VINOD K. CHAWLA

v.

U.O.I. AND ORS.

AUGUST 18, 2006

[K.G. BALAKRISHNAN AND G.P. MATHUR, JJ.]

Conservation and Foreign Exchange and Prevention of Smuggling Activities Act, 1974—Section 3(1)—Detention order passed against detenu for large scale evasion of customs duty by importing consumer electronic goods at grossly under-inoviced prices and circumventing Import and Expert Policy—Detention order was served on the detenue after more than a year soon after his arrest—Detenu filed Writ Petition before High Court challenging the detention order on the ground that a vital document was not placed before the detaining authority which could affect the opinion; that there was inordinate delay in disposing of his representation to the detention order; and that in view of the long period between the offending activities and the actual arrest, there is no ground for detaining the detenu—High Court dismissed the Writ Petition—Correctness of—Held, law does not require that every document or material must necessarily be placed before detaining authority for forming an opinion—On facts, non-placement of the relevant document did not affect the formation of opinion of the detaining authority—There was no inordinate delay in disposing of the representation of the detenu—Detention order cannot be rendered invalid on account of the own act of the detenu by evading arrest for a long period.

On the basis of the information that the appellant was indulging in large scale evasion of customs duty by importing consumer electronic goods at grously under-invoiced prices and circumventing Import and Export Policy and remitting payments for the same through illegal channels, the respondents conducted simultaneous searches at residential, business and factory premises of the appellant wherein many incriminating articles and documents were recovered. A detention order under section 3(1) of the Conservation and Foreign Exchange and Prevention of Smuggling Activities Act, 1974 was passed. The detention order was served on the appellant after more than a year when he was arrested as he was absconding earlier. The representation made by the appellant was rejected by the respondents. The

A appellant filed a Writ Petition challenging the detention order which was dismissed by the High Court.

In appeal to this Court, the appellant contended that a document recording the retraction statement made by the appellant's son was suppressed and not placed by sponsoring authority before the detaining authority; that B non-placement of the material document could affect the opinion of the detaining authority against him and hence the detention order passed against the appellant is illegal; that there was an inordinate unexplained delay in disposing of the representation to the detention order and hence his continued detention should be rendered illegal; and that the reasonable cause for C detaining him has snapped since there was a long time gap between his alleged activities and the serving of the detention order.

Dismissing the appeal, the Court

HELD: 1.1. The law does not require that every document or material D in possession of sponsoring authority must necessarily by placed by him before the detaining authority and in every case where any such document or material is not placed by the sponsoring authority before the detaining authority, the formation of opinion and the subjective satisfaction of the detaining authority would get vitiated. The mere fact that the sponsoring authority did not place the statement made by the son of the appellant before E the detaining authority, cannot lead to an inference that the formation of opinion and the subjective satisfaction of the detaining authority was vitiated in any manner. [661-E-F; 662-E]

Abdul Sathar Ibrahim Manik v. *Union of India and Ors.*, AIR (1991) SC 2261: [1992] 1 SCC 1; *K. Varadhraj* v. *State of T.N. and Anr.*, [2002] 6 F SCC 735; *M. Ahahmedukutty* v. *Union of India*, [1990] 2 SCC 1; *Sunila Jain* v. *Union of India*, [2006] 3 SCC 321; *Ashadevi* v. *K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat*, [1979] 1 SCC 222; *Ayya* v. *State of U.P.*, [1989] 1 SCC 374 and *Sital Ram Somani* v. *State of Rajasthan*, [1986] 2 SCC 86, referred to.

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2. The contention raised by the appellant that the detention should be rendered illegal since there was an inordinate unexplained delay in disposing of his representation to the detention order cannot be judged by any straight jacket formula divorced from before. This has to be examined with reference to the facts of each case having regard to the volume and contents of the H grounds of detention, the documents supplied along with the grounds, the

inquiry to be made by the officers of different departments, the nature of the inquiry, the time required for examining the various pleas raised, the time required in recording the comments by the authorities of the department concerned, and so on. Having regard to the facts and circumstances of the case, the entire time taken in consideration and disposal of the representation made by the appellant has been fully explained and it cannot be said by any stretch of imagination that there was only inordinate delay or unexplained delay in considering the representation made by the appellant.

[662-H; 663-A; 664-D, E]

L.M.S. Ummu Saleema **v.** *B.B. Gujaral and Anr.,* **AIR (1981) SC 1191;** *Francis Coralie Mullin* **v.** *W.C. Khambra,* **AIR (1980) SC 849;** *Madan Lal Anand* **v.** *Union of India and Ors.,* **AIR (1990) SC 176;** *Kamarunnissa* **v.** *Union of India and Anr.,* **AIR (1991) SC 1640 and** *Birendra Kumar Rai* **v.** *Union of India and Ors.,* **AIR (1993) SC 962, referred to.**

3. The fact establish that the detention order which was passed soon after the searches had been made and the statement of the appellant had been recorded could not be served in spite of every possible attempt had been made to serve him as the appellant was absconding. Where a person himself evades service of detention order, it is not open to him to contend that in view of the long period which has elapsed between the offending activities and the actual arrest and dentition, the vital link had snapped and there was no ground for actually detaining him. An otherwise valid detention order cannot be rendered invalid on account of the own act of the detenu of evading arrest and making himself scarce. [665-D-F]

CRIMINAL APPELLATE JURISDICTION : Civil Appeal No. 793 of 1999.

From the Judgment and Order dated 27.1.1999 of the High Court of Delhi at New Delhi in Criminal Writ Petition no. 517 of 1998.

Harjinder Singh, T.L.V. Iyer, Vandana Sharma and S.V. Deshpande for the Appellant.

A. Sharma, A.S.G., Binu Tamta, Anand Tiwari and P. Parmeswaran for the Respondents.

The Judgment of the Court was delivered by

G. P. MATHUR, J. 1. This appeal, by special leave, has been preferred against the judgment and order dated 27.1.1999 of High Court of Delhi by which the writ petition filed by the appellant challenging the detention order

A passed against him on 12.2.1997 under Section 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short 'COFEPOSA') by the Joint Secretary, Government of India, was dismissed.

2. Though the detention order was passed on 12.2.1997 but the same could be served upon the appellant after more than a year on 12.3.1998 when B he was taken into custody as he was absconding. The appellant filed the writ petition under Articles 226 and 227 of the Constitution soon thereafter before the Delhi High Court which was dismissed on 27.1.1999. The appellant has already undergone the entire period of detention but he is pursuing the present appeal as he is threatened with proceedings under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

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3. The grounds of detention mention that the Director of Revenue Intelligence, New Delhi (for short 'DRI') had received information that the appellant was indulging in large scale evasion of customs duty by importing consumer electronic goods at grossly under-invoiced prices and by D circumventing Import and Export Policy and remitting payments for the same through illegal channels. The goods were imported through various firms and concerns owned by the appellant. On the basis of the said information, the officers of the DRI conducted simultaneous searches on 20.12.1996 at seven residential/business/factory premises of the appellant, wherein many incriminating articles and documents were recovered. Further searches were E also made on 30th December, 1996 and some more goods of foreign origin were recovered which established evasion of excise duty. His statement was recorded on 19th and 20th December, 1996 and 30th January, 1997. On the basis of the material collected, the Joint Secretary to the Government of India passed the impugned order under Section 3(1) of COFEPOSA on 12.2.1997. F The appellant evaded service of the detention order and absconded. After great efforts had been made and proceedings had been initiated under Section 7 of COFEPOSA, the appellant was served with the copy of the detention order on 12.3.1998 when he was taken into custody. The representation made by the appellant was rejected by the detaining authority and also by the Central Government after the Advisory Board had recorded an opinion that G there was sufficient cause for his detention. The appellant challenged the detention order by filing the writ petition before the High Court of Delhi raising several pleas but the same was dismissed on 27.1.1999.

4. Learned counsel for the appellant has submitted that the grounds of detention make reference to the statement made by the appellant's son,

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Asheesh Chawla before the officers of DRI on 7.1.1997 and 8.1.1997. However, when he was produced before the ACMM, New Delhi, on 8.1.1997 he specifically retracted the statement allegedly made by him before the officers of DRI. The said statement of Asheesh Chawla made on 8.1.1997, whereby he specifically retracted from the statement made before the officers of DRI, was not placed by sponsoring authority before the detaining authority and, therefore, a vital document which could affect the opinion of the detaining authority one way or the other was suppressed and was not placed before him (detaining authority) and thus the detention order passed against the appellant is illegal. In support of this submission reliance is placed on *Ashadevi* v. *K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat,* [1979] 1 SCC 222, wherein it has been held as under :

> "If material or vital facts which would influence the mind of the detaining authority one way or the other on the question whether or not to make the detention order are not placed before or are not considered by the detaining authority, it would vitiate its subjective satisfaction rendering the detention order illegal."

Reliance is also placed on *Ayya* v. *State of U.P.,* [1989] 1 SCC 374, wherein it was held :

> "There would be vitiation of the detention on grounds of non-application of mind if a piece of evidence, which was relevant though not binding, had not been considered at all. If a piece of evidence which might reasonably have affected the decision whether or not to pass an order of detention is excluded from consideration, there would be a failure of application of mind which, in turn, vitiates the detention. The detaining authority might very well have come to the same conclusion after considering the material; but in the facts of the case the omission to consider the material assumes materiality."

Substantiating his argument learned counsel for the appellant has also relied upon *Sita Ram Somani* v. *State of Rajasthan,* [1986] 2 SCC 86, wherein it was observed that it was for the detaining authority to consider the relevant material before taking a decision whether it was necessary to detain the appellant under COFEPOSA and that having not been done, there was a clear non-application of mind by the detaining authority to relevant material.

5. In order to examine the contention raised by learned counsel for the appellant, it is necessary to refer to the detention order dated 12.2.1997 and

A the relevant part thereof which has a bearing on the controversy in dispute, is being reproduced below :

"The Directorate of revenue Intelligence, D Block, I.P. Bhawan, I.P. Estate, New Delhi received information that you i.e. named Mr. Vinod Kumar Chawla, resident of E-526, Greater Kailash-II, New Delhi were
B indulging in large scale evasion of Customs Duty by way of importing consumer electronic goods at grossly under invoiced prices and by way of circumventing Import and Export Policy and remitting payment through illegal channels through your business of computer accessories, connectors and cables. These goods are being imported
C through various firms owned by you namely i) M/s Connectronics and Cables Pvt. Ltd., New Delhi ii) M/s Life Electronics Pvt. Ltd., Noida, iii) M/s WINGS Electronics, Noida, iv) M/s MOBICON Enterprises, New Delhi.

Pursuant to the said information, the officers of the Directorate of
D Revenue Intelligence conduced simultaneous searches on 10.12.1996 at the residential/business/factory premises of the various firms owned by you as detailed below :

1. Business premises of M/s Connectronics and Cables Pvt. Ltd., G-3, Osian Buildings, 12, Nehru Place, New Delhi.

E 2. Residential premises of Mr. J.C. Malhotra, Director of M/s Connectronics and Cables Pvt. Ltd.

3. Business premises of M/s Wings Electronics and M/s Mobicon Enterprises situated at 309, Lajpat Rai Market, Delhi 6.

F 4. Your residential premises situated at K-526, Greater Kailash-II, New Delhi.

5. Factory premises of M/s Wings Electronics situated at A-62, Sector 16, NOIDA, Distt. Ghaziabad (U.P.)

6. Factory premises of M/s Life Electronics Pvt. Ltd. situated at E-
G 3, Sector VIII, NOIDA, Distt. Ghaziabad (U.P.)

7. The godown of M/s Connectronics and Cables situated at 7-1/147, Chittaranjan Park, New Delhi. The said premises is also the residential premises of Mr. Puran Chand Joshi, Sales Assistant of M/s Connectronics and Cables.

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3. As a result of the searches, several incriminating documents were recovered from the premises listed at Sr. No.1, 3 and 6 which are resumed by the officers for further investigation. In the premises listed at Sr. No.7 above imported goods of foreign origin valued at Rs.14.83 lakhs were recovered which were detained pending further enquiries as the functionaries present could not produce any documents for lawful importation and acquisition of the said goods. In a subsequent search carried out on 11.12.97, at the premises listed at Sr. No.6, several goods *viz.* speakers, cabinets, connectors and AT & T Cables, all the foreign origin valued at Rs.35 lakhs approximately were also recovered from the basement of the said premises. These were also detained pending further enquiry, and were subsequently seized on 17.12.1996 under Section 110 of the Customs Act, 1962 as no person, including you could produce any documents for legal import depicting their correct and true value.

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5. In your statement recorded on 19.12.96 under Section 108 of the Customs Act, 1962 you *inter alia* stated that initially you started doing business in purchase and sale of electronic components under a firm named M/s WINGS Electronics, 309, Lajpat Rai Market, Delhi 6; that at the same place you opened another firm, M/s LIFE Electronics (P) Ltd. in 1984-85 of which you were the Managing Director.

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..... that in addition to this, you also had a trading centre in the name and style of M/s CONNECTRONICS AND CABLES Pvt. Ltd. G-3, Osian Building, 12, Nehru Place, New Delhi since 1991, in which you were dealing in stock and trade of connectors, cables, switches, wires and other electronic components which were being imported from Hongkong/Taiwan. Your son Asheesh Chawla, was the Managing Director of this firm.

6. You further stated that you were importing components such as plastic molded items, wires and cables, connectors, hardware switches etc. through your firms and that this work of imports was being looked after by you; that you yourself used to negotiate prices and finalize the orders on behalf of M/s LIFE Electronics and M/s WINGS Electronics, Noida, that you were looking after the business interest of M/s CONNECTORS AND CABLES including the imports, that their

A main overseas suppliers were i) M/s Pearl Industrial Co., Hongkong. ii) M/s Mirtex Enterprises (HK) Ltd., Taiwan and Hongkong, iii) M/s RAFS Enterprises, Singapore iv) M/s Phillips, Holland. You further stated that before importing, you used to ask for a proforma invoice from the foreign supplies for the items to be imported, followed by a sales confirmation in certain cases in writing; that for regular items
B you simply used to get a proforma invoice and then place the order over phone.

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C 11. In view of the admissions made by you in various statements in connection with the import of juice extractors VCRs and cables the officers of the Directorate again visited the factory premises of M/s WINGS Electronics on 30.12.1996 and conducted further search of the said premises. As a result, 2460 pieces of car audio speaker "made in
D Korea" and 254 nos. of Spectra Strap Planar Cables valued at Rs.20 lakhs (approx) were recovered which were detained pending further enquiries which were subsequently seized on 15.01.97 as no person including you could produce the documents for legal importation and acquisition of the said goods.....
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12. Further the officers of DRI scrutinized the documents which were recovered from your various premises, as a result of searches conducted on 10.12.96. Scrutiny of records resumed from the business premises of M/s CONNECTRONICS AND CABLES Pvt. Ltd. revealed gross under valuation of the items viz. connectors imported by the
F company from Taiwan. It was found that all the goods imported by the said company since 1994 were supplied by a single supplier, namely, M/s MIRTEX ENTERPRISES (HK) LTD., Taiwan. Investigations revealed that this was a branch office with the main office at Hongkong.

13. On correlating the price of the items shown in the invoices of
G M/s MIRTEX which were declared to customs for duty purposes, with their quotation/proforma invoice, it was observed that the goods were under valued to the extent of approx 1/5th of the actual quoted price. From the respective bills of entry 9, in number regarding which the exercise of correlation has been carried out so far it was found that the firm had evaded customs duty to the tune of Rs.25 lakhs approx
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by way of such under invoicing.

14. Mr. Asheesh Chawla, your son and Managing Director of the said firm, was summoned on 07.01.97 to tender his statement. In his written statement, he stated that for the last one year he had been placing orders with M/s MIRTEX though previously you had been placing the orders; that the method of placing the orders is that the firm first calls for quotations from manufacturers and suppliers in Taiwan, and on the basis of these quotations they place the order with MIRTEX Enterprises, Taiwan on fax.

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28. Thus, from the statements of various persons, including yours, from the investigations conducted by the Directorate so far, the scrutiny of the documents recovered, it is clear that you are involved in the following offences :

(i) Large scale evasion of customs duty to the tune of over Rs.1.35 crores in the import of connectors, cables and other electronic items, through massive under valuation of the goods.

(ii) Remitting the differential amount to foreign suppliers through illegal channels, seized document show that you have remitted US$ 2,92,256.62 equivalent to Rs.85 lakhs approximately during the period June, 1995 to September, 1996 through illegal channels.

(iii) Importing various cables through his firm M/s WINGS Electronics and showing the same as being used in the manufacture and assembly of various consumer electronic goods such as car cassette players, music systems etc. taking MODVAT credit on the same, but diverting these cables for sale through your trading establishment M/s CONNECTRONICS AND CABLES thus flouting rules relating to MODVAT in the Central Excise and Salt Act, 1944.

(iv) Importing ready to assembly kits in SKD condition 890 VCR's and 1560 juicers by deliberately splitting the consignment showing the import under OGL and showing part of the consignment as having been imported by a third party whereas import of consumer electronics goods in SKD form requires special import licence."

6. The statement of Asheesh Chawla made in the Court of ACMM, New

A Delhi on 8.1.1997 which, according to the appellant amounts to retraction of the statement made by him (Asheesh Chawla) before the officers of DRI, is being reproduced below :-

> "I have been in the custody of the Officers of the department since 2.30 p.m. on 7.1.97. The Officers have made me write false and incorrect
B statements on their dictation and sign several documents under threat and coercion and after being given a beating. I have been maltreated and subjected to deep humiliation. I have not been provided anything to eat for the last one day. I was not permitted to sleep or drink any water.
>
C Sd/-
>
> (Ashish Chawla)
> 8.1.97"

7. The grounds of detention are very detailed and long and run into 35 paragraphs and several pages. They refer to the documents recovered from
D business premises of M/s Connectronics and Cables Pvt. Ltd., M/s Wings Electronics and M/s Mobicon and factory premises of M/s Life Electronics Pvt. Ltd. situate in Noida and also the godown of M/s Connectronics and Cables Pvt. Ltd. at Chittaranjan Park, New Delhi. They extensively refer to the statement of the appellant recorded on 19.12.1996 wherein he admitted that
E he was doing business through two firms owned by him, viz., M/s Wings Electronics and M/s Life Electronics Pvt. Ltd. and that he had started trading centre in the name and style of M/s Connectronics and Cables Pvt. Ltd. and also the fact that his son Asheesh Chawla was the Managing Director of this firm. The detention order refers to the several other statements of the appellant himself which were recorded on different dates and the admissions made by
F him. The statement of Asheesh Chawla, who is the son of the appellant, has been referred to in para 14 of the detention order, wherein it is mentioned that in his written statement he stated that for the last one year he had been placing orders with M/s MIRTEX though previously the appellant had been placing the orders. In para 15 of the detention order it is stated that Asheesh
G Chawla was shown several invoices and corresponding quotations/proforma invoices wherein difference in prices was evident in each and every case to which he agreed, but could not explain the difference. A reading of the whole of the detention order clearly shows that the detaining authority had placed reliance entirely upon the statement of the appellant Vinod K. Chawla himself and the documents and material recovered from the business premises and
H godowns of the firms which were admittedly owned by the appellant. There

was only a passing reference to the statement of Asheesh Chawla, wherein he had stated that for the last one year he had been placing orders with M/s MIRTEX though previously the orders had been placed by the appellant. The detention order is not at all based upon the statement of Asheesh Chawla nor any real support is taken by the detaining authority from his statement in order to come to the conclusion that the appellant was the owner of the firms which placed orders for import of various items and invoices whereof were deliberately grossly undervalued in order to evade customs duty and huge sum of money was remitted through illegal channels. Another fact which deserves notice is that Asheesh Chawla had merely stated that orders with M/s MIRTEX used to be placed by the appellant till one year earlier to the recording of his statement. It is important to note that the alleged retraction of statement has not been made by the appellant but by his son Asheesh Chawla. As mentioned earlier, the detention order is not based upon the statement of Asheesh Chawla but merely makes a passing reference to the same. Had the appellant retracted from his statement and the said retraction had not been placed before the detaining authority, the position may have been different as in such a case it could be urged that the formation of opinion by the detaining authority and his subjective satisfaction in that regard had been affected. But such is not the case here. The retraction of the statement by Asheesh Chawla has no bearing at all as it in no way could affect the formation of opinion and the subjective satisfaction of the detaining authority. Therefore, the contention raised by the learned counsel for the appellant has no substance and is liable to be rejected.

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8. We would like to clarify here that the law does not require that every document or material in possession of sponsoring authority must necessarily be placed by him before the detaining authority and in every case where any such document or material is not placed by the sponsoring authority before the detaining authority, the formation of opinion and the subjective satisfaction of the detaining authority would get vitiated. This view has been taken in several decisions of this Court. In *Abdul Sathar Ibrahim Manik* v. *Union of India & Ors.*, AIR (1991) SC 2261, it was held as under :

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> "If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody."

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A In *K. Varadharaj* v. *State of T.N. & Anr.*, [2002] 6 SCC 735, the detenu was arrested for indulging in the trade of bootlegging. He was granted bail in the said case by the Court of Principal District and Sessions Judge on 19.10.2001. Subsequently, a detention order was made under Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 B on 8.11.2001. The detaining authority did not have before him the application for grant of bail nor the order passed by the learned Sessions Judge granting bail. On the contrary, the detaining authority took into consideration a remand order made by the Court to note the fact that the appellant was in custody. The detenu challenged the detention order on the ground that the subjective C satisfaction of the detaining authority was vitiated by the fact that the relevant document ought to have been considered by the detaining authority before coming to the conclusion that the appellant should be detained, *viz.*, his application for bail as well as the order of Sessions Judge made thereon were not placed before the detaining authority. This Court after referring to *M. Ahamedkutty* v. *Union of India*, [1990] 2 SCC 1 and *Abdul Sathar Ibrahim* D *Manik* v. *Union of India & Ors.*, [1992] 1 SCC 1 observed that placing of the application for bail and the order made thereon are not always mandatory and such requirement would depend upon the facts of each case and ultimately rejected the contention raised by the detenu in this regard. This view has been reiterated in a recent decision of this Court in *Sunila Jain* v. *Union of* E *India & Anr.*, [2006] 3 SCC 321. We are, therefore, clearly of the opinion that the mere fact that the sponsoring authority did not place the statement made by Asheesh Chawla on 8.1.1997 in the Court of ACMM, New Delhi, before the detaining authority, cannot lead to an inference that the formation of opinion and the subjective satisfaction of the detaining authority was vitiated in any manner.

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9. Learned counsel for the appellant has next submitted that the appellant had made a representation against his detention on 24.3.1998, which was rejected by the detaining authority on 21.4.1998 and by the Central Government on 29.4.1998 and in view of this inordinate delay in the disposal of the representation, the continued detention of the appellant was rendered illegal. G Some decisions of this Court were cited where emphasis has been laid on expeditious disposal of the representation made by the detenu and it was also observed that unexplained delay in disposal of the representation renders the continued detention illegal.

10. The contention raised cannot be judged by any straight jacket H

formula divorced from facts. This has to be examined with reference to the facts of each case having regard to the volume and contents of the grounds of detention, the documents supplied along with the grounds, the inquiry to be made by the officers of different departments, the nature of the inquiry, the time required for examining the various pleas raised, the time required in recording the comments by the authorities of the department concerned, and so on.

11. In *L.M.S. Ummu Saleema* v. *B.B. Gujaral & Anr.*, AIR (1981) SC 1191 it was held that there can be no doubt that the representation made by the detenu has to be considered by the detaining authority with the utmost expedition but as observed in *Francis Coralie Mullin* v. *W.C. Khambra,* AIR (1980) SC 849, "The time imperative can never be absolute or obsessive." In *Madan Lal Anand* v. *Union of India & Ors.*, AIR (1990) SC 176, the representation dated 17.1.1989 of the detenu who was detained under COFEPOSA was rejected after more than a month on 20.2.1989. After referring to *L.M.S. Ummu Saleema* (supra) it was held that the detaining authority had explained the delay in disposal of the representation and accordingly the order of detention cannot be faulted on that ground. In *Kamarunnissa* v. *Union of India & Anr.*, AIR (1991) SC 1640, the representation made by the detenu on 18.12.1989 was rejected on 30.1.1990 and it was contended that there was inordinate delay in consideration of the representation. In the explanation given in the counter affidavit filed in reply, it was submitted that considerable period of time was taken by the sponsoring authority in forwarding its comments. It was contended on behalf of the detenu that the views of the sponsoring authority were totally unnecessary and the time taken by that authority could not be taken into consideration. The contention was repelled by this Court and it was observed that consulting the authority which initiated the proposal can never be said to be an unwarranted exercise. It was further emphasized that whether the delay in considering the representation has been properly explained or not would depend upon the facts of each case and cannot be judged in vacuum. Similarly, in *Birendra Kumar Rai* v. *Union of India & Ors.*, AIR (1993) SC 962, the petitioner made a representation against his detention on 22.12.1990 which was rejected by the Central Government after a month on 25.1.1991. It was observed that the explanation offered for the delay in consideration of the representation was not such from which an inference of inaction or callousness on the part of the authorities could be inferred and accordingly the challenge on the ground of delay was rejected. The subsequent decisions of this Court are also on the same lines and we do not consider it necessary to refer to them as the principle is well settled

A that there should be no inaction or lethargy in consideration of the representation and where there is a proper explanation for the time taken in disposal of representation even though it may be long, the continued detention of the detenu would not be rendered illegal in any manner.

12. The grounds of detention in the present case are a long one running B into 35 paragraphs which were accompanied by 82 documents running into 447 pages. The representation made by the appellant was also a fairly long one. The representation made by the appellant on 24.3.1998 was received in the Ministry on 27.3.1998. The comments of the sponsoring authority were called on 30.3.1998 which were received on 17.4.1998. The comments were C placed before the Secretary (R) through the A.D.G. on 22.4.1998 (18th and 19th being holidays). The decision of the Central Government was taken and communicated on 29.4.1998 (25th and 26th being holidays). The representation was also considered by the detaining authority in the meantime and was rejected on 21.4.1998. In the additional affidavit filed on behalf of the sponsoring authority before the High Court, it was stated that the D representation was received by them on 2.4.1998 and the comments were dispatched on 17.4.1998. During this period, there were holidays on 4th, 5th, 8th to 12th April, and only seven working days were available. Again there were holidays on 18th, 19th, 25th and 26th April. Having regard to the facts and circumstances of the case, we are clearly of the opinion that the entire time taken in consideration and disposal of the representation made by the E appellant has been fully explained and it cannot be said by any stretch of imagination that there was any inordinate delay or unexplained delay in considering the representation made by the appellant. The challenge to the detention order made on the ground of delay in consideration of the representation made by the appellant has no substance and deserves to be F rejected.

13. It was lastly urged that the searches of the premises of the appellant were conducted on 20.12.1996 and 30.12.1996 and his statement was also recorded between 19.12.1996 and 30.1.1997, but he was taken into custody after more than a year on 12.3.1998 and on account of this long delay the live G and proximate link in the alleged activities of the appellant and the date of his actual detention was snapped and there was no reasonable cause for detaining the appellant. The argument raised is wholly misconceived. The detention order was passed on 12.2.1997 soon after searches were conducted and his statement had been recorded but as the appellant was evading arrest and was absconding, it could only be served on 12.3.1998 when he was taken H

into custody. In the counter affidavit filed in the High Court on behalf of the respondents it was averred that continuous efforts were made both by the police authorities as well as the officers of DRI to arrest the appellant. A notice under Section 7(1)(b) of COFEPOSA was published in Official Gazette on 23.3.1997 and also in leading English and Hindi newspapers on 4.10.1997. An application under Section 7(1)(a) of the Act was also moved before the Court of ACMM for initiating proceedings under Sections 82 and 83 Cr.P.C. where proclamation was made on 3.12.1997 to appear on 9.1.1998. An order of attachment under Section 83 Cr.P.C. was also issued which was brought to the notice of his family members and only then the appellant could be apprehended and detained on 12.3.1998. Reference has also been made to three letters dated 28.2.1997, 17.7.1997 and 5.9.1997 from the Police Headquarters regarding the efforts made to serve the detenu and copies of those letters were placed on record. Every time the family members of the appellant reported before the police that the appellant had left the house on 12.3.1997 to an unknown place and that his whereabouts were not known. An additional affidavit of Assistant Director of Revenue Intelligence was also filed before the High Court wherein it was averred that 11 summons were issued to the appellant during 20.2.1997 and 26.11.1997 and a red alert was also issued by the DRI on 5.3.1997. These facts conclusively establish that the detention order which was passed on 12.2.1997 soon after the searches had been made and the statement of the appellant had been recorded, could not be served in spite of every possible attempt had been made to serve him as the appellant was absconding. Where a person himself evades service of detention order, it is not open to him to contend that in view of the long period which has elapsed between the offending activities and the actual arrest and detention, the vital link had snapped and there was no ground for actually detaining him. An otherwise valid detention order cannot be rendered invalid on account of the own act of the detenu of evading arrest and making himself scarce. The contention thus raised has absolutely no merit and has to be rejected.

A B C D E F

14. In view of the discussions made, we are in complete agreement with the view taken by the High Court. The appeal being wholly devoid of merit, is hereby dismissed.

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B.S. Appeal dismissed.