Usha Agarwal vs Union Of India (Uoi) And Ors. on 21 April, 2006

Equivalent citations: (2006)3CALLT19(HC), 2006(3)CHN348, 2006CRILJ2934

JUDGMENT

Debiprasad Sengupta, J.

1. The present application under Article 226 of the Constitution of India has been filed for issuance of a writ in the nature of habeas corpus for setting aside the order of detention passed by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue in terms of the provision of Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short COFEPOSA).

2. Before considering the matter on merit, we may refer to the facts of the case and the chronological events, which will appear from the order of dentention itself.

3. There was a source information that one Sandip Agarwal, Director of the Company M/s. Sandip Exports Limited under two licences issued in his favour imported different types of polyester and silk yarn/fabric duty-free under DEEC Scheme and instead of utilizing the said goods in the manufacture of resultant export products disposed of the said duty-free imported goods in the market without fulfilling the export obligation in terms of the condition of Advance Licences. On the basis of such information, the office premises of M/s. Sandip Exports Limited at 220, A.J.C. Bose Road, Calcutta was searched on 7.11.2003 and some documents were seized.

4. Voluntary statement of Sri Sandip Agarwal was recorded under Section 108 of the Customs Act on 7.11.2003, wherein he stated that he was one of three Directors and he used to look after the business of the company. They used to take help of the job-workers for manufacturing the export product although there was no such permission given in the Advance Licences. It was stated that in respect of the imports through Chennai Port, instruction was given to M/s. Sinu Kargo Ways to deliver the imported goods to job-workers in Proddatur namely M/s. Mohan Silk Fabrics, M/s. Balaji Handlooms and M/s. Maruti Silk Fabrics. Teh imported materials were not sent to the manufacturing unit as mentioned in the Advance Licences, but those were directly sent to the job workers of Proddatur who used to send the export product to the Calcutta office of M/s. Sandip Exports Limited. It was further stated that imported goods were sent to the job-workers at Bhagalpur through transporters namely M/s. Bhagalpur Transport, M/s. Maa Kali Transport and M/s. Prime Transport and goods were sent to Proddatur through M/s. Patel Transport.

5. To verify the genuineness of the statement of the detenu an enquiry was conducted by the Directorate of Revenue Intelligence, Patna in the office of M/s. Sandip Exports Limited at 23, M.N. Das Road, Bhagalpur and the statement of the owner of the house was recorded, which revealed that M/s. Sandip Exports Limited took one room on rental basis in the month of May, 1999 and vacated

the same in July, 2000 and no person ever stayed in the tenanted room permanently nor any article was kept in the said room. It was further revealed from the statement of the owner of the house that the said room was used as a transit office of one person named Dilip Kundu, Manager of M/s. Sandip Exports Limited. Dilip Kundu used to collect woven fabrics from the local weavers and after dying the same used to send it to his Kolkata office.

6. Statement of Dilip Kundu was recorded under Section 108 of the Customs Act 11.11.2003. He also provided a list of job-workers, namely Lakhan Ram, Bahrain raw silk, Z.R. Fashion Worldall of Bhagalpur and Balaji Silk Fabrics, Mohan Silk Fabrics and Maruti Silk Fabrics at Proddatur, Andhra Pradesh. Enquiry was conducted in respect of the job workers at Bhagalpur and their statements were also recorded under Section 108 of the Custom Act. They stated that they were not engaged by M/s. Sandip Exports Limited as their job workers. All of them stated they sold silk and cotton fabrics to M/s. Sandip Exports Limited, but they did not receive any raw material from the said company.

7. Similarly enquiry was conducted in respect of other three job-workers of Proddatur namely M/s. Mohan Silk Fabrics, M/s. Balaji Handlooms and M/s. Maruti Silk Fabrics and it was revealed that M/s. Mohan Silk Fabrics had supplied 13,000 metres of Indian Dupion silk fabrics to M/s. Sandip Exports limited, Kolkata during the period August, 2003 to November, 2003. Statement of Mr. T. Mohan, proprietor of M/s. Mohan Silk Fabrics was recorded and he stated that he had not received any raw material from M/s. Sandip Exports limited and goods supplied were manufactured through local weavers after purchasing raw materials from local market. Similarly the properietor of M/s. Balaji Fabrics made a statement that he sold nine consignments of silk fabrics to M/s. Sandip Exports Limited and the said goods were manufactured out of raw materials purchased by them from different places. The Managing Partner of M/s. Maruti Silk Fabrics was examined and he stated that he had received three consignments of Mulbury raw silk yarn from M/s. Sandip Exports Limited for job work in the year 2002 and after converting the said yarn into fabric, they sent back the article to Kolkata. They had also sold silk fabrics to M/s. Sandip Exports Limited. They had not received any raw material from M/s. Sandip Exports Limited in the year 2003-04.

8. In the statement of Shri Sandip Agarwal, which was recorded on 7.11.03, he disclosed the names of transporters through whom goods were sent to different job-workers of Bhagalpur. Amongst the three transport agencies only one transport agency stated that during the last 3/4 years only on 4 or 5 occasions their company had transported goods of M/s. Sandip Exports Limited from Kolkata to Bhagalpur. They further doisclosed that the goods sent through their transport were mainly packing materials like gunny bags, cloth etc. and they had never transported full truck load of goods of M/s. Sandip Exports Limited. Enquiry was also made to other two transport agencies who also stated that they had never transported any goods of M/s. Sandip Exports Limited. Enquries were also made in respect of M/s. Patel Transport Services and M/s. Patel Goods Carriers. On enquiry, it was revealed that both the said transport agencies transported goods imported by M/s. Sandip Exports Limited, but such goods were transported to Bangalore and Varanasi. None of the aforesaid transport companies ever carried any goods of M/s. Sandip Exports Limited from Kolkata to Bhagalpur.

9. Enquiry conducted by the Directorate of Revenue Intelligence (D.R.I) revealed that the goods imported by M/s. Sandip Exports Limited under the two Advance Licences were not at all utilized in the manufacture of the resultant export products in clear contravention of the Customs Act and of the conditions of licence.

10. Mr. Banerjee, learned Counsel appearing on behalf of the petitioner submitted that investigation was conduicted by the officers of the D.R.I. in a perfunctory manner. Denying all the allegations, it was submitted by Mr. Banerjee that the places, particulars of which were given by the detenu, were properly verified.

11. Mr. Banerjee, learned Counsel attacked the order of detention by rasing the following points:

1. Withholding of relevant materials by the sponsoring authority and not placed before the detaining authority.

2. Consideration of non-existent materials by the detaining authority.

3. Supply of illegible documents, which were relied upon by the detaining authority.

4. Inordinate delay between the date of registration of the case and the date of the detention order.

5. No material to show that there was possibility for the detenu to indulge in smuggling activities in future.

6. Consideration of irrelevant materials by the detaining authority.

7. Failure to supply English translated documents of Hindi within the stautory period of 5 days in violation of the provision of Article 22(5) of the Constitution of India.

8. The order of detention was passed on the basis of a solitary incident.

9. There was a long and inordinate delay in considering the representation made by the detenu to the Central Government.

10. There was no element of smuggling justifying the order of detention.

12. It is submitted by Mr. Banerjee that the sponsoring authority is bound to place all the revelant documents before the detaining authority and if any relevant document is withheld, the same would vitiate the order of dentention. Mr. Banerjee relies upon the judgements of the Hon'ble Apex Court Ahmed Nasar v. State of Tamil Nadu; V.C. Mohan v. Union of India; Ayya alias Ayub v. State of U.P. and 2005 (4) Crimes 282 K.S. Nagamuthu v. State of Tamil Nadu. We have carefully gone through the said judgements. The ratio of all the aforesaid judgements is that an order of detention vitiates if any relevant document is not placed before the detaining authority. This is a settled principle of law

laid down by the Hon'ble Supreme Court in number of judgements.

13. It is submitted by Mr. Banerjee, learned Advocate of the petitioner that the detenu had submitted a letter dated 19.03.2001 informing the JDGFT, Kolkata that since the Resultant Export Products covered under the unorganized sector, the company was authorized to get the same manufactured/processed/finished by various job-workers as the said facility is given in paragraph 7.17 of Chapter 7 of the Duty Exemption Scheme. Accordingly, it was prayed that the declaration given in the application for grant of Annual Advance Licence dated 17.03.2001 be treated as cancelled and the declaration given in the said letter dated 19.03.2001 be treated as valid. Mr. Banerjee submits that such an important document was not placed before the detaining authority. It is further pointed out by Mr. Banerjee that the order dated 15/20.04.04 passed by the Zonal JDGFT, by which the EXIM benefits to the detenu's company were suspended, was not placed before the detaining authority for its consideration. Documents relating to the search of the detenu's business premises by the officer of the SIB, Kolkata on 15.03.2002 was also not placed before the detaining authority. The goods imported by the detenu in terms of the First Advance Licence had been withheld. The names of the job-workers were clearly mentioned in a letter dated 29.04.2002, but the said letter was not placed before the detaining authority. It is the contention of Mr. Banerjee that the sponsoring authority, which had access to all the aforesaid documents, was duty-bound to place those documents before the detaining authority and withholding of such documents vitiates the order of dentention.

14. Mr. Kapoor, learned Counsel appearing for the Union of India submits that it is not at all necessary for the sponsoring authority to place all the documents before the detaining authority and only relevant documents are to be placed before the detaining authority. It is submitted by Mr. Kapoor that in the present case, enquiry started by the Directorate of Revenue Intelligence on 07.11.2003 and such enquiry by the DRI was independent of the enquiry conducted by the Special Investigation Branch (SIB) of Customs and also wider in scope. The investigation by the DRI, which started on and from 07.11.2003, when the detenu was first examined by the officers of the DRI, clearly revealed that the goods imported under the two Annual Advance Licences were not at all utilized in the manufacture of Resultant Export Products in contravention of the Customs Act and the EXIM Policy. The letter dated 19.03.2001 as referred to above was not at all an important document to arrive at a subjective satisfaction of the detaining authority. We have gone through the documents which are alleged to have been withheld by the sponsoring authority and not placed before the detaining authority. Even assuming that the above documents were not placed before the detaining authority, we fail to understand how the same could have influenced the subjective satisfaction of the detaining authority in favour of the detenu. As we have already said, the detenu in his statement dated 07.11.2003 supplied the particulars of the job-workers, transporters through whom the imported materials were supplied to the job-workers, but on verification those were not found to be correct. A detailed enquiry was made by the officers of the DRI on the basis of the statements made by the detenu. Job-workers were contacted, transport companies were also contacted, but it was found that the statement given by the detenu was not correct. Accordingly, we are of the view that the documents, which are alleged to have been withheld, were not at all relevant documents and the sponsoring authority committed no wrong in not placing those documents before the detaining authority.

15. As regards the second point, it is submitted by Mr. Banerjee, learned Counsel that at the time of passing the order of detention the detaining authority took into consideration non-existent materials which indicates that there was a total non-application of mind on the part of the detaining authority. It is submitted by Mr. Banerjee that the detaining authority proceeded on the basis that imports were made by M/s. Sandip Exports Limited and M/s. Scandia Investments Pvt. Limited. But there is no material to show that M/s. Scandia Investments Pvt. Limited had ever imported any material. As no import was made by M/s. Scandia Investments Pvt. Limited, the conclusion arrived at by the detaining authority on the basis of such non-existent material suffers from serious illegality. It is also pointed out by Mr. Banerjee that the detaining authority came to a conclusion that detenu had not submitted any reply to the show-cause notices. But such conclusion was not correct at all as a reply to the show-cause notice dated 29.05.2004 was submitted by the learned Advocate of the detenu on 13.07.2004. It is submitted by Mr. Banerjee, learned Advocate of the petitioner that the detaining authority had taken into consideration nonexistent materials in passing the order of detention and as such the said order bespeaks of non-application of mind by the detaining authority. Mr. Banerjee, in support of his contention relies upon a judgment of Bombay High Court reported in 1983 Cr. LJ 33 Mukesh Sunderlal Shah v. State of Maharashtra. From a reading of the said judgement, it appears that in the said case in the grounds of detention, a reference was made to the statement of a person who was the main person involved in the racket. But such statement in fact was not recorded. In such circumstances, it was held that the detention order was illegal as there was a total non-application of mind by the detaining authority. In our view, the said judgment is not at all applicable in the present case, where facts and circumstances are totally different.

16. Next judgment relied upon by Mr. Banerjee is reported in 1992 (1) Crimes 332 Sakina Abbasbhai Vasi v. Union of India. From a reading of the said judgement, it appeals that the petitioner was detained with a view to preventing him from abetting smuggling activities. It was stated in order of detention that though departmental proceeding and Court proceeding were initiated against the detenu, the detaining authority was satisfied that it was necessary to detain him under the Act. But, the records revealed that neither the Court proceeding nor any adjudication proceeding were initiated when the detention order was passed. The Division Bench of Bombay High Court held that the order of detention was based on totally non-existent facts and was liable to be set aside. In another judgment of Delhi High Court 1989 Cr. LJ 539 Ashoke Kumar v. Union of India, it was held that by seizure of passport from the detenu, he was sufficiently restrained from going abroad and indulging in smuggling activities. So there was no necessity for passing the order of detention and on this score alone, the order of detention was set aside. In the case of Ayub v. S.N. Sinha, , the order of detention was set aside as the same suffered from non-application of mind. It was stated in the grounds of detention that the detenu was a habitual offender and a dangerous person. Although three cases were registered against him, he was acquitted of the charge in two cases and the only case pending against him was lacking in supporting evidence. It was held that the appellant was not a habitual offender and hence not a dangerous person. As it was a total non-application of mind on the part of the detaining authority the order of detention was set aside.

17. Mr. Kapoor, learned Counsel appearing on behalf of the Union of India submits that it is nowhere stated in the grounds of detention that M/s. Scandia Investments Pvt. Limited had ever

imported any raw material. Mr. Kapoor further submits that the interim reply to the show-cause notice was not a reply at all. The detaining authority simply stated about the likelihood of prosecution that may be launched. It is nowhere stated that the prosecution has been launched. It is submitted by Mr. Kapoor that the judgements referred to above are not at all applicable in facts and circumstances of the present case.

18. We have gone through the judgements referred to above, which in our considered view, do not have any manner of application in the present case. Alleged non-existent materials referred to by the learned Advocate of the petitioner are not materials taken into consideration by the detaining authority while passing the order of detention. On the contrary, we find that the order of detention was passed on the basis of the materials which were very much existent. We are not at all impressed by the argument advanced by the learned Advocate of the petitioner of this point.

19. As regards the third point, it is submitted by Mr. Banerjee, learned Counsel of the petitioner that a good number of relied upon documents served on the detenu are illegible and unreadable. Because of such supply of illegible documents, the detenu was deprived of his right to make an effective representation. The procedural safeguards provided in Article 22(5) of the Constitution of India having not been complied with, the order of detention is vitiated and the same is liable to be quashed. Mr. Banerjee referred to Paragraph 12 of the writ petition where particulars of illegible relied upon documents have been mentioned. According to Mr. Banerjee, the following pages of the relied upon documents are totally illegible:

> Page Nos. 124-128, 160-178, 186, 254, 255, 257, 350-352, 357, 358, 360, 362, 368-371, 371A, 371B, 493, 497, 500, 508, 510, 515, 516, 523, 534, 538, 543, 550, 551, 608, 611, 616-21, 632-37, 682-701, 745, 750, 755, 760, 765, 769-70, 777, 780, 821, 841-43, 857-65, 872, 874, 882, 884, 887 and the last page are wholly illegible and unreadable.

20. From the paper-book containing the xerox copies of relied-upon documents, it appeared to us that the pages referred to above were illegible. We requested Mr. Banerjee to produce the originals of the said documents, which were supplied to the detenu. The same were produced before us. We found that the documents starting from page 124 to 371B are very much legible and readable and there cannot be any grievance regarding legibility of those documents. Mr. Kapoor pointed out before us that the documents, starting from the page No. 493 to 887 and last page, were the documents, which were supplied by the detenu himself. Although we found that some portions of those documents were partly illegible, the relevant portions of the said documents were quite legible. Mr. Kapoor also produced the originals of the documents which were supplied by the detenu himself and xerox copies of which were supplied to the detenu by the concerned authority and we find that there cannot be any better xerox copies of those documents. Since such copies were supplied by the detenu himself, Department cannot be held responsible for any kind of illegibility. We are unable to accept the contention of Mr. Banerjee that because of supply of illegible copies, the detenu was deprived of making any effective representation.

21. In support of his contention, Mr. Banerjee relies upon the following judgements:

1989 Supp (2) SCC 155 Dharmishta Bhagat v. State of Karnataka and Ors.

1990 Supp SCC 59 Manjit Singh Garewal @ Gogi v. Union of India and Ors.

1996 Cr. LJ 597 Tapas Chaudhary v. Union of India and Ors.

1998 C Cr. LR (Cal) 456 Kamala Devi Kedia v. Union of India and Ors.

22. We have gone through the said judgements referred to above. The ratio of all those judgements is that the detaining authority has to supply the legible copies of documents along with the grounds of detention, which had been considered in forming the subjective satisfaction. Refusal on the part of the detaining authority to supply the legible copies of documents for making an effective representation affects the Constitutional right of the detenu under Article 22(5) of the Constitution of India. Supply of illegible copies virtually amounts to non-supply of relevant documents, which vitiates the order of detention.

23. The above principle of law, laid down by the Hon'ble Apex Court in number of judgements, is settled principle of law. But we do not feel it necessary to deal with all the judgements referred to above as we have already held that the documents supplied to the detenu are quite legible and the detenu cannot be said to have been deprived of making an effective representation on the basis of such documents.

24. The fourth point argued by Mr. Banerjee is that is a long and inordinate delay between the date of registration of the case and the date of detention order. It is submitted by Mr. Banerjee that the registration of the case by the officers of the DRI was 07.11.2003, but the impugned order of detention was passed on 19.08.2004 i.e. after a lapse of about 10 months. Thus, there was a long and inordinate delay between the date of registration of the case involving the offending acts and the date of detention order. Mr. Banerjee submits that unless such a long delay is satisfactorily explained, it would throw considerable doubt on the genuineness of the subjective satisfaction arrived at by the detaining authority. In support of his contention, Mr. Banerjee, learned Counsel relies upon the following judgements of the Hon'ble Apex Court as also of other High Courts:

S.K. Serajul v. State of West Bengal 1993 Supp (2) SCC 61 Pradip Nilkanth Paturkar v. S. Ramamurthy and Ors.

Anand Prakash v. State of Uttar Pradesh T.A Abdul Rahman v. State of Kerala 1995 C Cr.L.R. (Cal) 80 Manju Jalan v. Union of India and Ors.

Ahmed Mohaiuddin Jabbar v. State of Tamil Nadu 1999 (II) CHN 329 Mohd. Jamil v. Union of India and Ors.

1994 (I) CHN 81 N.K. Bapna v. Union of India and Ors.

25. We have gone through the judgements referred to above. In our view, it is not at all necessary to deal with all the said judgements separately. The ratio of all those judgements is that unexplained delay in passing the order of detention vitiates the order detention. But there is no hard and fast rule that merely because there is a long gap between the offending act and the date of the order of detention, the casual link must be taken to be broken and the satisfaction arrived at by the detaining authority must be regarded as in-genuine. It is ultimately the question of satisfaction of the Court to ascertain as to whether the detaining authority has explained the delay satisfactorily.

26. Mr. Kapoor, learned Counsel of the respondents submits that the complicity of Sandip Agarwal could be ascertained only through a series of lengthy investigation process. Officers of DRI had to contact number of persons of various professions like Customs House Agents, Transporters, Job-workers, Manufacturers etc. Their statements were recorded on different dates. Such investigation had to be conducted by various agencies like DRI, Customs, DGFT, Special Economic Zone from various locations at Kolkata, Patna, Bhagalpur, Bangalore, Chennai, Varanasi, Hyderabad, Proddatur etc. Enquiry reports from different agencies were received even as late as the third week of July, 2004. Finally, it is submitted by Mr. Kapoor that such delay was mainly caused because of the non-cooperation of the detenu himself, who absconded since 07.11.2003, when his statement was recorded first and thereafter did not appear before the concerned authority in spite of repeated summons. In support of his contention, Mr. Kapoor refers to a chronological list of events, which is annexed to affidavit-in-opposition as Annexure R-1.

27. We have gone through the chronological list. We find sufficient merit in the submission of Mr. Kapoor. Although there appears to be delay of about nine and half months between the offending act and/or the registration of the case and date of passing order of detention, we find that such delay has been sufficiently explained. Volume of records also indicates that investigation of a case of this nature, when there was a total non-cooperation*by the detenu himself, cannot be completed within a short period. The question of delay and the consequence thereof on the detention order are matter of facts, which have to be judged in the facts and circumstances of each case and there cannot be any hard and fast rule in that regard.

28. As regards the delay in passing the order of detention, we do not consider such delay to be unreasonable or gross so as to invalidate the order of detention.

29. The next point argued by the learned Counsel of the petitioner is that the order of detention was passed against the detenu to prevent him from indulging in prejudicial activities in future, but in fact there was no scope for detenu to indulge in such activities in future as the DGFT authorities had suspended all exim benefits to the detenu's company thereby preventing him from making import in future. This shows a total non-application of mind by the detaining authority in arriving at a subjective satisfaction before passing the order of detention. Mr. Banerjee relies upon a judgment of the Hon'ble Supreme Court reported in 2002 (7) SCC 129. From a reading of the said the judgement, it appears that satisfaction of the detaining authority consisted of two partsfirstly, the appellant was likely to be released on bail and secondly after being released he would indulge in smuggling activities. The detenu was in custody when order of detention was passed. But detaining authority said that "normally bail is granted in such cases" although prayer for bail was rejected by the Court

on five occasions observing that this was not a "normal case. So there was no material before the detaining authority to come to a conclusion that there was "imminent possibility" that the appellant would come out on bail. Furthermore, according to the detaining authority the prime mover for the smuggling activities was the proprietor of a firm and the appellant was nothing but a pawn in the hands of another. The passport of the detenu was with the customs authority, but even then it was stated by the detaining authority that detenu was likely to travel clandestinely for the purpose of smuggling. In such circumstances, the Hon'ble Apex Court was of the view that this was a case of total non-application of mind and the order of detention was set aside on that score alone.

30. Mr. Kapoor, learned Counsel of the respondents submits that the detaining authority after through the records placed before it came to the conclusion that there was every likelihood that the detenu would indulge in prejudicial activities if he was not detained under preventive detention. It is further submitted that the power of preventive detention is different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. This is a case in which goods were imported duty-free, but the resultant products were not exported and the duty-free imported goods were sold out in the market. In a case of this nature, the detaining authority rightly came to a conclusion that unless the detenu was detained under preventive detention, there was every possibility of his indulging in smuggling activities in future.

31. We have gone through the judgment referred to above. The facts and circumstances, in which the said judgment was delivered by the Hon'ble Apex Court, is quite different from the present case. This is not a case of ordinary smuggling by going abroad with help of passport. The detenu continued his smuggling activities by remaining inside the country. A good number of consignments were imported duty-free, but the resultant finished products were not exported. The detenu failed to fulfil his export obligation and sold out the duty-free imported raw materials in violation of conditions of Advance Licences. We have taken into consideration the allegations made in the grounds of detention and in the affidavit-in-opposition. The offending act comes under the definition of "Smuggling". Section 2(39) of the Customs Act defines smuggling in relation two any goods as meaning any act or omission, which will render such goods liable for confiscation under Section 111 of the Customs Act. In view of Clause (o) of Section 111, if any goods exempted from payment of duty is imported without observing the condition, subject to which the exemption has been granted, it will be a case of "Smuggling" within the meaning of Section 2(e) of the COFEPOSA Act. Considering the nature of the offending act, the manner in which such act was continued fort a considerable period, and the conduct of the accused who after his first appearance absconded for a long period, we are of the view that the detaining authority was justified in coming to the conclusion that it was necessary to detain him with a view to preventing him from indulging in any smuggling activity in future. We do not find any merit in the submission made by Mr. Banerjee so far as this point is concerned. The potentialities of the detenu as gathered from his act of smuggling from the basis of detention. It is difficult to comprehend the manner in which such a detenu is likely to continue his act of smuggling in future. It is for the detaining authority to derive the necessary satisfaction on the basis of the materials placed before it.

32. Sixth point argued by the learned Counsel of the petitioner is that the detaining authority while passing the order of detention has taken into consideration certain irrelevant materials which do not

have any connection with the order of detention. The said documents are at pages 221 to 227 of the paper book. The relevance of such documents has not been brought out in the grounds of detention.

33. Mr. Kapoor, learned Counsel of the respondents submits with reference to those documents that those are not documents on which the order of detention was passed. It is submitted by Mr. Kapoor that there is no vagueness in the grounds of detention. Copies of all the documents, relying on which the order of detention was passed, were supplied to the detenu.

34. Mr. Banerjee relies upon following judgements in support of his contention:

Shalini Soni v. Union of India and Ors.

Vashisht Narain Karwaria v. State of U.P. and Ors.

1995 C Cr. LR (Cal) 144 Neelam Devi Karel v. Union of India and Ors.

1993 (1) CRIMES 223 Viswanath alias Pappu v. Union of India and Ors.

1995 Cr. LJ 2870 Munna Lal Khandelwal v. Union of India and Ors.

1990 Cr. LJ 269 Jagdish Mitra v. Union of India and Ors.

35. We have gone through the said judgements. Law is very much settled on this point that the detaining authority must apply its mind to only pertinent and proximate matters leaving aside the irrelevant and remote. But we find that the facts and circumstances of those cases referred to above were quite different from the present case. The documents at pages 221-227 are not the documents on which the order of detention was passed. We find that the main documents on which the order of detention was passed were supplied to the detenu. In our considered view, simply because few supporting or additional documents were supplied to the detenu that cannot be made a ground for quashing the order of detention.

36. As regards the seventh point raised by Mr. Banerjee, learned Counsel of the petitioner it is submitted that the order of detention dated 19.08.2004 was served upon the detenu on 11.11.2005 and the grounds of detention and relied upon documents were supplied to the detenu on 14.11.2005. The English translations of the statements in Hindi were supplied to the detenu on 16.11.2005, i.e. beyond the statutory period of 5 days from the date of his detention. Mr. Banerjee relies upon the following judgements on this point:

Kamala Kanahaiyalal Khushalani v. State of Maharashtra and Ors.

Ramchander A. Kamat v. Union of India and Ors.

Nafisa Khalifa Ghanem v. Union of India and Ors.

2002 Cr. LJ 1414 Kamala Sarkar v. State of Bihar and Ors.

37. Law laid down in the aforesaid judgments in settled principle of law. Article 22(5) of the Constitution of India confers a valuable right upon the detenu to get the grounds of detention as soon as practicable along with all relied-upon documents as soon as may be ordinarily not later than 5 days and in exceptional circumstances not later that fifteen days from the date of detention. But the argument advanced by Mr. Banerjee on this point does not impress us at all. From paragraph 15 of the affidavit-in-opposition, it appears that the detention order and the grounds of detention were supplied to the detenu on 11.11.2005. The relied-upon documents were supplied to the detenu on 14.11.2005, i.e. within the time-frame laid down in Section 3(3) of the COFEPOSA Act. Relied-upon documents were supplied on the 4th day after the date of detention which was within the stipulated period. After receiving such documents, the detenu complained that as he was not conversant with Hindi language, translated copies of those documents may be supplied to him, English translated documents were supplied to the detenu 2 days thereafter, i.e. on the 6th day after his detention. We have given our anxious consideration on this point and in our consideration, there was no delay in supplying the copies of documents. All the documents were supplied to the detenu on the 4th day after1 this order of detention i.e. within the statutory period. English translated documents were supplied only after it was brought to the notice of the concerned authority that the detenu was not conversant with the Hindi language within two days thereafter. In our view, there was no delay in supplying the copies of documents as initially those documents were supplied within the statutory period.

38. Eighth point argued by the learned Advocate of the petitioner is that the order of detention was passed on the basis of a solitary incident of non-fulfilment of Export obligations under Advance Licences. The offence was not of such a magnitude that the detenu could not have been dealt with the ordinary law of the land. Mr. Banerjee relies upon a judgment of the Apex Court reported in (2002) SCC-752, wherein it was held that in appropriate cast an inference can legitimately be drawn even from a single incident of smuggling that the person may indulge in smuggling activity, but for that purpose antecedents and nature of activities carried out are required to be taken into consideration for reaching a justifiable satisfaction that the person was engaged in smuggling and that with a view to preventing him it was necessary to detain him. In another judgment Debu Mahato v. State of W.B. it was held that the nature of the act and the attending circumstances may in a given case be such as to reasonably justify an inference that the person concerned, if not detained, would be likely to indulge in commission of such acts in future. The order of detention is a precautionary measure and it is based on his conduct judged in the light of the surrounding circumstances.

39. We have gone through the judgements referred to above. In none of the judgements, it was held that an order of detention cannot be passed on the basis of a solitary incident. It depends upon the facts and circumstances of each individual case. We do not find any merit in the submission of Mr. Banerjee on this point. In (1992) 1 SCC it was held that even a solitary incident speak of volumes about the potentialities of the detenu and merely on the ground that there was no antecedent that the detention order cannot be quashed. The gravity and nature of the act is relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in

similar prejudicial activity. Apart from this, the offending acts cannot be considered to be a solitary incident. Number of consignments were imported under Advance Licences duty-free, but the resultant products were not exported in contravention of the Customs Act and the Exim Policy. The detenu continued importing goods duty-free and disposed of the goods in different places. The offending act is preceded by a good amount of planning and organization. It is not at all necessary that there should be multiplicity of grounds for making or sustaining an order of detention.

40. As regards the ninth point, it is submitted by Mr. Banerjee, learned Counsel for the petitioner that there is a long and inordinate delay in considering the representation made by the detenu to the Central Government. This long delay is violative of the rights guaranteed under Article 22(5) of the Constitution of India. The detenu made a representation to the Central Government under Section 11 of COFEPOSA Act and since there is a long and inordinate delay in considering such representation in violation of Article 22(5) of the Constitution of India, the order of detention is liable to be set aside. In support of his contention, Mr. Banerjee relies upon a judgment of the Hon'ble Supreme Court reported in 2000 (9) SCC 561 Solomon Castro v. State of Kerala. In the said judgement, it was held by the Hon'ble Apex Court that if there is any delay in considering the representation, the Court can consider whether such delay was occasioned due to permissible reasons or unavoidable causes. Since delay was not sufficiently explained in the said case, the order of detention was quashed. In another judgment Rajmmal v. State of T.N., it was held that the real test in not the duration or range of delay, but how it is explained by the concerned authority. In the said case explanation given by the authority was absence of Minister at the Headquarters. It was held by the Hon'ble Court that such explanation was not sufficient to justify the delay and the order of detention was accordingly set aside. Next judgment relied upon by Mr. Banerjee is S.M. Jahubar Sathik v. State of Tamil Nadu. It appears that in the said case there was a delay of about 50 days in consideration of representation. The authority sought for clarification thrice in the usual "bureaucratic style" although there was no need for it. In such circumstances, the Hon'ble Court was of the view that the representation was not considered with promptitude. The order of detention was accordingly set aside. Mr. Banerjee, learned Counsel also upon a judgment B. Alamelu v. State of Tamil Nadu. From a reading of the said judgement, it appears that there was no delay on the part of the Central Government in disposing of the representation of the detenu, but there was a delay of about 84 days on the part of the jail authority in sending the representation to the appropriate authority of the Central Government. Since such delay could not be explained, the Hon'ble Supreme Court was of the view that the Constitutional right of the detenu under Article 22(5) was violated and the order of detention was set aside.

41. Same principle was laid down the Hon'ble Supreme Court in the other two judgements relied upon by Mr. Banerjee Tara Chand v. State of Rajasthan and Pabitra N. Rana v. Union of India. In both the cases, it was held that inordinate delay in considering the representation by the Central Government would amount to violation of Article 22(5) of the Constitution of India.

42. Mr. Kapoor learned Counsel appearing on behalf of the respondents submits that there was no laches or negligence on the part of the detaining authority or the other authorities in dealing with the representation of the detenu. There is no hard and fast rule that a representation is to be considered within a specific period. Mr. Kapoor relies upon a judgment of this Court reported in

1996 Cr. LJ 579 Tapas Chowdhury v. Union of India and Ors. It was held in the said judgment that if there is any undue or unexplained delay in considering a representation of the detenu the detention becomes illegal. But the question whether there was any unexplained delay is a question, which depends upon the facts and circumstances of each case. Mr. Kapoor submits that there are three representation filed by the detenu. Representation dated 16.01.2006 was considered and disposed of by the detaining authority on 10.02.2006 and by the Special Secretary and Director General, Central Economic Intelligence Bureau, New Delhi on 13.02.2006. Again a representation was made before the same authority i.e. S.S. & D.G., Central Economic Intelligence Bureau on 07.02.2006, which was verbatim the same as that of 16.01.2006. Mr. Kapoor refers to paragraph 9 of the supplementary affidavit to the affidavit -in-opposition which runs as follows:

> With further reference of paragraph 6 to the supplementary affidavit I say that the 3rd representation dated 7th February, 2006 was made by the detenu whilst in jail custody. On the following day, that is on 8th February, 2006 the jail authorities attested the signature of the detenu, and the same forwarded to the detaining authority by the jail authorities on 10th February, 2006. It is to be noted that 11th February, 2006 and 12th February, 2006 were Saturday and Sunday respectively, and in actual point of fact 9th February, 2006 was also a holiday on account of the Muharram festival. On 13th February, 2006 (that is to say on Monday following) the detaining authority forwarded the representation to the sponsoring authority that is, the D.R.I., Kolkata from Delhi for its comments. This representation was received at the office of the sponsoring authority on 15th February, 2006. On 17th February, 2006 the comments on the representation were forwarded to the detaining authority by the sponsoring authority. 18th February, and 19th February, 2006 was the weekend following, that is, Saturday and Sunday. On the basis of the aforesaid records on 22nd February, 2006 the representation was considered separately by the detaining authority and the Special Secretary and Director General, CEIB, New Delhi and both of them separately rejected the same. By two separate memorandum both dated 22nd February, 2006 issued on behalf of the detaining authority and the Special Secretary addressed to the detenu, the information was forwarded to the jail authorities and 24th February, 2006 for onward communication to the detenu, that the representation made on 7th February, 2006 have been considered and rejected.

43. It is submitted by Mr. Kapoor that considering the nature of the case and the volume of records it cannot be said that there was any delay in considering the representation dated 7th February, 2006. On the contrary, it can be said that such representation was considered by the appropriate authority with promptitude. All the representations were considered and disposed of by the separate authorities independently on proper application of mind and with promptitude. The explanation given by the respondent authority is quite satisfactory and convincing and we find that the delay has been sufficiently explained.

44. After perusing the judgements referred to by both the parties and considering the submission of the respective parties, we find sufficient merit in the submission made by Mr. Kapoor. Considering the facts and circumstances of the present case including the volume of records it cannot be said

that there was any undue delay in dealing with the representation. We do not find any merit in the argument advanced on behalf of the petitioner that there was delay in considering the representation of the detenu. The ground of undue delay in considering representation dated 7th February, 2006 thus fails.

45. Last point argued by the learned Counsel of the petitioner is that there is no element of smuggling in the present case. There was no material before the detaining authority on the basis of which it could come to the conclusion that the detenu was engaged in smuggling of goods by way of diverting the duty-free imported goods in the local market instead of exporting the resultant products. Furthermore, the detenu had executed a letter of undertaking and he undertook to pay the customs duty in case of failure to comply with the export obligation. But we do not find any merit in such submission, because there is nothing on record to show that such undertaking was ever accepted by the licensing authority. Section 2(39) of the Customs Act defines "smuggling" in relation to any goods meaning thereby an act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act. Relevant provision of Clause (o) of Section 111 provides that if any goods exempted from payment of duty is imported without observing the condition subject to which the exemption has been made, it will be a case of smuggling within the meaning of Section 2(e) of the COFEPOSA Act. So there cannot be any doubt that the offending act committed by the detenu comes within the meaning of "smuggling". So far as this last point is concerned, we are not impressed by the argument advanced by the learned Counsel of the petitioner.

46. It is evident from records that duty-free goods were imported under Annual Advance Licences and those were diverted to different places without utilizing the same in the manufacture of resultant export products in contravention of the Exim Policy and the Customs Act. With reference to the affidavit-in-opposition, it is pointed out by Mr. Kapoor that in spite of repeated summons the detenu never appeared before the authority except on one occasion i.e. on 07.11.2003, when his office was searched. In course of investigation, the residence of the detenu was visited by the officers of the DRI, but he was never available at his residence. Detention order was forwarded to the police authority being the executing authority as the detenu was concealing himself. The order under Section 7(1)(b) of the COFEPOSA Act was issued on 23.09.2004, but he did not comply with the said order. In such a situation a report under Section 7(1)(a) of the COFEPOSA Act was filed on 26.10.2004 before the learned C.M.M.,. Calcutta. Learned C.M.M., Calcutta passed an order on 18.11.2004 for proceeding under Section 82 of the Code of Criminal Procedure for proclamation. In the said proceeding a report was submitted by the police authority stating that detenu Sandip Agarwal could not be traced out. It is also pointed out by Mr. Kapoor that a case was also pending before the Court of the learned Metropolitan Magistrate, 13"1 Court, Calcutta, where a petition was filed by DRI, Kolkata under Sections 174 and 175 of the Indian Penal Code for non-appearance of detenu Sandip Agarwal in spite of several summons. The learned Magistrate by his order dated 21.09.2004 fixed 24.11.2004 for service return of summons. But without giving prior notice to the DRI, Kolkata Sandip Agarwal surrendered before the said Court and was released on bail. Next date was fixed on 13.01.2005, but Sandip Agarwal thereafter absconded and did not appear before the said Court, for which warrant of arrest was issued against him. The detenu moved a writ application before this Court at the pre-execution stage challenging the order of detention. Such writ application

was also dismissed by this Court by judgment and order dated 10.06.2005. Referring to aforesaid events, it is submitted by Mr. Kapoor that the conduct of the accused was not at all satisfactory from the very beginning and it was only for the non-cooperation of the detenu that the officers of DRI had to run from one corner to another of the country. Delay in investigation, if any caused, was only for the non-cooperation of the detenu.

47. We have heard the learned Advocates of the respective parties. We have also perused the judgements relied upon by the learned Advocates of the respective parties. In view of the discussion made above, we find sufficient merit in the submission made by Mr. Kapoor, learned Counsel appearing for the respondents. Since all the points argued by the learned Counsel of the petitioner have been rejected by us, this writ petition has to fail.

48. The writ petition is accordingly dismissed.

49. Criminal section is directed to supply the urgent xerox certified coy of this judgment to the learned Advocates, of the respective parties at an early date, if applied for.

Sadhan Kumar Gupta, J.

I agree.