Smt. Poonam Lata vs M.L. Wadhawan & Ors on 22 April, 1987

Equivalent citations: 1987 AIR 1383, 1987 SCR (2)1123, AIR 1987 SUPREME COURT 1383, 1987 (3) SCC 347, 1987 (3) JT 204, 1987 SCC(CRI) 506, 1987 (3) IJR (SC) 251, (1987) 13 DRJ 35, (1987) 1 SUPREME 529, (1987) 30 ELT 3, (1987) 2 RECCRIR 100, (1987) 2 SCJ 579

Author: A.P. Sen

Bench: A.P. Sen, Misra Rangnath

PETITIONER:
SMT. POONAM LATA

Vs.

RESPONDENT:
M.L. WADHAWAN & ORS.

DATE OF JUDGMENT22/04/1987

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
MISRA RANGNATH

CITATION:
1987 AIR 1383 1987 SCR (2)1123
1987 SCC (3) 347 JT 1987 (2) 204
1987 SCALE (1)849
CITATOR INFO :
F 1987 SC1748 (30)
F 1987 SC2098 (1)
* 1989 SC1529 (1)

ACT:
Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974: ss. 3 & 12--Preventive detention--Period of parole--Whether could be added to period of detention--Court whether competent to grant parole.
Constitution of India; Articles 226 and 32--COFEPOSA Act-Preventive detention--Powers of the Court to release on parole.
Words & Phrases: 'parole'--'detain'--Meaning of.

HEADNOTE:

Sub-section (6) of s. 12 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. 1974 prohibits release of a detenu on bail, or bail bond or otherwise, during the period a detention order is in force. Sub-sections (1) and (1A) of s. 12, however, permit temporary release by the Central or State Governments on certain terms and conditions. Section 10 provides for a maximum period of detention of one year in cases .to which provisions of s. 9 do not apply.

The husband of the petitioner was detained under s. 3(1) of the Act by an order dated February 28, 1986. His representation under s. 8(b) was rejected by the detaining authority on April 4, 1986. The Advisory Board in its sittings on April 28 and 29, 1986 concluded that there was sufficient cause for detention. The order of detention was confirmed by the Minister on May 14, 1986.

The writ petition filed under Article 32 of the Constitution on April 23, 1986 was heard by the Vacation Judge on May 15 1986 who made an order for the release of the detenu on parole and directed the matter to be listed in early August of 1986. The case, however, could not be listed till January 14, 1987, and was finally heard on March 3, 1987. The detenu had been out of Jail during the entire period. The period of one year expired on February 28, 1987.

1124

It was contended for the petitioner that the period of parole from May 15. 1986 till February 28. 1987 could not be added to the period of detention specified in the order under sub-s. (1) of s. 3 of the Act, that the period of one year from the date of detention having expired on February 28. 1987 the order of detention had lapsed entitling the detenu to be freed, and that once the detenu is taken into custody under the Act pursuant to an order of detention the running of time would not be arrested merely because the court directs the release of the detenu on parole. Relying on the decision in Lala Jairam Das & Ors. v. Emperor. (AIR 1945 PC 94) it was contended that the court cannot on general principles add the period of bail or parole to the period of detention, and that the ratio laid down in Amritlal Channumal Jain etc. v. State of Gujarat & Ors., (W.P. Nos. 1342-43 of 1982 decided on July 10, 1985) that the period during which a detenu was on parole should be taken into account while calculating the period of detention has to prevail and must be taken as binding.

Dismissing the writ petition. the Court.

HELD: 1. The period of parole of the detenu from May 15, 1986 to February 28. 1987 has to be excluded in reckoning the period of his detention for one year under sub-s. (1) of s. 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. [1136D, G-H]

2.1 The purpose and object of s. 10 of the Act is to prescribe not only a maximum period for which a person

against whom a detention order under the Act is made may be held in actual custody pursuant to the said order but also the method by which the period is to be computed. The key to the interpretation of the section is in the words "may be detained." The subsequent words "from the date of detention" which follow the words "maximum period of one year" merely define the starting point from which the maximum period of detention of one year is to be reckoned in a case not falling under s. 9. There is no justifiable reason why the word "detain" should not receive its plain and natural meaning 'to hold in custody'. [1134B; 1133G, EP]

2.2 The period during which the detenu is on parole cannot be said to be a period during which he has been held in custody pursuant to the order of his detention. In such a case he was not in actual custody. The order of detention prescribes the place where the detenu is to be detained. Parole brings him out of confinement from that place and detention as contemplated by the Act is interrupted until the detenu is put back into custody. The running of the period recommences then and

1125

a total period of one year has to be counted by putting the different periods of actual detention together. In the instant case it cannot, therefore, be said that the period during which the detenu was on. parole has to be taken into consideration in computing the maximum period of detention authorised by s. 10 of the Act. [1133H; 1134A-D]

Harish Makhija v. State of U.P., Crl. M.P. No. 620 of 1984 in W.P. (Crl.) No. 301 of 1983 decided on February 11, 1985; State of Gujarat v. Adam Kasam Bhaya, [1982] 1 SCR 740 and State of Gujarat v. IsmaiI Juma & Ors., [1982] 1 SCR 1014. referred to.

Amritlal Channumal Jain etc. v. State of Gujarat & Ors., Writ Petitions Nos. 1342-43 of 1982 decided on July 10, 1985, distinguished.

3. Parole is the release of a prisoner from a penal or correctional institution after he has served a part of his sentence under the continuous custody of the State and under conditions that permit his in carceration in the event of misbehavior. It is a grant of partial liberty or lessening of restrictions to a convict prisoner and does not change the status of the prisoner. [1131E, BC]

Preventive detention is not punishment. The scheme of s. 12. unless temporary release by the appropriate Government is taken to be one of parole, keeps away parole from the subject of preventive detention. [1130F; 1135F]

4.1 What in a given situation should be the sufficient period for a person to be detained for the purpose of the COFEPOSA Act is one for the subjective satisfaction of the detaining authority. Preventive detention jurisprudence in this regard is very different from regular conviction followed by sentence that an accused is to suffer. [1134EF]

4.2 Whether it be under Art. 226 or Art. 32 of the

Constitution. the Court has no jurisdiction either under the Act or under the general principles of law or in exercise of extraordinary jurisdiction to deal with the duration of the period of detention either by abridging or enlarging it. The only power that is available to it is to quash the order in case it is found to be illegal. It would not, therefore, be open to the Court to reduce the period of detention by admitting the detenu on parole. [1134F,E]

5. Sub-s. (6) of s. 12 of the Act puts a statutory bar to the release of the detenu after an order of detention has been made and the detenu lodged in custody. It is the appropriate Government and not the Court

1126

which deal with a case of temporary release of the detenu under subss.(1) and (1A) of s. 12 of the Act. The detenu seeking to have the benefit of temporary relief must go to the appropriate Government first. The Court cannot entertain his application for parole straightaway. On the principle that exercise of administrative jurisdiction is open to Judicial review by the superior Court, the High Court under Art. 226 or this Court under Art. 32 may in a given case examine the legality and propriety of the Government action. [1135E,C, F, G; 1136A; 1135H]

Samir Chatterjee v. State of West Bengal, [1975] 1 SCC 801; State of Bihar v. Rambalak Singh & Ors., [1966] 3 SCR 344 and State of; Uttar Pradesh v. Jairam & Ors., [1982] 1 SCC 176, referred to.

Babulal Das v. State of West Bengal, [1975] 1 SCC 311; Anil Dey v. State of West Bengal, [1974] 4 SCC 514 and Golam Hussain v. Commissioner of Police, Calcutta & Ors. [1974] 4 SCC 530, overruled.

6. It is desirable to insert in the COFEPOSA Act or the Rules made thereunder a provision like sub-s.(4) of s. 389 of the Code of. Criminal Procedure, 1973 that when an action is taken under s. 12 of the Act and the appropriate Government makes a temporary release order the order of such temporary release whether on bail or parole has to be excluded in computing the period of detention. [1136C] Lala Jairam Das & Ors. y. Emperor AIR 1945 PC 94, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Crl.) No. 292 of 1986. (Under Article 32 of the Constitution of India). Ram Jethmalani, Ms. Rani Jethmalani and A.K. Sharma for the Petitioner.

Anil Dev Singh, Mrs. Indra Sawhney and Ms. S. Relan for the Respondents.

The Judgment of the Court was delivered by SEN, J. By this petition under Article 32 of the Constitution, the petitioner Smt. Poonam Lata has asked for the issue of a writ of habeas corpus for the

release of her husband, Shital Kumar who has been detained by an order passed by the Additional Secretary to the Government of India, Ministry of Finance, Department of Revenue. dated February 28, 1986. made under section 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'Act'), on being satisfied that it was necessary to detain him "with a view to preventing him from dealing in smuggled goods". Put very briefly, the essential facts are these. The Directorate of Enforcement, New Delhi, gathered intelligence over a period of time before making of the impugned order of detention which revealed that the detenu was engaged in receiving smuggled gold from across the Indo-Nepal Border and was making payments in foreign currency and remitting the sale proceeds of such smuggled gold out of the country in the shape of U.S. dollars with the help of carriers. On February 26. 1986, the Directorate received information that the three carriers, namely, Ram Deo Thakur, Shyam Thakur and Bhushan Thakur would be leaving under the assumed names of Dalip, Mukesh and Rajesh respectively by 154 Dn. Jayanti Janata Express leaving New Delhi Railway Station at 6.45 p.m. Accordingly, the officers of the Delhi Zone of the Directorate mounted surveillance at Platform No. 5 of the Railway Station from which the train was to steam off. The said carriers were detrained and upon search of their bag- gage, the officers recovered $ 29,750 and Rs.1500 from Ram Deo Thakur @ Dalip, $ 28,900 and Rs.650 from Shyam Thakur @ Mukesh and $ 20,000 and Rs.1,000 from Bhushan Thakur @ Rajesh. The same ware seized under section 110(1) of the Customs Act, 1962. The total value of the seized foreign currency was equivalent to Rs.10,25,000 in round figure. During interrogation by the officers under section 108 of the Customs Act, these persons stated that the seized for- eign currency totaling $ 78,650 had been paid by the detenu towards the price of 48 gold biscuits of foreign origin brought by them from Darbhanga to New Delhi and made over to him and accordingly the detenu was taken into custody on February 27, 1986. He too made a statement under s. 108 of the Act confessing that he was dealing in smuggled gold brought across the Indo-Nepal Border and has been remitting the price of such gold in U.S. dollars through different carriers.

On February 28, 1986, the detenu was served with the impugned order of detention along with the grounds thereof and copies of the relevant documents relied upon in the grounds. On March 25, 1986. the detenu submitted a represen- tation under section 8(b) of the Act and the detaining authority by its order of April 4, 1986 rejected the same. On April 12, 1986 the detenu made a representation to the Advisory Board through the Superintendent of the Central Jail, Tihar. The representation together with comments of the detaining authority and the relevant documents were forwarded by the Ministry of Finance, Department of Revenue to the Advisory Board. On the same day the detenu appears to have made a representation to the Central Government and it was received in the Ministry of Finance on April 24, 1986. The Minister of State for Finance rejected the said repre- sentation on April 28, 1986 and the detenu was informed about it the following day. The Advisory Board had its sittings on April 28 and 29, 1986. and came to the conclu- sion that there was sufficient cause for the detention and sent its report on May 8, 1986. The Minister considered the report of the Advisory Board and confirmed the order of detention on May-14, 1986 and the Central Government's order of confirmation was duly communicated on May 26, 1986. The representation of the detenu was still before the Advisory Board when the petitioner moved this Court under Article 32 of the Constitution on April 23, 1986. On April 29, 1986, notice was ordered by the Court returnable on May 3, 1986, and it directed that the matter may be placed before the

Vacation Judge on May 15, 1986. On that date, the learned Vacation Judge made an order for the release of the detenu on parole in the following terms:-

> "The detenu is released on parole until fur- ther orders on the condition that he will report to the Directorate of Revenue Intelli- gence, New Delhi every day and the Directorate will be at liberty to ask him to explain his conduct during this time.
>
> Reply affidavit may be filed within two weeks. The matter will be listed two weeks after reopening of the Court after summer vacation.
>
> In the meantime, the respondents will be at liberty to make an application for the revocation of the parole if any misconduct or any other activity comes to their notice which requires the revocation of the parole."

Notwithstanding the order of the learned Vacation Judge that the matter should be listed within two weeks after the re-opening of the Court after the long vacation--it should have been some time in early August of 1986--the case was not listed till January 14, 1987. The respondents also took no steps to apply for early listing of the matter. On January 14, 1987, a prayer was made by the learned counsel appearing for the Union of India seeking two weeks' time to file an additional affidavit and the case was ordered to be listed on March

3. 1987. During all these months, the detenu has been out of jail.

Indisputably the detention was for one year. When the matter came up for hearing on the 3rd of March, 1987, Shri Jethmalani, learned counsel for the petitioner confined his submissions to only one aspect, namely, that the period of parole i.e. from May 15, 1986 till February 28, 1987, could not be added to the period of detention specified in the impugned order under sub-s. (1) of s. 3 of the Act and the period of one year from the date of detention having expired on February 26, 1987, the impugned order had lapsed and the detenu became entitled to be freed from the shackles of the order of detention. Ac- cording to the learned counsel, section 10 of the Act prescribes the maximum period of detention to be one year or two years, as the case may be, from the date of detention or the specified period, whichever expires earlier. Admittedly in respect of the detenu no decla- ration under section 9 of the Act has been made and, therefore, the maximum period of detention so far as he is concerned is one year and it has to be reckoned as prescribed under section 10 of the Act. That section indicates not only the starting point but also the outer limit. In other words, the argument is that once the detenu is taken into custody under the Act pursuant to an order of deten- tion, the running of time would not be arrest- ed merely because the Court directs release of the detenu on parole.

Shri Jethmalani drew a distinction between 'bail' and 'parole'; he contended that preven- tive detention was not a sentence by way of punishment and, therefore, the concept of serving out which pertains to punitive juris- prudence cannot be imported into the realm of preventive detention. According to him, the grant of parole to a detenu amounts to a provisional release from confinement; yet the detenu continues to be under judicial deten- tion; release from jail custody

subject to restrictions imposed on free and unfettered movement transfers the detenu to judicial custody. Since there is no provision to autho- rise interruption of running of the period of detention, release on parole does not bring about any change in the situation. It has further been argued that when the Court enter- tains a writ petition for grant of habeas corpus and issues a rule nisi, the detenu is deemed to have come into judicial custody and the effect of grant of parole does not termi- nate such custody but merely allows greater freedom of move-

ment to the detenu. Conditions imposed on the detenu during parole impinge upon his freedom and liberty; therefore, the period during which a detenu is released on parole cannot be taken as a period during which the detention is not operative. Shri Jethmalani placed reliance on the ratio of the Privy Council decision in Lala Jairam Das & Ors. v. Emperor, AIR 1945 PC 94 to contend that but for the special provision contained in sub-section (3) of s. 426 of the old Code of Criminal Proce- dure, 1898 (corresponding to s. 389(4) of the Code of 1973) the power of the Court to grant bail to a convicted person or accused would not include a power to exclude the period of bail from the term of the sentence. The same principle ought to apply in the case of re- lease of a detenu on bail or parole and the Court therefore cannot on general principles add the period of bail or parole to the period of detention. In the absence of any provision regarding the grant of parole and the computa- tion of the period thereof and in view of the special provisions contained regarding com- mencement and the computation of the period of detention of one year, the period of parole cannot be deducted while computing the period of one year of detention. The learned counsel also relied upon the direction made by a Bench of three Judges in the case of Amritlal Chan- numal Jain etc. v. State of Gujarat & Ors. (Writ Petitions Nos. 1342-43, 1345-48 and 1362 of 1982 and No. 162 of 1983 dated July 10, 1985) where this Court directed that the period during which a detenu was on parole should be taken into account while calculating the total period of detention. According to learned counsel the direction in Amritlal Channumal Jain's case was given after a Bench of two Judges in Harish Makhija v. State of U.P. Crl. M.P. No. 620 of 1984 in U.P. (Crl.) No. 301 of 1983 held on February 11, 1985, that the period of parole cannot be counted towards the period of detention. Shri Jethmal- ani has submitted that in view of the direc- tion of the larger Bench of this Court, the ratio laid down in Amritlal Channumal Jain's case (supra) has to prevail and must be taken as binding on us.

There is no denying the fact that preven- tive detention is not punishment and the concept of serving out a sentence would not legitimately be within the purview of preven- tive detention. The grant of parole is essen- tially an executive function and instances of release of detenus on parole were literally unknown until this Court and some of the High Courts in India in recent years made orders of release on parole on humanitarian considera- tions. Historically 'parole' is a concept known to military law and denotes release of a prisoner of war on promise to return. Parole has become an integral part of the English and American systems of criminal justice inter- twined with the evolution of changing atti- tudes of the society towards crime and crimi- nals.

As a consequence of the introduction of parole into the penal system, all fixed-term sen- tences of imprisonment of above 18 months are subject to release on licence, that is, parole after a third of the period of sentence has been served. In those countries, parole is taken as an act of grace and not as a matter of right and the convict prisoner may be released on condition that he abides by the promise. It is a provisional release from confinement but is deemed to be a part of the imprisonment. Release

on parole is a wing of the reformative process and is expected to provide opportunity to the prisoner to trans- form himself into a useful citizen. Parole is thus a grant of partial liberty or lessening of restrictions to a convict prisoner, but release on parole does not change the status of the prisoner. Rules are flamed providing supervision by parole authorities of the convicts released on parole and in case of failure to perform the promise, the convict released on parole is directed to surrender to custody. (See: The Oxford Companion to Law, edited by Walker, 1980 edn., p. 931, Black's Law Dictionary, 5th edn., p. 1006, Jowitt's Dictionary of English Law, 2nd edn., Vol. 2, p. 1320, Kenny's Outlines of Criminal Law, 17th edn., p. 574-76, The English Sentencing System by Sir Rupert Cross at pp. 31-34, 87 et seq., American Jurisprudence, 2nd edn., Vol. 59, pp. 53-61, Corpus Juris Secundum, vol. 67, Probation and Parole, Legal and Social Dimen- sions by Louis P. Carney). It follows from these authorities that parole is the release of a very long term prisoner from a penal or correctional institution after he has served a part of his sentence under the continuous custody of the State and under conditions that permit his incarceration in the event of misbehavior.

There is abundance of authority that High Courts in exercise of their jurisdiction under Article 226 of the Constitution do not release a detenu on bail or parole. There is no reason why a different view should be taken in regard to exercise of jurisdiction under Article 32 of the Constitution particularly when the power to grant relief to a detenu in such proceedings is exercisable on very narrow and limited grounds. In State of Bihar v. Rambalak Singh & Ors., [1966] 3 SCR 344 a Constitution Bench laid down that the release of a detenu placed under detention under Rule 30 of the Defence of India Rules, 1962. on bail pending the hearing of a petition for grant of a writ of habeas corpus was an improper exercise of jurisdiction; It was observed in that case that if the High Court was of the view that prima facie the impugned order of detention was patently illegal in that there was a serious defect in the order of detention which would justify the release of the detenu, the proper and more sensible and reasonable course would invariably be to expedite the hearing of the writ petition and deal with the merits without any delay rather than direct release of the detenu on bail. Again, in State of Uttar Pradesh v. Jairam & Ors., [1982] 1 SCC 176 a three-Judge Bench speaking through Chandrachud, CJ., referred to Rambalak Singh's case and set aside the order passed by the learned Single Judge of the High Court admitting the detenu to bail on the ground that it was an improper exercise of jurisdiction. As to grant of parole, it is worthy of note that in none of the cases this Court made a direction under Article 32 of the Constitution for grant of parole to the detenu but left it to the executive to consider whether it should make an order in terms of the relevant provision for temporary release of the person detained as under section 12 of the COFEPOSA, in the facts and circumstances of a particular case. In Samir Chatterjee v. State of West Bengal, [1975] 1 SCC 801, the Court set aside the order of the Calcutta High Court releasing on parole a person detained under S. 3(1) of the Maintenance of Internal Security Act, 1971 and unequivocally viewed with disfavor the observations made by Krishna Iyer, J. in Babulal Das v. State of West Bengal, [1975] 1 SCC 311 to the effect:

> "While discharging the rule issued and dis- missing the petition, we wish to emphasize that s. 15 is often lost sight of by the Government in such situations, as long term preventive detention can be self-defeating or criminally counter-productive. Section 15 reads:

15. Temporary release of persons detained--

We consider that it is fair that persons kept incarcerated and embittered without trial should be given some chance to reform them- selves by reasonable recourse to the parole power under s. 15. Calculated risks, by re- lease for short periods may, perhaps, be a social gain, the beneficent jurisdiction being wisely exercised."

Alagiriswamy, J. speaking for the Court, observed in no uncertain terms:

> "We fail to see that these observations lay down any principle of law. Section 15 merely confers a power on the Government. The power and duty of this Court is to decide cases coming before it according to law. In so doing it may take various considerations into ac- count. But to advise the Government as to how they should exercise their functions or powers conferred on them by statute is not one of this Court's functions. Where the Court is able to give effect to its view in the form of a valid and binding order that is a different matter. Furthermore, section 15 deals with release on parole and there is nothing to show that the petitioner applied for to be released on parole for any specific purpose. As far as we are able to see, release on parole is made only on the request of the party and for a specific purpose."

The innovative view expressed by Krishna lyer, J. in Anil Dey v. State of West Bengal, [1974] 4 SCC 5 14 which he tried to reiterate in Golam Hussain v. The Commissioner of Police, Calcutta & Ors., [1974] 4 SCC 530 and in Babulal Das' case, (supra), therefore, no longer holds the field, and rightly so, because the Court cannot usurp the functions of the Government.

Section 10 of the Act provides that the maximum period for which any person may be detained in pursuance of an order of detention to which provisions of section 9 do not apply shall be for a period of one year from the date of detention or the specified period, whichever expires earli- er. The key to the interpretation of section 10 of the Act is in the words 'may be detained'. The subsequent words 'from the date of detention' which follow the words 'maximum period of one year' merely define the starting point from which the maximum period of detention of one year is to be reckoned in a case not falling. under section 9. There is no justifiable reason why the word 'detain' should not receive its plain and natural meaning. According to the Shorter Oxford English Dictionary, vol. 1, p. 531, the word 'detain' means "to keep in confinement or custody". Webster's Campre- hensive Dictionary, International Edition at p. 349 gives the meaning as "to hold in custody". The purpose and object of s. 10 is to prescribe a maximum period for which a person against whom a detention order under the Act is made may be held in actual custody pursuant to the said order. It would not be violated if a person against whom an order of deten- tion is passed is held in actual custody in jail for the period prescribed by the section. The period during which the detenu is on parole cannot be said to be a period during which he has been held in custody pursuant to the order of his detention, for in such a case he was not in actual custody. The order of detention pre- scribes the place where the detenu is to be detained. Parole brings him out of confinement from that place. Whatever may be the terms and conditions imposed for grant of parole, detention as contemplated by the Act is interrupted when release on parole is obtained. The position would be well met by the appropriate answer to the

question "how long has the detenu been in actual custody pursuant to the order?"

> According to its plain construction, the purpose and object of s. 10 is to prescribe not only for the maximum period but also the method by which the period is to be computed. The computation has to commence from the date on which the detenu is taken into actual custody but if it is interrupted by an order of parole, the detention would not continue when parole operates and until the detenu is put back into custody. The running of the period recommences then and a total period of one year has to be counted by putting the differ- ent periods of actual detention together. We see no force in Shri Jethmalani's submission that the period during which the detenu was on parole has to be taken into consideration in computing the maximum period of detention authorised by section 10 of the Act.
>
> It is pertinent to observe that the Court has no power to substitute the period of detention either by abridging or enlarging it. The only power that is available to the Court is to quash the order in case it is found to be illegal. That being so, it would not be open to the Court to reduce the period of detention by admitting the detenu on parole. What in a given situation should be the sufficient period for a person to be detained for the purpose of the Act is one for the subjective satisfaction of the detaining author- ity. Preventive detention jurisprudence in this regard is very different from regular conviction followed by sentence that an accused is to suffer. Whether it be under Article 226 or Article 32 of the Constitution, the Court would, therefore, have no jurisdiction either under the Act or under the general principles of law or in exercise of ex- traordinary jurisdiction to deal with the duration of the period of detention.
>
> Parliament has authorised the detention of persons under the COFEPOSA to serve two purposes:-
>
> "(1) To prevent the person concerned from engaging himself in an activity prejudicial to the conservation of foreign exchange and also preventing him from smuggling activities and thereby to render him immobile for the period considered necessary by the detaining authority so that during that period the society is protected from such prejudicial activities on the part of the detenu. And (2) In order to break the links between the person so engaged and the source of such activity and from his associates engaged in that activity or to break the continuity of such prejudicial activities so that it would become difficult, if not impossible, for him to resume the activities."

Release of a detenu on parole after an order of detention has been made and the detenu lodged in custody for achieving one or the other of the aforesaid legislative objects is thus contrary to the purpose of the statute. There is a statutory prohibition against release of a detenu during the period of detention in sub-section (6) of section 12 of the Act. That sub-section which was inserted by Amending Act 39 of 1975 with effect from 1.7.1975 reads:-

> "Notwithstanding anything contained in any other law and save as otherwise provided in this section, no person against whom a deten- tion order made under this Act is in force shall be released whether on bail or bail bond or otherwise."

Sub-section (6) puts a statutory bar to the release of the detenu during the period of detention in a manner otherwise than the one provided in section 12. Section 12 authorises either the Central Government or the State Government to temporarily release the detenu on such terms and conditions as the appropriate Government considers necessary to impose. The scheme of section 12, unless release by the appropriate Government is taken to be one of parole, keeps away parole from the subject of preventive detention. At any rate, it is the appropriate Government and not the Court which deals with a case of temporary release of the detenu. Since the Act authorises the appropriate Government to make an order of temporary release, invariably the detenu seeking to have the benefit of temporary relief must go to the appropriate Government first. It may be that in a given case the Court may be required to consider the propriety of an adverse order by the Government in exercise of the jurisdiction under section 12 of the Act. On the principle that exercise' of administrative jurisdiction is open to judicial review by the superior court, the High Court under Article 226 or this Court under Article 32 may be called upon in a suitable case to examine the legality and propriety of the governmental action. There is no scope for entertaining an application for parole by the Court straightaway. The legislative scheme, keeping the purpose of the statute and the manner of its fulfilment provided thereunder, would not justify enter- taining of an application for release of a detenu on parole. Since in our view release on parole is not a matter of judicial determination, apparently no provision as contained in the Code of Criminal Procedure relating to the computa- tion of the period of bail was thought necessary in the Act. But we would like to point out to the Government the desira- bility of inserting a provision like sub-s.(4) of s. 389 of the Code of Criminal Procedure, 1973 that when an action is taken under section 12 of the Act and the appropriate Gov- ernment makes a temporary release order, the period of such temporary release whether on bail or parole has to be ex- cluded in computing the period of detention. Either the statute or the rules made thereunder should provide for this eventuality.

In the premises, it must accordingly be held that the period of parole has to be excluded in reckoning the period of detention under sub-section (1) of section 3 of the Act. We find it difficult from the observations made by the three-Judge Bench in Amritlal Channumal Jain's case to infer a direction by this Court that the period of parole shall not be added to the period of detention. The words used 'shall be taken into account' are susceptible of an inter- pretation to the contrary. We find that an order made by a bench of two Judges of this Court in Harish Makhija's case (supra) unequivocally laid down that the period of parole cannot be counted towards the period of detention. This accords with the view taken by this Court in a bench of two Judges in State of Gujarat v. Adam Kasam Bhaya, [1982] 1 SCR 740 and State of Gujarat v. Ismail Juma & Ors., [1982] 1 SCR 1014. In view of these authorities which appear to be in consonance with the object and purpose of the Act and the statutory provisions and also having regard to the fact that the direction made in Amritlal Channumal Jain's case (supra) is capable of another construction as well, we do not find Shri Jethmalani's contention on this score as acceptable. For these reasons, the only contention advanced by Shri Jethmalani in course of the hearing, namely, that the period of parole from May 15, 1986 to February 28, 1987 could not be added to the maximum period of detention of

the detenu Shital Kumar for one year as specified in the impugned order of detention passed under sub-s.(1) of s. 3 of the Conserva- tion of Foreign Exchange & Prevention of Smuggling Activi- ties Act, 1974, must fail. The writ petition is accordingly dismissed. There shall be no order as to costs. We direct that the petitioner shall surrender to custody to undergo remaining period of detention. We give the detenu ten days' time to comply with this direction failing which a non- bailable warrant for his arrest shall issue.

P.S.S. Petition dis- missed.