M/s Balaji Traders
28.	Copy of invoice and E-way bill by M/s Jagadamba Enterprises raised for M/s Sunvista Trading.
30.	Details of Shipping Bills by fourteen entities controlled by Shri Gurmeet Singh Kohli and Shri Amanpuneet Singh Kohli.

8. From close scrutiny of the grounds of detention, it is evident that detaining authority has noted the facts presented by the sponsoring authority. The grounds of detention also refers to the quasi judicial orders as well as incriminating material which have been retrieved from the mobile phones of the detenu. The subjective satisfaction has been recorded by the detaining authority on the basis of statements recorded during the search as well as several documents seized during the search to which reference has been made in

the grounds of detention. In para 15 of the grounds of detention, various cases registered against the detenu have been referred to and reference has been made to audio recordings recovered from the mobile devices of the detenu. The detaining authority has also referred to the gist of conversation between the detenu and one Syed Ahmed, Chain Singh and Sarvanand Thangavel. On the basis of the aforesaid material, the detaining authority has stated that 14 companies were being operated / controlled by the detenu along with his son. Thus, from perusal of order of detention, there was adequate material before the detaining authority, on the basis of which the subjective satisfaction was recorded by it. The adequacy of the material on the basis of which the subjective satisfaction has been formed cannot be examined by this court and the material upon which the aforesaid subjective satisfaction has been arrived at are not extraneous to the scope or purpose of the legislative provision. All the relied upon documents have been

admittedly supplied to the detenue. Therefore, the contention of the detenue that the material on the basis of which subjective satisfaction was derived was not supplied to him is sans substance.

9. From the perusal of the order of detention, it is evident that the detenue has propensity and potentiality to engage in the offences and despite service of summons has indulged in commission of offences.

In view of preceding analysis, we do not find any ground to interfere with the order of detention. In the result, the petition fails and is hereby dismissed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

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