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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WP - ASDB - LDVC - 233 OF 2020**

Suresh Gulabchand Jaiswal

Age : 40 yers, Occ. : Employed,  
residing at A-26, Chandra Mani Society,  
Laxmi Nagar, Link Road,  
Near Bangur Nagar, Goregaon (West),  
Mumbai, Maharashtra - 400 104.

..Petitioner

**vs.**

1. Union of India  
through Joint Secretary (COFEPOSA)  
Government of India, Ministry of Finance,  
6<sup>th</sup> Floor, 'B' Wing, Janpath Bhavan,  
Janpath, New Delhi through the office  
of Additional Solicitor General of India,  
High Court, Bombay.

2. The State of Maharashtra  
through Government Pleader,  
High Court, Bombay,

..Respondents

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Dr. Abhinav Chandrachud a/w. Mr. Amol Joshi a/w. Vinod Rane i/b.  
Rane & Co. for the petitioner.

Mr. Satish Aggarwala, Senior Standing Counsel, Sponsoring  
Authority, AIR Customs, IGI Airport, New Delhi.

Ms. P.H. Kantharia, APP - UOI

Mr. Y.P. Yagnik, APP a/w. Mr. A.D. Kamkhedkar, APP - State.  
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**CORAM : S.S.SHINDE &  
M.S.KARNIK, JJ.**

**RESERVED ON : SEPTEMBER 28, 2020**

**PRONOUNCED ON : OCTOBER 1, 2020**

**JUDGMENT : (PER M.S. KARNIK)**

This Petition under Article 226 of the Constitution of India takes exception to the detention order dated February 14, 2020 passed under the provisions of The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as “the COFEPOSA Act’ for short) and consequently for a direction to release the petitioner.

2. The proceedings which culminated into the issuance of the impugned detention order began when the Sponsoring Authority brought to the notice of the Detaining Authority i.e. respondent No.1 the following facts :-

One International passenger, namely, Shri Abhishek Bhavanbhai Ranpariya arrived at Terminal - 3, New Delhi by Flight No. AI-315 dated September 3, 2019 from Hongkong. He was in transit in Delhi and was travelling to Mumbai by Flight No.AI-315 dated September 3, 2019. Two domestic passengers, namely, Bhadresh and the petitioner were also travelling from Delhi to Mumbai by Flight No.AI-315. It is alleged that the said

passengers including the petitioner are involved in smuggling of mobile phones, laptop batteries and memory cards, deliberately, intentionally and knowingly with intent to evade custom duty. The said recovered miscellaneous goods / items having market value (as per web portal) of Rs.4,03,64,328/- were seized under Section 110 of the Customs Act, 1962 by seizure memo dated September 4, 2019 on a reasonable belief that the same is liable to confiscation under Section 111 of the Customs Act, 1962.

3. So far as the petitioner is concerned, his statement was recorded on September 5, 2019 under Section 108 of the Customs Act. The investigations revealed that the petitioner in whose possession 74829 memory cards were recovered was carrier for three occasions in the past. The petitioner along with others were produced before the Jurisdictional Magistrate on September 9, 2019 and was remanded to judicial custody upto September 23, 2019 which was further extended from time to time. The petitioner was released on bail by the Chief Metropolitan Magistrate, Patialia House Courts, New Delhi vide order dated November 6, 2019 observing that the complaint in the present case has already been filed after conclusion of investigation and custodial interrogation of the petitioner is no more required. According to the Detaining Authority, the

petitioner's statement dated November 21, 2019 recorded under Section 108 of the Customs Act, 1962, re-admitted the facts mentioned in his previous statement dated September 5, 2019. Before the Chief Metropolitan Magistrate the petitioner stated that his statement was obtained under pressure, threat and force.

4. The Detaining Authority was of the view that the investigations revealed that all three passengers were involved in smuggling of commercial goods in a repeated and systematic manner. All the three passengers formed a cartel adopting the modus operandi by importing dutiable goods through Shri Abhishek Ranpariya and changing hands at transit area and clearing it illegally with the help of domestic passengers, the petitioner being one of them. The Detaining Authority was therefore satisfied that the petitioner is an important member of well organised smuggling syndicate involved in smuggling of goods of foreign origin. He was satisfied that the petitioner along with his associates, are in habit of regularly smuggling goods into India from abroad without declaring the same before the Customs Authorities and paying applicable duty which amounts to "smuggling" in terms of Section 2 of the Customs Act, 1962. In the opinion of the Detaining Authority the underlying common

threat is the petitioner's propensity to smuggle goods for making illicit profit and putting the national economy into danger which needs to be curbed and the petitioner needs to be prevented from indulging in such activities further. The Detaining Authority was satisfied that the petitioner indulged in activities amounting to smuggling in terms of Section 2 (39) of the Customs Act, 1962 and Section 2 (e) of the COFEPOSA Act and his acts of deliberate commissions and omissions have rendered the goods involved liable to confiscation under the Customs Act, 1962. The Detaining Authority concluded that the petitioner played a vital role in smuggling of goods of foreign origin from abroad along with other accomplices and having regard to his continued propensity and inclination to indulge in act of smuggling in a planned manner to the detriment of the economic security of the country and that unless the petitioner is prevented, he will continue to indulge in these activities. The Detaining Authority was therefore satisfied that there is a need to prevent the petitioner from smuggling goods under the provisions of Section 3(1) of the COFEPOSA Act. It is further stated in the detention order that the Detaining Authority is aware that prosecution under Section 135 of the Customs Act, 1962 has been launched against the petitioner and adjudication proceedings were likely to be initiated soon, which are however, punitive in nature and independent of

the preventive detention provided under the COFEPOSA Act. The Detaining Authority was satisfied that in the meantime the petitioner should be immobilised by detention under the COFEPOSA Act with a view to prevent the petitioner from smuggling goods, abetting the smuggling of goods and engaging in transporting or concealing or keeping smuggled goods in future. The petitioner was provided details of the documents relied upon and also informed he has right to represent against his detention to the Detaining Authority i.e. to the Central Government as well as to the Advisory Board.

**SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER :-**

5. The detention order is challenged on various grounds mentioned in the Petition. The learned counsel appearing on behalf of the petitioner has however during the course of the hearing restricted his challenge to ground (l) and (k) in the Petition. According to him, there is inordinate delay in passing impugned order of detention by the Detaining Authority. He submits that though the petitioner was released on bail by an order dated November 6, 2019, but the detention order was made on February 14, 2020 and same was executed on July 2,

2020 i.e. almost 8 months after the petitioner was released on bail. The learned counsel would submit that there is no explanation of the undue delay in passing the detention order as well as its execution till July 2, 2020. In support of his submissions, the learned counsel relied upon the decision of the Apex Court in the case of **SMF Sultan Abdul Kader vs. Joint Secretary to Government of India and others**<sup>1</sup>

6. The other ground of challenge pressed by the learned counsel in the Petition is ground (k). According to him, the impugned order of detention is passed on February 14, 2020, prior to the lockdown which was imposed on account of the international outbreak of Covid-19. Thereafter, international commercial flights ceased all operations. The learned counsel submits that Air India has been operating limited number of special flights called “Vande Bharat” flights only for the purpose of bringing back Indians who have been stranded abroad. He would submit that the apprehension which the Detaining/Sponsoring Authorities had against the petitioner on February 14, 2020 viz., that the petitioner would smuggle electronic goods from China to India through international commercial passenger flights, in his hand baggage, is now no

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1 (1998) 8 SCC 343

longer well founded and therefore the material relied upon by the Detaining Authority has become stale. He submits that the live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. He would submit that in the present situation as the International flights are not operating, detaining the petitioner on the apprehension that he might indulge in smuggling activities in future, goes against the concept of preventive detention in as much as the detention is not to punish him for something he has done but to prevent him from doing it. In support of his submission learned counsel relied upon the decision of the Apex Court in the case of **Sama Aruna vs. State of Telangana and another**<sup>2</sup>. The learned counsel would submit that the impugned order of detention is unsustainable and deserves to be quashed.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS:-**

7. An affidavit-in-reply has been filed by Shri L.R. Chauhan, presently working as Deputy Secretary, Central Economic Intelligence Bureau, Department of Revenue, Ministry of Finance,

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<sup>2</sup> (2018) 12 SCC 150

Government of India, justifying the order of detention. In the affidavit the stand of the respondents is recorded that there is no delay in passing the order of detention as according to the respondent No.1 the delay in passing the order of detention is satisfactorily explained.

8. Even in so far as the delay in execution of the detention order is concerned, the Detaining Authority says that the petitioner was absconding and all possible steps were being taken by the executing authority i.e. the respondent No.2 to execute the order. It is further stated in the affidavit that the detention order is passed after the Detaining Authority has arrived at his subjective satisfaction based on material submitted before it and after careful consideration of all the material placed before it.

9. An affidavit has also been filed by Shri Shrimant Bacharam Shinde, Police Inspector, Preventive Crime Branch, Mumbai. The affidavit records the efforts made by the executing authority to execute the order of detention.

10. The learned counsel Ms. P.H. Kantharia appearing on behalf of the Detaining Authority invited our attention to the affidavit-in-

reply filed on behalf of the respondent No.1. She would submit that subjective satisfaction of the Detaining Authority is based on the material submitted before it and after careful consideration of all the material placed before it. According to her, there is no delay in passing the order of detention. So far as the contention of the learned counsel for the petitioner that there is delay in passing the order of detention, she invited our attention to paragraphs 6 and 21 of the affidavit. She pointed out that the Detaining Authority is different and independent authority from the Sponsoring Authority and that before issuing a detention order, the Detaining Authority applies its mind fully independent of the Sponsoring Authority. Further, before the proposal is placed before the Detaining Authority, the Central Screening Committee (CSC) consisting of senior officers from different organisations has to screen the entire proposal and make its recommendations. She would submit that there are three different and independent authorities to examine the material and facts made available. She would urge that the Detaining Authority has to arrive at its subjective satisfaction completely independent of the prosecution proceedings initiated by the Sponsoring Authority. She would submit that based on the documents and the materials placed before the Detaining Authority and considering the individual role of the petitioner, the

Detaining Authority satisfied itself as to his continued propensity and his inclination to indulge in acts of smuggling in a planned manner to the detriment of the economic security of the country that there is a need to prevent the petitioner from smuggling goods. She would thus submit that there is no delay in passing the order of detention.

11. She would next submit that the detention order cannot be said to be vitiated on the ground of delay in its execution. So far as execution is concerned, she would submit that the detention order dated February 14, 2020 was forwarded to the Commissioner of Police, Greater Mumbai, by hand on February 18, 2020 for execution of the detention order. The petitioner was absconding and was not found in his known residence. She would submit that the petitioner was not traceable by Mumbai Police. She further urged that action under Section 7 (1) (b) of the COFEPOSA Act was initiated on June 8, 2020 and Notification was published in the official gazette of Government of India. She pointed out that the Mumbai Police traced the petitioner after surveillance and the order of detention was executed upon the petitioner on June 29, 2020. She would thus submit that it is the petitioner who was absconding and the petitioner cannot take advantage of his own wrong by contending that there is a delay

in execution of the order of detention. She would submit that merely because there is a delay in execution of the detention order will not vitiate the detention order as the Detaining Authority has given satisfactory and reasonable explanation about the delay in execution of the order of detention. According to her, if at all anybody is responsible, it is the petitioner who should be held so as he was absconding and evading the execution of the order. In support of her submissions she placed reliance on the decisions of the Apex Court in the case of **(1) Union of India and others vs. Muneesh Suneja<sup>3</sup>** , **(2) Licil Antony vs. State of Kerala & anr.<sup>4</sup>**, **(3) T.A. Abdul Rahman vs. State of Kerala and others<sup>5</sup>** and **(4) Subhash Popatlal Dave vs. Union of India and another<sup>6</sup>**.

12. On the earlier occasion, learned counsel Shri Aggarwala appeared on behalf of the Sponsoring Authority. The learned counsel for the petitioner contended that the Sponsoring Authority is not a necessary party as the order under challenge is the one passed by the Detaining Authority. Purely in the interest of justice and in order to satisfy ourselves to arrive at an appropriate conclusion we permitted Shri Aggarwala to make his

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3 (2001) 3 SCC 92

4 (2014) 11 SCC 326

5 1989 (4) SCC 741

6 (2014) 1 SCC 280

submissions without going into the question Whether Sponsoring Authority is a necessary party. Shri Aggarwala made his submissions on the similar lines as the one made by the learned counsel Ms. Kantharia appearing on behalf of the respondent No.1 - Detaining Authority. Shri Aggarwala relied upon the decisions of the Apex Court in the case of **(1) Union of India and others vs. Muneesh Suneja** (supra), **(2) Licil Antony vs. State of Kerala & anr.** (supra), **(3) T.A. Abdul Rahman vs. State of Kerala and others** (supra), **(4) Subhash Popatlal Dave vs. Union of India and another** (supra), **(5) Radhakrishnan Prabhakaran vs. The State of Tamil Nadu and others**<sup>7</sup> and **Union of India vs. Dimple Happy Dhakad**<sup>8</sup>

13. The learned counsel appearing on behalf of the respondent No.1 - Executing Authority invited our attention to the affidavit-in-reply filed on their behalf. He argued that the petitioner was absconding and every possible attempt was made to execute the order. He submitted that with the help of secret informants and through technical investigation police team was taking sincere efforts to trace the petitioner. It is his submission that time consumed to execute the detention order is not a delay from their end but it is the petitioner who himself avoided execution of

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7 (2000) 9 SCC 170

8 AIR 2019 SC 3428

the detention order despite having full knowledge that the detention order is issued against him. The learned APP would further contend that address which was mentioned in the order of detention of the petitioner was not in existence due to redevelopment of his residential premises and he has not furnished any alternative address of his premises. He would submit that even the shop of the petitioner's brother was found closed on February 25, 2020 and March 3, 2020. The executing authority therefore submitted a detailed report to the Joint Secretary of Government of India on May 28, 2020 and accordingly, the Detaining Authority issued proclamation under Section 7 (1) (b) of COFEPOSA Act on June 8, 2020. Learned APP would submit that sincere efforts were made by the executing authority to trace the whereabouts of the petitioner but it is the petitioner who avoided execution of the detention order. He would thus submit that it is the petitioner having avoided the execution, now cannot contend that the detention order is vitiated on the ground of delay in execution.

14. We have heard learned counsel at length. We have perused copy of the Petition, impugned order of detention, the grounds of detention relied, affidavits filed and the relevant documents.

**CONSIDERATION :-**

15. The petitioner was intercepted on September 5, 2019 by Air Customs with smuggled electronic goods worth Rs. 4,03,00,000/-. His statement was recorded on September 5, 2019 under Section 108 of the Customs Act. He was released on bail on November 6, 2019. His further statement under Section 108 of the Customs Act was recorded on November 21, 2019. The proposal dated January 23, 2020 for preventive detention of the detenu and two other was received on January 24, 2020. On January 30, 2020, notice was issued for holding meeting of CSC on February 4, 2020 for considering the proposal of the Sponsoring Authority. On February 4, 2020 revised notice for holding meeting of CSC on February 5, 2020 for considering the proposal of the Sponsoring Authority was issued. On February 5, 2020, the meeting of the CSC was held. On February 13, 2020, minutes of the meeting were finally signed by the CSC members and issued. On February 14, 2020 detention order in respect of the detenu was issued by the Detaining Authority under COFEPOSA Act.

16. The question is whether delay in passing the detention order would vitiate the detention order ? The Apex Court in the case of **Union of India and others vs. Muneesh Suneja**

(supra) has held that if there are good reasons for delay in passing the order or giving any effect to it, the same can be explained. In our opinion, the delay in passing the detention order is satisfactorily explained and therefore, we do not find any merit in the contention of the learned counsel for the petitioner that the delay in passing the detention order would vitiate the same also in the light of the law laid down by the Apex Court in **Licil Antony's** case.

17. Considering the observations in the case of **Licil Antony** (supra), 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. The Apex Court has held that 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. The Apex Court in the case of *M. Ahamedkutty vs. Union of India*<sup>9</sup> which was referred in the case of *Licil Antony* (supra) has held that under a law like the COFEPOSA enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange

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

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.

18. Before we discuss the ground regarding delay in execution of the detention order, we would deal with the submission of the learned counsel for the petitioner that the live nexus between the incident and need for detaining the petitioner has snapped in view of the Covid-19 pandemic. According to him, the international commercial passenger services through and from India are not operational and therefore purpose of detaining the petitioner is lost. We may refer to the Circular dated August 31, 2020 issued by the office of the Director General of Civil Aviation which has been placed on record to show that the international scheduled flights may be allowed on selected routes by the

competent authority on case to case basis. We are not impressed with this submission of learned counsel for the petitioner. The order of detention was passed in February 14, 2020 which ultimately came to be executed on June 29, 2020. It may be that there are restrictions on operations of international commercial passenger flights through and from India till September 30, 2020. However, the circular clearly provides that international scheduled flights may be allowed on selected routes by the competent authority on case to case basis. It is not as if the international flights are completely restricted for a determined period. The restriction imposed is reviewed from time to time since the outbreak of Covid-19 pandemic. The resumption of international Air travel flights is a decision to be taken by the Government of India. It is only as a precautionary and safety measure the restrictions have been imposed. This, in our opinion, will not be a ground available to the petitioner to contend that the live nexus between the petitioner's arrest in connection with an alleged crime and need to detain him has snapped. A precautionary measure undertaken by the concerned authorities to suspend the operation of international flights cannot enure to the benefit of the petitioner. The decision to continue the restriction, permit selected international flights to operate on case to case basis is a decision taken on the review of the

situation from time to time. In our opinion, the outbreak of Covid-19 pandemic and the subsequent decision of the DGCA to temporarily suspend the operations of the international flights cannot be a ground available to the petitioner to contend the live link between the petitioner's arrest in connection with an alleged crime and need to detain him has snapped, more so when on selected routes the international flights are operational on case to case basis.

19. We now deal with the contention of the petitioner that the delay in executing the order of detention will vitiate the same. The order of detention is made on February 14, 2020. The same was executed on June 29, 2020.

20. From the affidavit of the Executing Authority, it is seen that on 18/02/2020, the office of the Commissioner of Police, Brihanmumbai received an order for execution of the detention order. On 25/02/2020, the police team of PCB, CID , Mumbai visited the address of detenu as mentioned in the detention order. The police were informed that the said society has been demolished for SRA project. The police were informed that the address pertains to the room standing in the name of detenu's brother - Mukesh. They were informed that the detenu's brother

- Mukesh runs a mobile shop. Hence, police visited the mobile shop, which they found closed. When the detenu's brother was contacted on his mobile phone, he informed the police that the detenu did not return home so far since the case was registered against him at Delhi. An entry to that effect has been made in the station diary on 25/02/2020. On 03/03/2020 the team of police again visited the address of the detenu and his brother's mobile shop which was closed. The police could not get any reliable information for effecting execution of the order of the detenu. In the affidavit it is stated that with the help of secret informant through technical investigation, police were taking sincere efforts to trace the detenu. It is then stated that a detailed report was forwarded to the Respondent No.1 on 28/05/2020. Accordingly, proclamation under section 7(1)(b) of the COFEPOSA Act was issued. On 08/06/2020, a notification was published in the gazette of India. On 29/06/2020 the team of Mumbai police nabbed and traced the detenu and the order of the detention came to be executed.

21. The Apex Court in paragraph 4 in the case of **Kadhar Naina Ushman Vs. Union of India and ors.**<sup>10</sup> in the context of the submission that there was delay in executing the detention

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<sup>10</sup> (2008) 17 scc 725

order has held thus :

“4. In the present case, as already noticed, the detention order was executed on 9/4/2002. It was passed on 23/10/2001 and modified on 9/4/2002. Earlier to 23/10/2001, the petitioner had been released on bail in terms of the order of the High Court dated 30/8/2001. The respondent - State of Tamil Nadu, in the counter-affidavit, filed by its Deputy Secretary, has stated that the detention order dated 23/10/2001 could not be executed as the petitioner went in hiding and was absconding all the time and action was taken under Section 7(1)(b) of the COFEPOSA on 7/2/2002. It has also been stated that all efforts taken by the police to implement the detention order proved futile as the detenu was absconding to evade arrest. Except these general and vague averments, no particulars have been mentioned in the affidavit. There is nothing in the affidavit which could show as to what efforts were made between 23/10/2001 and 7/2/2002. In absence, this Court is constrained to take the view that no efforts were made for nearly 3 ½ months i.e. between 23/10/2001 and 7/2/2002 to apprehend the petitioner. It is also not the case of the respondents that any application was filed before the Magistrate either praying for the cancellation of the bail or praying that the petitioner shall not be granted exemption from personal appearance since he is evading arrest pursuant to the order of detention. Clearly, therefore, the respondents have miserably failed to offer any explanation let alone a satisfactory explanation in respect of delay in execution of the order of detention. The inevitable conclusion is that the respondents were not serious in detaining the petitioner under the preventive law of COFEPOSA.”

22. It would be also material to consider the law laid down by the Apex Court in the case of **K.P.M. Basheer Vs. State of Karnataka and anr.**<sup>11</sup> paragraphs 10 & 11 where it is held thus :

“10. All the above points show that no serious and sincere effort appears to have been taken by the arresting officers and that there was only exchange of correspondence between the Department and the arresting officers. It is incomprehensible as to why no effort has been made to secure the appellant/detenu during the two days, namely, on 6<sup>th</sup> and 20<sup>th</sup> February when he appeared before the Assistant Collector of Customs. No supporting affidavits or documents are filed to substantiate the averments made in the counter. Incidentally, it may be mentioned that though the two gold pellets (the contrabands) were seized from the appellant on November 12, 1990 the authorities concerned passed these orders only on January 7, 1991, i.e. nearly after two months.

11. Under these circumstances, we are of the view that the order of detention cannot be sustained since the 'live and proximate link' between the grounds of detention and the purpose of detention is snapped on account of the undue and unreasonable delay in securing the appellant/detenu and detaining him. As we have now come to the conclusion that the order of detention is liable to be set aside on this ground alone we are not dealing with other contentions raised in the Memorandum of Appeal as well as in the Writ Petition.”

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11 (1992) 2 SCC 295

23. It would be profitable to refer to the decision of the Apex Court in the case of **SMF Sultan Vs. Joint Secretary to Government of India** (supra). Paragraph 2 of the said decision which reads thus :

"2. It is not necessary to state the facts leading to the passing of the detention order as we are inclined to allow this petition on the second ground raised by Mr. K.K. Mani, learned counsel for the petitioner. The order of detention was passed on 14.3.1996. The petitioner came to be detained on 7.8.1997. The contention raised by Mr. Mani is that there was undue delay in execution of the order and that clearly indicates that there was no genuine satisfaction on the part of the detaining authority regarding the necessity of immediate detention of the petitioner in order to prevent him from committing and continuing to commit the prejudicial activity alleged against him. In reply to this contention raised by the petitioner what the detaining authority has stated in the counter-affidavit is that the detention order could not be executed immediately as the petitioner was absconding. In para 12 of the counter-affidavit filed by the Joint Secretary to the Government of India it is stated as under:

" Continuous efforts were made by the State Police on the following dates to apprehend the detenu- 25.04.1996, 20.05.1996, 30.06.1996, 23.07.1996, 28.08.1996, 24.09.1996, 15.10.1996, 26.11.1996, 18.12.1996, & 20.12.1996, 17.1.97, 27.2.97, 26.3.97, 24.4.97, 29.5.1997, 29.6.97, 25.7.1997 and 7.8.97."

But for the sustained efforts by the Police authorities at Nagore, he would not have been apprehended now."

The joint Secretary has not explained why no attempt was made from 14.3.1996 to 25.4.1996 to apprehend the detenu

and put him under detention even though the detention order was passed on 14.3.1996. It further appears that no attempt was made to see that the petitioner was immediately apprehended. No serious efforts were made by the police authorities to apprehend the detenu. Only once in a month the police had tried to find out the petitioner. It is also not stated where they looked for him and what inquiries were made to find out his whereabouts. The Joint Secretary himself had made no effort to find out from the Police authority as to why they were not able to apprehend the petitioner. No material has been produced on the basis of which it can be said that the police authorities had made reasonable efforts to locate the petitioner and apprehend him and yet they were not successful in finding him out. There is also no material to show that the detaining authority had made any serious attempt during this whole period of delay to find out if the detention order was executed or not. Thus, the delay in execution of the detention order remains explained. The unreasonable delay in executing the order creates a serious doubt regarding the genuineness of the detaining authority as regards the immediate necessity of detaining the petitioner in order to prevent him from carrying on the prejudicial activity referred to in the grounds of detention. We are of the opinion that the order of detention was passed by the detaining authority not in lawful exercise of the power vested in him. We, therefore, allow this petition, set aside and quash the order of detention and direct that the petitioner be set at liberty forthwith unless his presence is required in jail in connection with any other case.”

24. It is necessary to refer to the observations made by the Apex Court in paragraph 9 in the case of **Licil Antony Vs. State of Kerala & anr.** (supra) that “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. 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 doubt, **Licil Antony** was a case where the Apex Court was considering the question whether the delay in passing the order of detention is vitiated. However, the observations that the delay will not vitiate the order of detention if satisfactorily explained, will equally hold good in the context of delay in execution of the order.

25. A conspectus of the law laid down by the Apex Court shows that the Respondents have to offer satisfactory and reasonable explanation in respect of delay in execution of order of detention. Live and proximate link between the grounds of detention and the purpose of the detention is snapped on account of the undue and unreasonable delay in securing the detenu and detaining him unless the delay is satisfactorily and reasonably explained. While dealing with the question of delay, we are conscious that COFEPOSA Act intends to deal with persons engaged in smuggling activities who pose a serious threat to the economy and thereby security of the nation. 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. 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 delay in execution of the order of detention, the order of detention becomes vulnerable.

26. It is also material to note that after issuance of the proclamation for initiating action under Section 7 (1) (b) of the COFEPOSA Act, the detention order was executed on June 29, 2020. It is pertinent to note that after the detenu was released

on bail on November 6, 2019, the petitioner and other accused persons were summoned for recording their statements on November 11, 2019, November 21, 2019 and December 7, 2019. It is not the case of the respondents that the detenu did not appear for recording of the statement and in fact it is the case of the respondent No.1 that the detenu's further statement was recorded under Section 108 of the Customs Act on November 21, 2019. We find from the record that the respondent No.1 did not apply for cancellation of bail. No doubt that merely because the Detaining Authority has not applied for cancellation of bail, would by itself be a ground to vitiate the order of detention if otherwise the delay is satisfactorily explained.

27. There is nothing on record to indicate the steps taken or the efforts made by the executing authority to execute the order of detention between the period from March 3, 2020 to June 8, 2020. The executing authority has only stated that they visited the address mentioned in the detention order on February 25, 2020 and March 3, 2020 when they found the premises have been demolished for construction of SRA project. Further, they stated that they visited the mobile shop of the petitioner's brother on these two dates viz. February 25, 2020 and March 3, 2020 when they found the shop to be closed. Except for this no

material is produced on the basis of which it can be said that the police authorities made reasonable efforts to locate the petitioner and apprehend him and yet they were not successful in finding him out. We again reiterate that we are conscious that while dealing with the question of delay in executing the order of detention under the COFEPOSA Act, the court is required to be circumspect and has to take a pragmatic view. However, we find that for the period from March 3, 2020 to June 8, 2020 there is hardly any explanation leave alone satisfactory explanation of the efforts made to trace out the detenu. In the facts of the present case, it is not possible for us to accept the bare and vague contention of the executing authority that the detenu had absconded in the absence of bringing materials on record about efforts made to trace out the detenu during the period from March 3, 2020 to May 28, 2020.

28. For the period from March 3, 2020 upto May 28, 2020, we find no serious efforts were made by the police authorities to apprehend the detenu and no materials are placed on record to indicate the steps taken. It is not stated where they looked for him and what inquiries were made by the police authorities to find his whereabouts. No materials are produced on the basis of which it can be said that the police authorities had made

reasonable efforts to locate the petitioner and apprehend him and yet they were not successful in finding him out. Thus, this delay in execution of the detention order remains unexplained. The unreasonable delay in executing the order creates a serious doubt regarding the genuineness of the Detaining Authority as regards the immediate necessity of detaining the petitioner in order to prevent him from carrying on the prejudicial activity referred to in the grounds of detention. Hence, the inevitable conclusion would be that the Respondents were not serious in detaining the Petitioner under the preventive law of COFEPOSA.

29. We, therefore, allow this Petition, set aside and quash the order of detention and direct that the petitioner be set at liberty forthwith unless his presence is required in jail in connection with any other case.

30. The Petition is allowed.

31. Rule is made absolute in the above terms.

32. This judgment will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this judgment.

**(M.S.KARNIK, J.)**

**(S.S.SHINDE, J.)**