PETITIONER:
BHAWARLAL GANESHMALJI

Vs.

RESPONDENT:
STATE OF TAMIL NADU & ANR.

DATE OF JUDGMENT11/12/1978

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
UNTWALIA, N.L.

CITATION:
1979 AIR 541 1979 SCR (2) 633
1979 SCC (1) 465
CITATOR INFO :
APL 1990 SC 220 (6)
E&R 1990 SC1597 (15)
RF 1992 SC1900 (15)

ACT:
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 - Order of detention made-Detenu absconded for 3 years and later surredered-Live and proximate, link between grounds of detention and purpose of detention-Whether snapped.
Constitution of India 1950-Article 22(5)-Order of detention made on the basis of intelligence report-Necessity to disclose the identity of the author of the report and the material on which the report is based-Detenu not claiming disclosure-Whether detenu can assail such order of detention.

HEADNOTE:
An order of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 was passed in December 1974 against the appellant. But it could not be executed because the detenu was absconding and could not be apprehended'despite a proclamation made under section 7 of the Act. More than three years after the order was passed, the appellant surrendered in February, 1978.
His application for a writ of habeas corpus was rejected by the High Court. In his appeal against the judgment of the High Court as well as in a petition under Art. 32 of the Constitution raising grounds not raised before the High Court, the appellant contended that (I) the detention order made more than three years before its execution must be considered to have lapsed without fresh application of the mind of the detaining authority to the facts and circumstances of the case, (2) all the four persons who had made statements against the detenu had resiled from their earlier statements long before the order of detention and the failure of the detaining authority to consider such vital material vitiated the order of detention. and (3) the detention order was not based upon any "rationally probative" material, inasmuch as it was based upon an intelligence report, not disclosed to the detenu and that this had resulted in denial to the detenu of

his fundamental right under Art. 22(5) of the Constitution

Dismissing the appeal and writ petition,

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HELD: 1. It is well settled that the purpose of detention under the COFEPOSA is not punitive but preventive, that is to say, its purpose is to prevent organised smuggling activities and to conserve and augment Foreign Exchange, that the maximum period of detention under the Act is one year, and that there must be a 'live and proximate link' between the grounds of detention and the avowed purpose of detention. But in appropriate cases the Court can assume that the link is 'snapped' if there is a long and unexplained delay between the date of the order of detention and the arrest of the

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detenu. Where the delay is not only adequately explained but is found to be the result of the detenu's recalcitrant or refractory conduct in evading arrest, there is warrant to consider the 'link' not snapped but strengthened. [638 B-D]

In the instant case, the order was made in December, 1974. He was absconding, a proclamation was published in several leading newspapers that he was a person absconding and a reward was of offered for his apprehension. Despite all this he could not be arrested until he surrendered in February, 1978. Therefore the submission pseud on delay had no force. [638 E-F]

2. There is no force in the contention that material facts which might influence the mind of the authority one way or the other, were not placed before it and that this vitiated the order of detention. The detaining authority took into consideration the circumstance that there were 'adjudication' proceedings, that the currency which the appellant was carrying was confiscated and that a penalty of Rs.5,000/- was imposed on him. The order of adjudication by which the currency was confiscated and penalty was imposed did refer to the circumstance that persons who had made incriminating statements against the detenu had resiled from those statements.[638 H-639B]

3. It cannot be said that the detenu had been denied a reasonable opportunity of making a representation merely because particulars which he never desired in respect of a ground which was not vague were not furnished to him. The ground was specific enough. If the detenu wanted any more particulars such as the name of the intelligence officer or other information, he could have asked for them before making his representation. That he never did. It was not as if any privilege had been claimed by the Government in respect of the intelligence reports. The intelligence reports were produce before the High Court at the hearing of the writ petition. There was no complaint that the detenu wanted to peruse the reports but was denied the opportunity of doing so. [649 B, 639 H-640 A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 233 of 1978.

Appeal by Special Leave from the Judgment and Order dated the 20th April, 1978 of the Madras High Court in Writ Petition No. 988 of 1978.

AND

WRIT PETITION NO. 4327 OF 1978

(Under Article 32 of the Constitution of India)

Ram Jethmalani M. G. Kurnali and Vineet Kumar- for the

Appellant/Petitioner.

A. V. Rangam for the Respondent.

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The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. Bhawarlal Ganeshmalji whose application for the issue of a Writ of Habeas Corpus was rejected by the High Court of Madras, is the appellant in Criminal Appeal No. 233 of 1978. He has also filed Writ Petition No. 4327 of 1978 for the issue of a Writ of Habeas Corpus under Article 32 of the Constitution in which he has raised certain grounds which had not been raised before the Madras High Court. The appeal and the Writ petition were heard together by us and are disposed of by this common order.

The impugned detention order was made on 19th December, 1974 by the Government of Tamil Nadu and the grounds for the order were contained in a memorandum dated 20th December, 1974 of the Government of Tamil Nadu. The order of detention could not be executed immediately as the appellant-petitioner was absconding and could not be apprehended despite a proclamation made pursuant to Section 7 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The appellant-petitioner, however, surrendered himself before the Commissioner of Police, Madras on 1st February, 1978. First the order of detention and later the grounds of detention were served on the appellant petitioner.

There were two grounds of detention which were as follows:

> "(i) On 23-2-1972 an inland registered parcel bearing No. 325 emanating from one T. Chowdiah No. 2, Sanjeev appa Lane, Bangalore, and addressed to M/s. Raj Metal House, 77, Mint St. Madras was intercepted by Preventive Officers of the Madras Customs at the Madras General Post Office and it was found to contain Indian currency amounting to Rs.1,20,000/- and the currency was seized under the Customs Act. Sukanraj, owner of M/s. Raj Metal House on being questioned admitted in a written statement dated 23-2-1972 that the currency was sent by one R. G. Bhandari's man from Bangalore, to be received by him and handed over to one Bhoormal, a partner of R. G. Bhandari, residing with the latter. He also stated that he knew well that R. G. Bhandari was dealing in smuggled gold at Ban galore; Sukanraj further stated that within the previous two months, 5 or 6 parcels were received by him and by his brother Motilal. Motilal also gave an independent statement on the same day corroborating the facts mentioned by his brother that R. G. Bhandari was dealing in smuggled gold and that the currencies in post parcels were the sale proceeds of smuggled gold. On enquiry at the Park Town

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> Post Office it was found that seven registered parcels had been delivered to M/s. Raj Metal Works between 18-1-1972 and 17-2-1972 and received either by Sukhanraj or Motilal.
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> At Bangalore, the premises at No. 2, Sanjeev appa Lane the address mentioned on post parcel, was searched on 23-2-1972. T. Chowdiah, the sender of the said parcel was not there. But one Ghaverchand Samarthajee was present. He admitted in his statement dated 24-2-1972 that he was an employee of R. G. Bhandari and on the latter's instructions he was disposing of smuggled gold in Bangalore on behalf of his master and

despatching the sale proceeds to Madras. The postal receipt bearing the No. 325 Avenue Road Post Office, Bangalore, in respect of the parcel which was seized at Madras was also seized. This and his confessional statement revealed that he had previously despatched seven registered parcels to M/s. Raj Metal Works containing amounts to the tune of Rs.8,84,000/- using the name of T.Chowdiah and that he had disposed of 3900 bars of smuggled gold valued at Rs.80 lakhs within a short time of less than a month. Bhawarlal, the servant of Bhoormal in Madras identified Ghaverchand Samarthajee as an employee of R. B. Bhandari used for gold smuggling business at Bangalore. The case was adjudicated and the currency was confiscated. personal penalty of Rs.5000/- was imposed on Thiru R. S. Bhandari.

(ii) On 20-4-1974, 40 bars of gold weighing 23,274.100 grams valued at Rs.12,75,420/- was seized by Thiru Ramanathan Supdt. Central Excise, Madras from a secret vacity of an Ambassador can MDE 9399 at the commercial Check Post, Hosur. T. Ramamurthy of Porayar (driver) and Thiru Ganesan occupied the car. Their statements revealed that the gold was sent by Sikku Govidaswami of Porayar, a noted transport agent for contraband goods. Ganesan also admitted that the car with the contraband was to be handed over to one Marwari, at Bangalore at an appointed place. The intelligence report dt. 17-4-74 and 19-4-74 by the Intelligence officer tc the . Directorate of Revenue Intelligence which had been received earlier on the basis of which the aforesaid car was intercepted and the seizure was effected, had disclosed that the Marwari referred to was R. G. Bhandari

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Shri Jethmalani learned Counsel for the detenu submitted that the order of detention which was made more than three years before its execution must be considered to have lapsed or ceased to be effective without a fresh application of the mind of the detaining authority to the facts and circumstances of the case and the necessity for preventive detention. Otherwise, the learned Counsel submitted the order of preventive detention would change its character and be- come an order of punishment for an unproven crime. In regard to the first ground mentioned in the Memorandum of the Government, the learned Counsel submitted that all the four persons who had made statements on 23rd February, 1972 and 24th February, 1972, and which were the basis of the first ground, had resiled from their statements long before the order of detention was made. The circumstance that all of them had resiled from their earlier statements was not brought to the notice of the detaining authority and the failure of the detaining authority to consider such vital material before arriving at its subjective satisfaction vitiated the ground and, therefore, the order of detention itself. Shri Jethmalani urged that the order of detention had necessarily to be struck down even if a single ground out of many was bad since the order had been made at a time when Section 5A of the COFEPOSA had not yet been brought into the Statute Book. In regard to the second ground of detention the submission of Shri Jethmalani was that it was not based upon any "rationally probative" material The ground was invalid inasmuch as it was based upon an intelligence report. It was further contended that the ground would be innocuous without the aid of the intelligence report mentioned therein and since no privilege

was claimed in respect of the intelligence report, the identity of the author of the report should have been disclosed as also the material on which the report was based. Failure to do so had resulted in a denial of the petitioner's fundamental right, under Article 22(5) of the Constitution.

Shri A. V. Rangam, learned Counsel for the State of Tamil Nadu urged that the appellant-petitioner was himself responsible for the long delay in the execution of the order of detention and he could not be allowed to take advantage of his own wrong. With regard to the first ground of detention he submitted that the circumstance that the persons who had incriminated the detenu had resiled from their former statements had been mentioned in the judication order passed by the Customs authorities and that order had been placed before the detaining authority before the order of detention was made. In regard to the second ground of detention the learned Counsel argued that it was not based merely on the intelligence

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report and in any case, since no privilege was claimed, it was always open to the detenu to have asked for more particulars if he so desired, but which he failed to do.

It is true that the purpose of detention under the COFEPOSA is not punitive but preventive. The purpose is to prevent organised smuggling activities and to conserve and augment Foreign Exchange. It is true that the maximum period for which a person may be detained under the COFEPOSA is one year. It is further true that there must be a 'live and proximate link' between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is 'snapped' if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the 'link' not snapped but strengthened. That, precisely, is the state of affairs before us. The order of detention was made on 19th December, 1974. The detenu was found to be absconding. Action was taken pursuant to Section 7 of the COFEPOSA and he was proclaimed as a person absconding under Section 82 of the Criminal Procedure Code. The proclamation was published in several leading English and local language daily newspapers. His photograph was exhibited in Cinema halls A reward of Rs. 5.000/- was also announced for his apprehension. Despite all this effort he could not be arrested until he surrendered on 1st February, 1978. We do not have any hesitation in over-ruling the submission of Shri Jethmalani based on the delay in the execution of the order of detention

The second submission made on behalf of the detenu that the detaining authority had not before it the circumstance that the four persons who had made statements implicating the detenu had later, but long before the order of detention, resiled from their statements is also devoid of force. The proposition that the failure to place before the detaining authority relevant and material facts which may influence the mind of such authority one way or the other will vitiate the order of detention is unexceptionable. But a perusal of the first ground of detention shows that the

detaining authority took into
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consideration the circumstance that there were 'adjudication' proceedings, that the currency was confiscated and that a penalty of Rs.5,000/- was imposed on the detenu. It was not disputed and it was not alleged in the petition that the order of adjudication by which the currency was confiscated and penalty was imposed did refer to the circumstance that persons who had made incriminating statements against the detenu had resiled from those statements. The circumstance that persons who had earlier incriminated the detenu had later resiled from those statements was therefore before the detaining authority. There is thus no factual foundation for this submission of the learned Counsel, which we accordingly reject.

We now proceed to consider the last submission of the learned Counsel based on the reference to the contents of the intelligence report in the second ground of detention. It was pointed out by the petitioner's learned Counsel that the statement of Ramamurthy and Ganesan merely showed that the contraband was to be delivered to a Marwari at Bangalore at an appointed place. It was the intelligence report alone that fixed the identity of the Marwari as the detenu. Without the intelligence report it would be impossible to connect the detenu with the person mentioned as the Marwari in the statements of Ganesan and Ramamurthy. Now the submission of the learned Counsel was that the identity of the author of the intelligence report as well as the report and the material on which the report was based ought to have been disclosed to the detenu if the detenu was to effectively exercise his fundamental right under Article 22(5) of the Constitution and to make a representation against the order of detention We agree with the learned Counsel for the petitioner that in order to make a representation against the order of detention and thus to exercise the fundamental right guaranteed by Article 22(5) of the Constitution, a detenu is entitled to be furnished with all essential particulars forming the basis of the grounds of detention. so it is that where insufficient particulars are mentioned in the grounds, the detenu is entitled to call for better particulars. That is a right which flows from the Constitutional right to be afforded a reasonable opportunity to make representation. Of course, where the grounds are vague. no question would arise of the detenu asking for better particulars. But the present case is not a case of a vague ground. The ground is specific enough. If the detenu wanted any more particulars such as the name of the intelligence officer or other information, he could have well asked for the particulars before making his representation. That he never did. It was not as if any privilege had been claimed by the Government in respect of the
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intelligence reports. In fact, we find that the intelligence reports were produced before the learned Judges of the High Court at the hearing of the Writ Petition there. There was no complaint before us that the detenu or his Counsel wanted to peruse the reports and were denied the opportunity of doing so. We do not think that the detenu could be said to have been denied a reasonable opportunity of making a representation merely because particulars which he neyer desired in respect of a ground which was not vague were not furnished to him. We are unable to see any force in any of the submissions advanced on behalf of the detenu.

In the result, we reject the appeal and the writ

petition.
N.V.K. Appeal & petition dismissed
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