

Bombay High Court Shri Nazir Ahmed Abdul Hamid vs The State Of Maharashtra & Others on 29 August, 1997 Equivalent citations: 1998 (5) BomCR 73 Author: A Savant Bench: A Savant, S Radhakrishnan ORDER A.V. Savant, J. 1. Heard both the learned Counsel; Ms. Mane for the petitioner and Mr. Bagwe, Additional Public Prosecutor for the respondents. 2. This is a petition under Article 226 of the Constitution of India for a writ of Habeas Corpus seeking to challenge the order of preventive detention passed on 11th November, 1996 (Annexure 'A' page 18) against the petitioner-detenu. The said order has been passed by the 2nd respondent-detaining authority- namely, Principal Secretary to the Government of Maharashtra, Home Department (Preventive Detention) in exercise of his powers under section 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 (for short "COFEPOSA Act"). The Order of Detention has been passed on recording the satisfaction with respect to the detenu that with a view to preventing him in future from smuggling goods, it was necessary to detain him in exercise of the powers conferred by sub section (1) of section 3 of the COFEPOSA Act. Along with the Order of Detention, the Grounds of Detention dated 11th November, 1996 (Annexure 'B' page 20) were also served on the detenu on 19th February, 1997. Few facts necessary to appreciate the contentions raised before us may be briefly stated. 3. On the 3rd of December, 1995, a ship- M.V. Susak-arrived at the Jawaharlal Nehru Port Trust (for short "JNPT") Nhava-Sheva, New Bombay from Dubai. Amongst the cargo, it carried container IPEL-200057-7 in its voyage 79 of 95 under Bill of Lading No. N.H.A./4839 dated 27th December, 1995 consigned from Dubai in the name of M/s. Fatima International, C-32, Abhinandan 306, L.B.S. Marg, Kuria (West), Bombay 400 070. However, when the said container was unloaded at the J.N.P.T., the Customs authorities found that nobody had come to claim it. The container was, therefore, lying in the customs area of the J.N.P.T. without payment of customs duty. It appears that a conspiracy was entered into between as many as 13 persons including the present detenu Nazir Ahmed Abdul Hamid Tungekar, for smuggling 1,12,267 Russian made ball-bearings and 4770 kgs. of heavy metal scrap, totally valued at Rs. 11,61,145 F.O.B. which at the prevailing market value was worth Rs. 82,89,622/-. Under the guise that the container contained only heavy metal scrap, 1,12,267 Russian made ball-bearings were smuggled into the country from Dubai. The names of the 13 conspirators mentioned in para 3 of the Grounds of Detention are as under : 1. Zulfikar AN Mohammed, 2. Kamaluddin Kikan Shaikh, 3. Pappu @ Jethanand Lakhimichand Toloni, 4. Bhuvan @ Mohan Pandurang Koli, 5. Nazir Ahmed Abdul Hamid Tungekar, 6. Shabbir Ahrned Mohammed Akbar Qureshi, 7. Shashikant H. Mhatre, 8. R. Gnanesekaran, 9. P.V. Sreekumar. 10. Perumat Anbu Gandhi, 11. Sayed Beer Mohammed, 12. Nasim Khan Nasir Khan, 13. Lalitkumar Sohanlal Jain. It is of some relevance to note that the first six persons including the petitioner at serial No. 5 are alleged to be the main conspirators; the 7th person Shashikant H. Mhatre is the crane operator employed at the J.N.P.T. At Serial Nos. 8 to 11 namely R. Ganesekaran, P.V. Sreekumar, Perumat Anbu Gandhi, and Sayed Beer Mohammed are the four constables of the Central Industrial Security Force (C.I.S.F.), who

were, at the relevant time, posted at the J.N.P.T. Serial No. 12 Nasim Khan Nasir Khan was the driver hired for carrying the truck trailer bearing M.H. 04/C-4807 for bringing the container out of the customs area and smuggling the said goods into the country. Serial No. 13 Lalitkumar Sohanlal Jain is owner of a shop and is a co-conspirator. 4. The Grounds of Detention give the details of the whole conspiracy for smuggling heavy metal scrap along with the Russian made ball-bearings from Dubai into the country for which operation, the conspirators were to be paid Rs. 5,50,000/- inclusive of all the expenses to be incurred for illegal clearance of the said goods from J.N.P.T. and smuggling the same into country. Several meetings were held between the first six persons mentioned above, including the detainee, Nazir Ahmed. These meetings were held in the month of November and December 1995 at the Ashoka Hotel, Uran near Nhava-Sheva, where J.N.P.T. is located. It appears from the statement of the detenu recorded on 6th January 1996 that he was earlier indulging in smuggling of consumer items like tape-recorders in link with one Bhuvan @ Mohan Pandurang Koli and Pappu @ Jethanand Lakhmichand Tolani. Later on the detenu met Karnaluddin Kikan Shaikh. The conspirators decided to smuggle the consignment of Russian made ball-bearing from Dubai into India through the J.N.P.T. Statements of the detenu and Zulfikar AN Mohammed, were recorded on 30th December, 1995. Statement of Karnaluddin Kikan Shaikh was recorded on 6th January 1996; that of Bhuvan @ Mohan Pandurang Koli on 6th January, 1996; Pappu @ Jethanand Lakhmichand Tolani on 6th January, 1996 and of R. Gnanasekaran, the C.I.S.F. constable was recorded on 4th March, 1996. They clearly indicate that the detenu had a series of meetings to finalise the strategy and the conspiracy for smuggling the said goods from Dubai into India. 5. In furtherance of the said conspiracy, on the arrival of M.V. Susak from Dubai at the J.N.P.T. on the 3rd December, 1995, the conspirators finalised their further strategy of unloading the said dutiable goods in contravention of the provisions of sections 33 and 34 of the Customs Act, 1962, as also of removing the said dutiable goods from the customs area without permission of the appropriate officer. Both these acts would attract action for confiscation of the improperly imported goods, in accordance with the provisions of section 111 of the Customs Act, 1962. In this behalf we will deal with the definition of "smuggling" under the COFEPOSA Act, 1974 with reference to provisions of the Customs Act, 1962. Suffice it to say that, in furtherance of the said conspiracy, truck trailer No. M.H./04-C-4807 was booked to remove the container clandestinely from the J.N.P.T. The said truck trailer was hired from Prakash Goods Carrier, Bombay. Driver Nasim Khan Nasir Khan, mentioned at Serial No. 12 in para 3 above, brought the said truck trailer inside the J.N.P.T., crane operator Shashikant Mhatre, mentioned at Serial No. 7 in para 3 above, loaded the said container No. IPEL-200057-7 on the truck trailer in the presence of constable Gnanasekaran and Sreekurnar, mentioned at Serial Nos. 8 and 9 in para 3 above. After this loading operation was complete, driver Nasim Khan drove the truck trailer out of the customs area without a gate pass, after the necessary 'instructions' were given to C.I.S.F. constable P.A. Gandhi, mentioned at Serial No. 10 in para 3 above. The truck was thus brought out of the J.N.P.T. and was taken

to a nearby place Jasai at about 8.30 p.m. on 15th December, 1995. 6. The detenu was aware of the said smuggling operation and arrived at Jasai in a Maruti van provided by Pappu Tolani and proceeded to Kalamboli fire brigade, where the truck trailer was then parked. The detenu, in the company of K.K. Shaikh and Pappu Tolani got the hacksaw and locks from Uran and while they were attempting to break open the seal of the container with Shabbir Ahmed, they were apprehended by the police. The statements of the persons arrested, have been recorded under section 108 of the Customs Act, which clearly show that they were involved in the smuggling activities and that the detenu was a part to the said conspiracy and had played an active role in the entire operation. He was involved in the removal of the container from the J.N.P.T. without payment of customs duty. Thus a satisfaction has been recorded that the detenu was likely to engage in prejudicial activities of smuggling in future and with a view to preventing him from undertaking such prejudicial activities, it was necessary to make the Order of Detention under section 3(1) of the COFEPOSA Act. 7. Proceedings for confiscation of the smuggled goods have been initiated and notice under section 124 of the Customs Act, to show cause, has already been issued and the adjudication proceedings are pending. Similarly, prosecution under section 135 of the Customs Act is also pending in the Court of Judicial Magistrate, First Class at Uran, District Raigad. On these facts, the Order of Detention has been issued detaining the petitioner. It was brought to our notice that some more orders have been issued and are in the process of being served on the concerned detenues. 8. Ms. Mane, the learned Counsel appearing for the detenu has, firstly, contended that the Order of Detention issued by the 2nd respondent shows clear non-application of mind, as a result of paragraph 29 being added as the concluding para in the said order. Para 29 reads as under : "29. The Detention Order is signed along with the Grounds of Detention. It should be sent to the Sponsoring Authority for translation and service on the proposed detention (detenu), after all the pages are sealed with the seal of Home Department." This contention has been raised in para 4(v) of the petition. What is alleged is that, mentioning that the detention order is signed along with the Grounds of Detention and that it should be sent to the sponsoring authority for translation and service on the proposed detenu, after all the pages are sealed with the seal of the Home Department itself shows non-application of mind on the part of the detaining authority. It is contended before us that such a paragraph could appear in the draft order, but on the same being finalised, para 29 ought to have been deleted by the detaining authority and the fact that it was not deleted, shows non application of mind. Ms. Mane even went to the extent of saying that the detaining authority had not cared to read the Order of Detention signed by him. 9. In reply to this contention, Mr. Bagwe, the learned Additional Public Prosecutor, has contended that far from indicating non application of mind, this paragraph shows that, utmost care was taken by the detaining authority in ensuring that the provisions of law and the mandate of Article 22(5) of the Constitution was duly complied with. Having regard to the past experience and the view taken by this Court in some matters, the detaining authority thought it necessary to put it in writing that while the order and Grounds of Detention

were signed on the 11th November, 1996, the sponsoring authority should take care to see that the documents should be translated and after putting the seal of the Home Department thereon, the same should be served on the detenu. Our attention has been invited by Mr. Bagwe to the specific plea taken in the affidavit of Mr. M.M. Kamble, Deputy Secretary to the Government of Maharashtra, Home Department (Special), Mantralaya, who has filed the affidavit since the detaining authority Mr. C.D. Singh, the then Principal Secretary to the Government of Maharashtra, Home Department, has been transferred out of Mantralaya and was not available to file the affidavit. Mr. Kamble, in para 9, categorically states as under : “9. With reference to paragraph No. 4(v) of the petition, I say that it had come to the notice of the then Detaining Authority that in several petitions for Habeus Corpus this Hon’ble Court had quashed the Order of Detention on account of the delay caused in serving the Order of Detention upon the detenu. I say that it was also noticed that such delay was caused due to the time taken by the Sponsoring Authorities for getting the translation done of the Order of Detention, the grounds thereof and the accompanying documents. It was, therefore, felt that such delay, if unduly long, ought to be explained before the Hon’ble High Court by the Sponsoring Authorities themselves. Accordingly the then Detaining Authority had issued instructions to all the concerned Sponsoring Authorities in that regard by Government Letter No. Misc. 2096/C.R.-74/S.P.L.-3(A) dated 25th October, 1996. It was stated in the said letter inter alia that the Order of Detention, Grounds thereof and accompanying documents would be dated on the day the same were signed and that thereafter the same should be sent to the Sponsoring Authority for carrying out translations. It was further stated that the Sponsoring Authority should, thereafter, get the translations made and serve the same upon the detenu after the said translated documents were stamped with the seal of the Home Department, Mantralaya, Mumbai. I say that the purpose of the issuance of the said letter was to avoid the delay caused in getting translations done. I say that the gist of the said instructions were included in the Grounds of Detention in the instant case with a view to enable the detenu to ensure for himself that he was served with all the documents which were duly signed and sealed. I deny that the detaining authority had not read the Grounds of Detention or did not apply his mind thereto at the time of signing the same, as alleged. I deny that the proposal was accepted in toto as alleged. I deny that the Order of Detention and the grounds thereof and the list of documents were signed at different dates prior to 11th November, 1996 as alleged. I deny that the Order of Detention is illegal, mala fide or void as alleged.” 10. Mr. Bagwe also invited our attention to the earlier averments in the said affidavit of Mr. Kamble, which appear in para 5 of his affidavit. We may only reproduce the relevant portion, which reads as under : “Thereafter, the Detention Order, Grounds of Detention, along with sets of documents were forwarded to the Assistant Commissione of Customs (Preventive), COFEPOSA Cell, Mumbai, for translation and execution of the detention order. I say that the entire set of the above documents was served upon the detenu on 19-2-1997.” Our attention has also been invited to the circular dated 25th October, 1996 issued by the Government of Maharashtra. 11.

In the light of the above pleadings, we will examine the first contention raised by Ms. Mane about the alleged non-application of mind as a result of para 29 being retained in the final Order of Detention signed by the detaining authority on 11th November, 1996. As mentioned in the reply of Mr. Kamble, the detaining authority thought it necessary to mention in the order itself that the order should be sent to the sponsoring authority for translations and after the translations were made, each page should be sealed with the seal of the Home Department and service should be effected on the detenu. This was based on the fact that, in certain matters, this Court had objected to the failure and/or delay in getting the documents translated and effecting service on the detenu, after the Order of Detention was signed by the detaining authority. We may refer to the circular dated 25th October, 1996 issued by the Under Secretary to the Government of Maharashtra, Home Department (Special), which is addressed to following authorities : (i) Principal Commissioner of Customs, Mumbai. (ii) Commissioner of Customs (Preventive), Mumbai. (iii) Commissioner of Customs (Air), Mumbai. (iv) Additional Director General, Directorate of Revenue Intelligence, Mumbai. (v) Director, Narcotics Control Bureau, Mumbai. and; (vi) Additional Commissioner of Police, Narcotics Cell, Mumbai. The circular refers to the fact that some time there was delay in furnishing information relating to the proposal sent by the sponsoring authority. Attention is invited in the circular to the lapses in the past and instruction have been issued to take care that such lapses did not recur. In para 3 of the circular, it is stated that it was necessary to monitor the receipt of information and to decide if the live link had been snapped due to prolonged delays. Then, in para 4 of the said circular, instructions have been given to ensure that after the Order of Detention was signed by the detaining authority, translations should be effected without delay and the order and grounds be served on the detenu. Time taken in this behalf should be explained by the sponsoring authority in its affidavit before the Court. We may reproduce para 4 of the said circular, which is as under : “4. The Principal Secretary (Preventive Detention) and Detaining Authority desires that the time taken for translations of the Detention Order, Grounds of Detention and documents, before serving on the detenu may be explained by the Sponsoring Authority concerned to the Court if it is unduly long. The detention order etc. will be dated on the day it is signed and sent to the Sponsoring Authority for translation. The Sponsoring Authority will translate and serve the Detention Order etc. on the proposed detenu, after all the translated pages are stamped with the seal of the Home Department, Mantralaya, Mumbai -400 032.” It is, in this background, that the detaining authority has added para 29 in the Order of Detention. We fail to understand, how this careful approach on the part of the detaining authority shows “non-application of mind” as contended by Ms. Mane. Indeed, as contended by Mr. Bagwe, it shows that utmost care was taken by the detaining authority in ensuring that the provisions of law and the mandate of Article 22(5) of the Constitution was duly complied with. It is obvious that, apart from the general instructions given in the Circular dated 25th October, 1996, referred to above, a specific mention was made in para 29 to ensure that the sponsoring authority should take necessary care in ensuring

that the documents are translated and after the pages were sealed with the seal of the Home Department, service was effected on the detenu. If, based on their past experience in detention matters, the approach of the Apex Court and of this Court, the detaining authority thought it necessary to ensure compliance with procedural safeguards, we do not think that any objection can be taken to the statements contained in para 29 of the impugned order. In our view, there is no substance, whatsoever, in the contention that para 29 suggests non application of mind on the part of the detaining authority. 12. Since Ms. Mane went to the extent of contending that the detaining authority had not even cared to read the Order of Detention signed by him, we called for the original file from Mr. Bagwe and perused the same. The original file clearly shows that the draft of the detention order was corrected by Mr. C.D. Singh personally on the 8th November, 1996. There are corrections on each page and he has initialed the corrections. The corrections are in his own handwriting and at the end, he has initialed and put the date 8th November, 1996. Since 9th and 10th November, 1996 were 2nd Saturday and Sunday respectively, and, therefore, holidays, the Order of Detention has been signed on the 11th November, 1996. Having perused the original file ourselves, we have no hesitation in rejecting the first contention of Ms. Mane. 13. The second contention raised by Ms. Mane is that a portion of a document at page 175 of the compilation of documents is somewhat blurred and hence illegible, affecting the detenu's right to make a representation as guaranteed by Article 22(5) of the Constitution of India read with sub-section (3) of section 3 of the COFEPOSA Act. A perusal of page 175 in the compilation of documents furnished to the detenu along with Grounds of Detention shows that it is a remand application under section 104 of the Customs Act, 1962, praying for remand of the accused to judicial custody till 22nd January, 1996, since the investigation was in progress. The application was made on 7th January, 1996 and out of the five accused-respondents in the said application, the petitioner is respondent No. 2. The application gives the brief history of the incident leading to the arrest of the accused on 15th December, 1995, initially for an offence punishable under section 379 of the Indian Penal Code for theft of the smuggled goods and, later on, on 7th January, 1996 under the Customs Act. A reference is made to the statement of Kamaluddin Shaikh in sub-para 1 on page 2 of the remand application, which refers to the substance of Kamaluddin Shaikh's statement under section 108 of the Customs Act, 1962 implicating himself in the offence of smuggling of the Russian made ball-bearings and the metal scrap, in which operation the detenu and others had helped him. Sub-para 2 makes a reference to the statement of detenu recorded under section 108 of the Customs Act, wherein he had admitted his involvement in the smuggling operation in association with the other accused. Sub-para 2 gives the substance of his statement which is at page 76. Five statements of the detenu were recorded; on 6th January, 1996, 16th January, 9th April, 11th April and 26th April 1996. The copies of all these statements have been furnished to the detenu and there is no grievance that any part of the said statements is, in any manner, blurred or illegible. However, in sub-para 2 of the remand application, in respect of which the grievance of partial illegibility is made, there

is a reference to the meeting between detenu and Kamaluddin Shaikh, Raman Tandel, Ravi Thakur and Sanjay Thakur on 18th and 25th November 1995. The contention in respect of some pages being illegible is to be found in para 4(vii) of the petition, but what is contended before us by Ms. Mane is only that there was partial blurriness or illegibility on page 175 namely typed page 2 of the remand application dated 7th January, 1996. In reply to this contention, Mr. Kamble, in para 11 of his affidavit has stated as under : “11. With reference to paragraph No. 4(vii) of the petition, I say that though some of the documents are slightly blurred, however the same are legible. I submit that copies of all such documents which consisted the basic facts on the basis of which the Order of Detention was passed were clearly legible. In the circumstances the detenu was not precluded from making an effective representation as alleged or at all. I deny that any of the facets of Article 22(5) of the Constitution of India had been violated.” 14. Incidentally, it needs to be mentioned that no grievance was made by the detenu before making any representation under Article 22(5) of the Constitution that he was, in any manner, prejudiced or handicapped in making a representation as a result of an insignificant portion of a document being slightly blurred. As stated earlier, the copies of all the statements made by the detenu were furnished to him. 15. That apart, as indicated above though what is contended in para 4(vii) of the petition is that several pages were illegible thus affecting the detenu’s right under Article 22(5) of the Constitution, what was pressed before us was only partial blurriness or illegibility on page 175 of the compilation of documents. Mr. Kamble, in his affidavit, has stated that copies of all the documents to which reference is made in the Grounds of Detention, have been furnished to the detenu and they are legible. Page 175 is a part of the remand application by the Customs authorities in the Court of Judicial Magistrate, First Class, Uran, praying for remand till 22nd January, 1996. Copies of the statements of the detenu recorded on 6th January, 1996, 16th January, 9th April, 11th April, and 26th April, 1996 have been furnished to the detenu and there is no grievance made before us that any of the said statements is either wholly or even partially blurred or illegible. With the assistance of both the learned Counsel, we have perused the statement of detenu recorded on 6th January 1996 which is at pages 75 to 78 of the compilation of documents. The relevant portion of this statement, which is summed up in sub-para 2 of the remand application dated 7th January 1996 (the alleged partially blurred or illegible portion at page 175) is at page 76 of the statement of the detenu. Ms. Mane could not dispute that the detenu’s statement at page 76 was fully legible. That apart, no grievance was made by the detenu before making the representation under Article 22(5) of the Constitution that he was, in any manner, prejudiced or handicapped in making his representation as a result of an insignificant portion of a document at page 175 of the compilation being slightly blurred or illegible. In this view of the matter, we find no merit in the second contention. We may only refer to two decisions of the Apex Court in this behalf which indicate the approach to be adopted in such matters. 16. In *L.M.S. Ummu Saleema v. B.B. Gujaral*, a grievance was made that the detaining authority was under an obligation to supply along

with the grounds, copies of all documents to which reference was made in the grounds irrespective of whether such documents were or were not relied upon in making the Order of Detention. The Apex Court dealt with this submission of in para 7 at page 1193 of the report and considered its earlier decisions (i) *Khudiram Das v. State of West Bengal*, ; (ii) *Ichhu Devi Choraria v. Union of India*, ; and (iii) *Smt. Shalini Soni v. Union of India*, . The Court observed that every failure to furnish a copy of a document to which reference is made in the Grounds of Detention is not an infringement of Article 22(5), fatal to the Order of Detention. It is only failure to supply copies of such documents as were relied upon by the detaining authority, making it difficult for the detenu to make an effective representation, that amounts to a violation of the Fundamental Rights guaranteed by Article 22(5). The Court, therefore, observed that it was unnecessary to furnish copies of documents to which casual or passing reference may be made in the course of narration of facts and which are not relied upon by the detaining authority in making the Order of Detention. In the present case, we are dealing with a situation where a document has been furnished which makes a reference to a statement of the detenu, copy of which, has also been furnished to the detenu. The copy of the said statement of detenu is wholly legible but a portion of the remand application, which makes a reference to the statement of the detenu is partially blurred. We do not think that this would amount to failure to communicate the Grounds of Detention so as to amount to a breach of the guarantee enshrined under Article 22(5) of the Constitution. 17. In dealing with such matters, we cannot be oblivious to what the Hon'ble Supreme Court has said in *Pratesh Chandra v. Commr. & Secy., Govt. of Kerala*, , dealing with failure to furnish translation of some of the documents to the detenu in a case under the COFEPOSA. In para 81 of the judgment at page 701 of the report, the Court observed that though the power of detention must be very cautiously exercised not to undermine the fundamental freedoms guaranteed to our people; the procedural safeguards are to ensure that; yet these must be looked at from a pragmatic and commonsense point of view. The Court must construe the procedural safeguards in proper light. In para 81, the Court concluded that we must remember that the observance of written law about the procedural safeguards for the protection of the individual is normally the high duty of public official; but in all circumstances, not the highest. The law of self preservation and protection of the country and national security may claim in certain circumstances higher priority. Similar view was taken by a Division Bench of this Court in *Rajesh R. Kushalani v. Mahendra Prasad*, . Bearing in mind the approach of the Supreme Court in the above mentioned decisions, in the facts of the present case, having regard to the pleadings and the insignificant portion in sub-para 2 of the remand application, which is partially blurred and illegible, we find no substance in the contention of Ms. Mane that the detenu's right to make a representation was adversely affected and hence the Order of Detention is liable to be struck down. Apart from this, no grievance was made to the detaining authority, as is some times the case. Representation was made under Article 22(5) and has been considered and rejected on merits. In this view of the matter we reject the second contention. 18. Third contention raised by



Ms. Mane is about the delay between the last of the offending incidents, dated 15th December, 1995 and the making of the detention order on 11th November, 1996. This contention has been raised in para 4(i) of the petition, to the effect that 11 months' delay in making the Order of Detention shows that the live link between the offending act and the propensity of the detenu to indulge in similar acts in future must be deemed to be broken and snapped and, hence, it was not necessary to pass an Order of Detention under section 3(1) of the COFEPOSA Act. In reply, Mr. Bagwe has invited our attention to the pleadings in two affidavits, namely, one of Mr. Kamble and the other of Mr. R.S. Patil, the Assistant Commissioner of Customs (Preventive) COFEPOSA Cell, who is the sponsoring authority. In para 5 of his affidavit filed on behalf of the detaining authority, Mr. Kamble has set out the details of the various steps taken and we find it convenient to reproduce para 5 which reads as under :

"5. With reference to paragraph No. 4(i) of the petition, I say that the Assistant Commissioner of Customs (P), COFEPOSA Cell, Mumbai, submitted the proposal in respect of the detenu alongwith the documents by his letter dated 26-8-1996, which was received in Home Department on the same day. Additional information regarding the show cause notice etc. was received on 4-9-1996. Thereafter, the detaining authority discussed the case with the Investigating Authority on 16-10-1996 and additional information/documents were called for and the same was received on 18-10-1996, 28-10-1996 and 29-10-1996. The detaining authority, thereafter, considered the proposal and scrutinised the documents and formulated the Grounds of Detention and issued the Order of Detention contemporaneously on 11-11-1996. Thereafter, the Detention Order, Grounds of Detention, along with sets of documents were forwarded to the Assistant Commissioner of Customs (Preventive), COFEPOSA Cell, Mumbai, for translation and execution of the Detention Order. I say that the entire set of the above documents was served upon the detenu on 19-2-1997. In the circumstances I submit that there was no inordinate delay in issuance of the Order of Detention on the part of the detaining authority. I say that upon reckoning with the gravity of the offence committed, the manner of its commission and other attendant circumstances, the live-link between the said incident and the need to pass the Order of Detention was very much in existence. The then detaining authority had correctly arrived at his satisfaction that there was a need to issue the Detention Order. I deny that the credible chain had been broken or snapped as alleged. I deny that the Order of Detention is liable to be struck down as alleged or at all." 19. It is also necessary to reproduce para 2 of the affidavit of Mr. Patil, which reads as under : "2. With reference to paragraph No. 4(i) of the petition, I say that the claim of the detenu that the investigation was over by 21-5-1996, is denied. The investigations in the case were continuing upto 27-6-1996, the date on which show cause notices were issued to the accused. The proposal was placed before the Screening Committee in its meeting held on 26-7-1996. On receipt of the results of the Meeting on 16-8-1996, the proposal of the detenu alongwith that of the other co-accused were forwarded to the detaining authority on 26-8-1996. Further documents pertaining to the case were forwarded to the detaining authority on the follow-

ing dates : 4-9-1996, 16-10-1996, 25-10-1996 and 29-10-1996. These documents form part of the compilation of documents on which the detaining authority had relied upon for arriving at his subjective satisfaction. The Detaining Authority vide letter dated 30-10-1996 had raised some queries, and they were replied vide letter dated 1-11-1996. The detention order was issued on 11-11-1996. From the above it can be seen that there is no unexplained delay in the issuance of the Detention Order. It is denied that the live link is broken and the credible chain is snapped.” 20. In the light of the above pleadings and in view of the law laid down by the Supreme Court on the question of delay being explained and the intervention of some time between the offending act and the passing of the Order of Detention, we will examine this contention that the delay of about 11 months in making the Order of Detention has the result of snapping the live link between the offending act and the propensity of the detenu to indulge in similar acts in future and hence the Order of Detention is bad in law. In reply, Mr. Kamble has set out the various steps taken in the matter of initiation of the proposal, its process and its culmination into the final order made on the 11th November, 1996. Mr. Patil, the sponsoring authority has also referred to the various steps and the dates on which the action was taken. In substance both Mr. Kamble and Mr. Patil contend that the time lag has been properly explained. There was no inaction on their part and this is not a case of unexplained delay which is frowned upon by the courts in detention matters. Mr. Bagwe has also made available to us the original file which support the pleadings in the affidavits of Mr. Kamble and Mr. Patil. After the initial investigation into the incident which involved a conspiracy to smuggled goods from Dubai into India, the proposal was forwarded on 26th August, 1996 by the sponsoring authority to the detaining authority. Additional information was called in the month of September 1996 by the detaining authority. A discussion was held with the investigating agency on 16th October 1996 and further information was called which was received in the month of October 1996; the last date of such receipt of information being 19th October 1996. It is, thereafter, that the detaining authority considered the entire material, scrutinised the documents and formulated the Grounds of Detention. The draft was finalised on 8th November, 1996 and the Order of Detention was issued on 11th November, 1996. After translating the documents, service was effected on the detenu on 19th February, 1997. No grievance is made before us about any delay between the date of issuance of the order and its service but what was contended was that the lapse of about 11 months between 15th December, 1995 and 11th November 1996 must necessarily be construed to mean that there was snapping of the live link and, therefore, there was no necessity to pass the Order of Detention. While considering such an argument based on delay in making the Order of Detention merely on the ground of lapse of a few months or even a year between the offending incident and the making of the order, we must consider the question as to whether the detaining authority and others concerned with the proposal for detention have acted without any laxity or negligence on their part. If the time taken has been properly explained, as has been done in the two affidavits of Mr. Kamble and Mr. Patil, the Apex Court has never viewed mere lapse of time to be sufficient

to hold that the link was snapped. Despite the lapse of some time, there may still be material to come to the conclusion that the detenu was likely to indulge, in future, in similar prejudicial activities which necessitated his detention under the COFEPOSA. In matters under the COFEPOSA, since conspiracies are hatched, which embrace several facts, people, times and places, finalising the proposal for detention may take time. We may refer to a few decisions on this point. 21. In *Rajendrakumar Natvarlal Shah v. State of Gujarat*, the Supreme Court has indicated that in the enforcement of law relating to preventive detention, like the COFEPOSA Act, there is apt to be some delay between the prejudicial activities complained of and the making of an Order of Detention. When a person is detected for foreign exchange racketeering, the directorate of enforcement has to make a thorough investigation into all the facts with a view to determining the identity of the persons engaged in these operations which have a deleterious effect on the national economy. Quite often, these activities are carried on by persons forming a syndicate or having a wide network. The Supreme Court then sounded a note of caution in para 10 of its judgment at page 1260 of the report for the guidance of the High Courts that a distinction must be drawn between delay in making of an Order of Detention under a law relating to preventive detention, like the COFEPOSA Act, and the delay in complying with the procedural safeguards under Article 22(5) of the Constitution. It was stated that rule as to unexplained delay in taking action was not inflexible and the Court should not merely on account of delay in making the 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. 22. In *Gora v. State of West Bengal*, the incident was in the night between June 25/26, 1973 and the Order of Detention was issued on 29th December 1973. In *Ashok Narain v. Union of India*, 1982 C.R.I. L.J. 1729 the last incident was of 25th February, 1981 and the Order of Detention was issued on 14th October, 1981. In both these decisions the Supreme Court took the view that the delay in making the Order of Detention did not result in the live link being snapped nor did such lapse of time indicate that the subjective satisfaction was either vitiated or was not genuinely reached by the detaining authority. In *Abdul Salam v. Union of India*, the smuggling of gold had taken place on 17th September, 1987 and the detention order was issued on the 21st May, 1988. The contention was that there was a solitary instance of smuggling which had become stale and hence Order of Detention was not called for. The Supreme Court rejected the argument after considering its earlier decisions in para 13 of the judgment at page 1450 of the Report. The conclusion that the nexus was not severed because of the delay or that the grounds had become stale and illusory is recorded in para 14 of the judgment on page 1450. 23. In the light of the above decisions of the Supreme Court and the pleadings of Mr. Kamble and Mr. Patil, it is not possible for us to come to the conclusion that the time lag of about 11 months in the facts of the present case must be construed as unexplained delay which necessarily vitiates the Order of Detention on account of the live link being snapped. As indicated earlier,

the time taken has been satisfactorily explained. There is thus no question of delay in the present case. The time lag of about 11 months does not, having regard to the nature of the smuggling activities, in our view result in the live link being snapped. It is not possible for us to doubt the subjective satisfaction of the detaining authority in this behalf. It is also not possible for us to hold that merely because of the time lag of about 11 months the detaining authority ought not to have resorted to the power of preventive detention. There is, thus, no merit in the third contention. We reject the same. 24. The fourth contention raised on behalf of the detenu is about the alleged disparity between the order and the Grounds of Detention with reference to the fact that it was necessary, with a view to preventing the detenu, in future, from smuggling goods, to detain him under the COFEPOSA Act. It is contended that the Order of Detention is specifically referable to section 3(1)(i) of the COFEPOSA Act, which talks of "smuggling goods". As against this, it was contended that the Grounds of Detention mainly relate to the role attributed to the detenu in an activity which is referable to Clause (iii) of sub-section (1) of section 3 of the COFEPOSA Act namely "engaging in transporting or concealing or keeping smuggled goods". It is thus contended in para 4(ii) of the petition that there is a disparity between the Order of Detention and the Grounds of Detention which are at variance with each other and hence the order shows non-application of mind and, as such, is liable to be set aside. 25. In reply to this contention Mr. Bagwe has invited our attention to the affidavits of the detaining authority and the sponsoring authority. Mr. Kamble, in para 6 of his affidavit, has stated as under : "6 With reference to paragraph No. 4(ii) of the petition, it is denied that the conclusion arrived at by the then detaining authority in the Grounds of Detention and in the Order of Detention are at variance as alleged. I say that from the details set out in the Grounds of Detention regarding the prejudicial activities of the detenu, it becomes manifestly clear that the detenu was involved in the conspiracy to remove the container bearing smuggled goods, with the help of his other smuggler associates. In the circumstances the then detaining authority had rightly come to the conclusion that the detenu was involved in smuggling of goods, as contemplated under the provisions of the Customs Act. I submit that the Order of Detention has been properly made by the then detaining authority. I deny that the Order of Detention and the Grounds of Detention are at variance as alleged. I deny that the Order of Detention is liable to be struck down as alleged or at all." 26. Mr. Patil in para 3 of his affidavit has given the details of the role attributed to the detenu at various stages and the statement of the detenu recorded under section 108 of the Customs Act on 6-1-1996 and has contended that the activities of the detenu clearly amounted to 'smuggling' within the meaning of Clause (e) of section 2 of the COFEPOSA Act read with provisions of the Customs Act, 1962. We find it convenient to reproduce para 3 of the affidavit of Mr. Patil, which reads as under : "3. With reference to paragraph No. 4(iii) of the petition, I say that the claim of the detenu that the detaining authority has in the Grounds of Detention stated that the petitioner was arrested by Kalamboli Police Station, while trying to break the seal of the container of truck trailer, is misleading and not correct. The detaining authority

has in the Grounds of Detention has made the following observations : "On 15-12-1995 Officers of the Kalamboli Police Station interrogated five persons namely (1) Kamaluddin Kikan Shaikh, (2) you, Nazir Hamid Abdul Hamid Tunekar, (3) Pappu @ Jethanand Lakhmichand Tolani, (4) Shabbir Ahmed Mohammed Akbar Qureshi and (5) Nasim Khan Nasir Khan after you all were found in suspicious circumstances on Panvel Thane Road, near the Kalamboli fire brigade. Some of you were at tempting to tamper with the seal of a container..." The petitioner had also voluntarily disclosed in his statement recorded under section 108 of Customs Act, 1962, dated 6-1-1996, that they (the petitioner alongwith some of the co-accused) were intercepted and taken into custody by the Police, while they were trying to open the container. Smuggling under the Customs Act, in relation to goods, is defined as follows :- "Smuggling" means any act or omission which will render such goods liable to confiscation under section 111 or section 113 of the Customs Act. And any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34 of the Customs Act, 1962 are liable to confiscation under section 111(h) of the Customs Act, 1962. The container loaded was clandestinely removed from the J.N.P. docks, without payment of Customs duty, and was attempted to be unloaded in breach of the provisions of section 33 and section 34 of the Customs Act, 1962 and hence in this case the goods are liable to confiscation under section 111(h) of the Customs Act. By virtue of the definition of smuggling in the Customs Act, this aforesaid attempt for illegal unloading is smuggling. The detenu along-with other co-accused had attempted to unload and contents of the container, in breach of the provisions of section 33 and other provisions of the Customs Act, 1962. In other words, the detenu had attempted to smuggle the goods, which is punishable under the Customs Act. As such the detenu is liable to be prosecuted under the Customs Act, 1962." Further more prosecution of the petitioner under the Customs Act, is independent of his detention under the COFEPOSA Act. Therefore, the claim of the petitioner that the Detaining Authority should not have issued the Detention Order is not tenable. 27. In this behalf, our attention was also invited by Mr. Bagwe to the Grounds of Detention which show how the detenu was directly involved in the conspiracy for smuggling the ball-bearings from Dubai into India and had taken active part in the meetings held between various conspirators in the months of November and December 1995, which culminated in the final act of 15th December, 1995. 28. In the light of the above pleadings, we will examine the fourth contention of Ms. Mane about the alleged disparity between the Order of Detention and the Grounds of Detention. What is contended is that, while the Order of Detention talks of 'smuggling of goods' which act is referable to Clause (i) of sub-section (1) of section 3, the Grounds of Detention refer to the role of the detenu in engaging in transporting or concealing or keeping smuggled goods, which activity falls in Clause (iii) of subsection (1) of section 3. It is true that section 3 of the COFEPOSA Act dealing with power to make orders detaining certain persons, contemplates different kinds of activities and it is with a view to preventing a person from indulging in one or more of these activities, that the detaining authority thinks that it is necessary to make an

Order of Detention. Section 3 may be reproduced as under :- “3. Power to make orders detaining certain persons.— (1) The Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to the Government, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view So preventing him from- (i) smuggling goods, or (ii) abetting the smuggling of goods, or (iii) engaging in transporting or concealing or keeping smuggled goods, or (iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or (v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods, it is necessary so to do, make an order directing that such person be detained. Provided that no Order of Detention shall be made of any on the grounds specified in this sub-section on which an Order of Detention may be made under section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1998 or under section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1998 (J. & K. Ordinance 1 of 1998). (2) When any Order of Detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order. (3) For the purposes of CI. (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be alter the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention.” 29. The word “smuggling” or “smuggled” which appears in each of the 5 clause of subsection (1) has been defined in section 2(e) of the COFEPOSA Act, which reads as under : (e) “smuggling” has the same meaning as in CI. (39) of section 2 of the Customs Act, 1962 (52 of 1962), and all its grammatical variations and. cognate expressions shall be construed accordingly;" When we turned to the definition of smuggling under the Customs Act, 1962, Clause 39 of section 2 of the Customs Act reads as under : (39) “smuggling”, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;" Turning to section 111 of the Customs Act, 1962 which deals with the different categories of goods brought from a place outside India which are liable for confiscation. From the affidavits filed before us, it is clear that the goods were dutiable and were unloaded in contravention of the provisions of sections 33 and 34 of the Customs Act, 1962. The affidavit filed by Mr. Patil clearly sets out this fact. It may be recalled that 1,12,267 Russian made ball-bearings and 4770 kgs. of heavy metal scrap totally valued to Rs. 11,61,145 (F.O.B.) which, at the prevailing market value, was then valued at Rs. 82,89,622/- was illegally imported into country from Dubai. The container which was lying in the Customs area was illegally re-

moved without payment of Customs duty and in contravention of provisions of sections 33 and 34 of the Customs Act. This was as a result of a conspiracy hatched by as many as 13 persons. Perusal of the Grounds of Detention shows that different roles have been attributed to the detenu at various stages of the conspiracy right from the time it was hatched till its execution and completion of the smuggling activity. In para 3 of the Grounds of Detention, there is a reference to a conspiracy between 13 persons for smuggling the said goods through the J.N.P.T. In para 6 of the grounds, detenu has been said to have been involved in the initial conspiracy hatched by the first six persons and Rs. 5.50 lacs were to be paid for the entire smuggling operation. The detenu's services were requisitioned through Bhuvan @ Mohan Pandurang Koli. Para 9 of the Grounds of Detention shows that the detenu was aware of the removal of the container from J.N.P.T. and was also involved in the actual opening of the container near Kalamboli. The detenu is said to have reached the site, where the truck trailer was parked, in the company of Kamaluddin Kikan Shaikh and Pappu @ Jethanand Lakhmichand Tolani and he had carried the hacksaw and locks from Uran and when all of them were trying to break open the seal of the container, they were apprehended by the police. Para 11 of the Grounds of Detention shows the detenu was involved in the smuggling of the goods from the J.N.P.T. without payment of Customs duty. Para 15 of the grounds shows that the role played by the detenu in the matter of the movement of the truck trailer and following the same at Kalamboli. What is more important to note in the light of present contention of this distinction between "smuggling goods" and "engaging in transporting or concealing or keeping smuggled goods" is the recital in para 20 of the Grounds of Detention. It shows that the detenu was involved earlier also in smuggling of consumer items like tape-recorders. He knew Pappu Tolani who was smuggling goods through J.N.P.T. with the help of C.I.S.F. guards. The detenu was introduced to Pappu Tolani through his old friend Bhuvan @ Mohan Koli. The detenu was aware of the fact that Kamaluddin Shaikh was having consignment of ball-bearings from Dubai which was to be smuggled into India through J.N.P.T. and meetings were held between six persons at the Ashoka Hotel, Uran to finalise the whole smuggling operation. In the conclusion of second para 20 (which should have been numbered 21) in the Grounds of Detention, there is a reference to the meetings between the detenu and the other conspirators at the Ashoka Hotel, Uran. It is on the basis of these facts that satisfaction has been reached that the detenu was engaged in smuggling and was likely to continue engaging in such prejudicial activities in future and it was with a view to preventing him from undertaking such prejudicial activities in future, that it was necessary to detain him under the COFEPOSA Act. Para 23 of the grounds categorically records subjective satisfaction reached by the detaining authority and the further fact that the nexus between the incident and the passing of the Order of Detention as well as the object of the detention had been maintained. 30. In the light of these glaring facts, it is not possible for us to accept the contention of Ms. Mane that there is a disparity between the Order of Detention which refers to only 'smuggling of goods' under section 3(1)(i) of the COFEPOSA Act and the Grounds of Detention which refer

to ‘engaging in transporting or concealing or keeping smuggled goods’ within the meaning of section 3(1)(iii) of the said Act. In our view the material that was placed before the detaining authority clearly indicated that the detenu was smuggling goods and was also engaged in transporting smuggled goods and it is erroneous to assume that the Grounds of Detention only referred to the detenu’s role in engaging or transporting or concealing or keeping smuggled goods. 31. In this behalf we also wish to point out that the Grounds of Detention have to be read in the light of the statements furnished to the detenu along with the Grounds of Detention. A perusal of the said statements clearly shows that the detenu was involved at every stage of the entire operation. Mr. Bagwe has taken us through some of the statements to which we will make brief reference. Statement of K.K. Shaikh recorded on 6th January, 1996, categorically shows the involvement of the detenu at various stages of the conspiracy. Statement of Bhuvan @ Mohan Pandurang Koli recorded on 6th January, 1996, shows that the detenu was earlier indulging in smuggling activities and was also involved in the present case of smuggling. Statement of Pappu Tolani recorded on 6th January, 1996 also refers to the role played by the detenu during the different stages of the entire conspiracy, activities of smuggling the Russian made ball-bearings from Dubai into the country. The statements of the detenu recorded on several dates unmistakably show that he was involved in the smuggling activities in the past as also in the present operation of smuggling of Russian made ball-bearings. Similarly the statement of C.I.S.F. Constable R. Gnanasekaran recorded on 4th March, 1996 implicate the detenu in the various stages of the smuggling operation. Relying upon such material, the detaining authority has recorded the satisfaction to the effect that the detenu was engaged in smuggling of goods and with a view to preventing him in future from smuggling goods, it was necessary to make the Order of Detention. 32. In view of the above, we find no merit in the contention raised by Ms. Mane that there is variance between the Order of Detention and the Grounds of Detention, as a result of which the Order of Detention is vitiated. We hold that the Grounds of Detention are not merely confined to the detenu engaging in transporting or concealing or keeping smuggled goods, but the Grounds of Detention unmistakably show that the detenu was involved in smuggling goods as stated in the Order of Detention. In this behalf we may refer to the decision of the Apex Court in *Narendra v. B.B. Gujral*, . This was also a case of detention under the COFEPOSA Act in respect of the smuggling of stainless steel worth Rs. 15,44,400/- on the 20th August 1977. This resulted in the Order of Detention being issued under section 3(1) of the COFEPOSA Act on the 1st of February, 1978 with a view to preventing the detenu from smuggling the goods. An argument was advanced, like the one which is advanced before us that, the activities of the detenu fell under Clause (ii) of subsection (1) of section 3 namely “abetting the smuggling of goods” and could by no stretch of imagination be called “smuggling goods” falling under section 3(1)(i). This argument has been referred to in para 25 of the judgment on page 425 of the Report. In para 26 onwards, the Supreme Court considered the definition and the distinction between various clauses of section 3(1) like (i) smuggling goods, (ii) abetting the smuggling of goods, (iii)



engaging in transporting or concealing or keeping smuggled goods, (iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or (v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods. In para 28 of the judgment at page 426 of the Report the Court observed that in a case like the present, where there is a widespread network employed by a person, it cannot be said that he is not engaged in the act of smuggling of contraband goods. In para 33 of the judgment at page 427 the Court concluded that the activities of the appellant before it were such that his case would be covered by both the Clause (i) and (ii) of section 3(1) of the Act. In the result the contention based on disparity and non-application of mind was rejected. 33. In our view the activities of the detenu were clearly referable to the “smuggling of goods” having regard to the role attributed to the detenu in the Grounds of Detention which is not confined to his merely engaging in transporting or concealing or keeping smuggled goods. There is, thus, no merit in this contention which accordingly, is rejected. 34. The last contention advanced by Ms. Mane is that since the detenu was released on bail, as far back as, on 8th January, 1996, it was not necessary to exercise the power of preventive detention, as late as, on 11th November, 1996. Her contention is that there was no likelihood of the detenu indulging in similar acts and nothing had happened between the 8th January 1996 and 11th November, 1996 so as to justify the exercise of power of preventive detention under section 3(1) of the COFEPOSA Act. Contention in this behalf is taken in para 4(iv) of the petition. Mr. Bagwe has invited our attention to the reply which is to be found in the affidavits of Mr. Kamble and Mr. Patil. In para 8 of Mr. Kamble’s affidavit, he has referred to the necessity of passing the Order of Detention on a reasonable prognosis of the future behaviour of the detenu based on his past conduct. He has further stated that the detaining authority had arrived at the subjective satisfaction that passing an Order of Detention was absolutely necessary with a view to preventing the detenu from committing similar prejudicial activities in future. The allegation, that there was no material before the detaining authority for coming to the conclusion, drawn by him, has been denied by Mr. Kamble. Mr. Patil, in para 4 of his affidavit, has referred to the statement of the detenu recorded on 6th January 1996, where he has admitted his involvement in smuggling consumer items in the past. This provides the basis for recording the satisfaction that it was necessary to prevent the detenu with a view to preventing him from indulging in such prejudicial activities in future. Apart from the above two affidavits, para 23 of the Grounds of Detention records the satisfaction of the detaining authority, that the detenu was likely to continue to engage in the prejudicial activities of smuggling in future and in order to prevent him from undertaking such prejudicial activities in future, it was necessary to detain him under the COFEPOSA Act. There is a further categorical statement that the nexus between the date of incident and passing of the detention order as well as the object of detention had been maintained. 35. In view of the above, it is clear that the detaining authority was satisfied about the nexus between the last incident of 15th December 1995 and the passing of the Order of Detention with a view to preventing him from indulging in

similar acts in future. In the light of this subjective satisfaction recorded by the detaining authority, in our view, there is no merit in the contention that merely because a person was released on bail, which is the usual experience in offences punishable under the Customs Act, an order of detention under the COFEPOSA Act cannot be issued. Just as a person who is already in jail can be detained under preventive detention, which principle of law is settled by a series of Supreme Court decisions, a person who is on bail can also be detained, if the detaining authority arrives at the subjective satisfaction that with a view to preventing him from indulging in similar prejudicial activities in future, it was necessary to detain him. No hard and fast rule can be laid down merely depending upon whether a person is in jail or is on bail. It would depend upon the facts of a given case. Here we are dealing with a case where the detenu started with smuggling tape-recorders. The present incident relates to smuggling of Russian made ball-bearings from Dubai into India. We are, therefore, of the view that even if the detenu was on bail since 8th January, 1996, if the detaining authority had material before it to record its satisfaction that it was necessary to detain him with a view to preventing him from indulging in future in similar prejudicial activities, no objection can be taken to such a course of action. As stated in the Grounds of Detention if the nexus has been established, if the live link had not snapped, if on the past conduct which indicates the repetition of smuggling activities, a reasonable prognosis can be reached about the future conduct of the detenu, as has been done in the present case, the Order of Detention cannot be objected to. In our view, therefore, there is no merit in the last contention raised by Ms. Mane. 36. Accordingly, we find that there is no merit in any of the five contentions raised by Ms. Mane. The petition must, therefore, fail. The rule is accordingly discharged. 37. Petition dismissed.