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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th September 2021

+ W.P.(CRL) 630/2021

NAVEEN KASERA ALIAS NAVEEN AGARWAL ..... Petitioner

Through: Mr. Neeraj Jain, Advocate with Mr. U.M. Tripathi & Mr. Anupam Mishra, Advocates.

versus

UNION OF INDIA SECRETARY MINISTRY OF FINANCE ..... Respondent

Through: Mr. Anurag Ahluwalia, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

Brief Background

By way of the present petition filed under Articles 226 and 227 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, the petitioner Naveen Kasera *alias* Naveen Agarwal, challenges order dated 15.01.2021 bearing F.No.:PD-12001/03/2021–COFEPOSA ('detention order') made under section 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974, ('COFEPOSA Act') whereby the petitioner has been put under preventive detention, having been taken into custody on 20.01.2021. It is the petitioner's case that

consequent upon his detention on 20.01.2021, he was taken from his home in Delhi to the Presidency Correctional Home, Alipore, Kolkata on the pretext of questioning him and is being held in detention at the Kolkata Jail ever since.

2. Although the detention order contains a lengthy discussion citing several grounds for preventive detention, in essence and substance, the principal ground for the petitioner's detention is alleged to be that he :

> "*…. is controlling a syndicate involved in effecting fraudulent exports and imports in order to evade Customs duty and earn undue export benefits including IGST refunds through 33 non-existent and/or dummy firms….*"

3. The petitioner is stated to have made a representation dated 08.02.2021 to the Joint Secretary (COFEPOSA), Government of India, Ministry of Finance, Department of Revenue; and another representation dated 25.02.2021 to the Chairman, COFEPOSA Advisory Board and to other officials of the Central Economic Intelligence Bureau and the Directorate of Revenue Intelligence of the Government of India, but to no avail.

4. A hearing before the COFEPOSA Advisory Board is stated to have taken place in Kolkata on 05.03.2021; which however, was adjourned to 24.03.2021. While the writ petition was filed on 13.03.2021, as per the counter affidavit dated 12.04.2021 filed by the respondents, the Advisory Board has rendered a report dated 26.03.2021, in which it has opined that there exist sufficient grounds for the petitioner's detention; and based on that opinion and other material facts,

detention order dated 15.01.2021 has been confirmed by the Ministry *vidé* its order 08.04.2021.

5. Other things apart, the petitioner is stated to have suffered a severe brain stroke on 31.10.2019 resulting in "*hemiplegia right posterior cerebral artery infarct with dystonic spasm left side*", which would commonly be understood as paralysis of the left side of the body, leaving him physically incapacitated.

Petitioner's Contentions

6. The principal grounds of challenge to the detention order, as canvassed in the petition and in the submissions made by Mr. Neeraj Jain, learned counsel appearing for the petitioner, are the following :

a) That though the detaining authority has relied upon statements allegedly made by several persons, it is the petitioner's contention that none of the statements provide any reasonable basis to infer that the petitioner was involved in any prejudicial activity; and there is nothing to show that the detaining authority arrived at any subjective satisfaction to warrant the petitioner's detention under section 3(1) of the COFEPOSA Act;

b) That the only transaction disclosed in the proceedings against the petitioner is the one comprised in shipping bill dated 11.12.2018 issued by one M.G. Enterprises, whereby the petitioner is alleged to have attempted to export goods 'on-paper' without actually exporting anything, with the intent of illegally availing duty drawback; and there is no other cogent

material to show any prejudicial activity during the period after 11.12.2018 until 15.01.2021, that is the date on which the detention order came to be passed;

c) That even in relation to the transaction comprised in shipping bill dated 11.12.2018, no proceedings have been initiated against the petitioner; not even a show cause notice has been issued; and it is the petitioner's contention that he has no connection with the company that issued the said shipping bill, except that he acted as an intermediary, that too only during the course of his ordinary business activities;

d) That though the petitioner was detained on 20.01.2021, the detention order containing the grounds of detention along with relied upon documents was served upon him only later, which, the written submissions filed by the respondents say, happened on 23.01.2021;

e) That a substantial number of the documents relied upon by the respondents, as served upon the petitioner, are completely illegible and the petitioner is accordingly unable to comprehend the purport and effect thereof, especially since, according to the petitioner, such documents do not relate to him; and the petitioner is therefore unable to make an effective representation against the detention order;

f) That there is inordinate and unexplained delay in the passing of the detention order, which proceeds on the heels of a show cause notice dated 07.01.2021; but the issuance of the show cause notice itself suffers from inordinate and unexplained delay;

g) That furthermore, the detention order suffers from non-application of mind, for which reason also, it is vitiated;

h) That in addition to the forgoing, from the time the petitioner suffered a stroke on 31.10.2019, his medical condition is in any case such that he could not have indulged in any prejudicial activity at all; and the petitioner ought not to be placed under preventive detention in his present medical state.

7. In support of his case, the petitioner has relied upon the following judicial precedents:

(i) ***Khaja Bilal Ahmed, v. State of Telangana and Others***[1], on the issue of delay in passing of the detention order, based on stale material;

(ii) ***Licil Antony v. State of Kerala & Another***[2], on unexplained delay in passing of the detention order;

(iii) ***K. Mayilammal v. The State of Tamil Nadu***[3],on the passing of the detention order after a long lapse of time*;*

(iv) ***M. Kakkammal. v. The Commissioner of Police & Another*** [4] on the delay of passing the detention order;

(v) ***Sama Aruna v. State of Telangana & Another***[5], on the issue of stale grounds for passing detention order, subjective satisfaction of detaining authority and judicial review thereof;

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[1] cf. 2019 SCC OnLine SC 1657; paras 20-22

[2] cf. (2014) 11 SCC 326; paras 10-11 and 19

[3] cf. (2012) SCC OnLine Mad 160; para 10

[4] cf. (2009) 2 TNLR 121 (Mad); para 6

[5] cf. (2018) 12 SCC 150; paras 16 - 26

(vi) ***Rajinder Arora v. Union of India***[6], on unexplained delay in passing of the detention order;

(vii) ***Sumita Devi Bhattachaiya v. Union of India***[7], on the issue of a live-link between an occurrence and passing of the detention order; and

(viii) ***T. A. Abdul Rahman v. State of Kerala***[8], on the issue of examination of the causal connection in case of inordinate delay in passing of the detention order.

Respondents' Contentions

8. Contradicting the petitioner's contentions, Mr. Anurag Ahluwalia, learned Central Government Standing Counsel appearing for respondents Nos. 1 to 5, namely the Ministry of Finance (Department of Revenue), Government of India and other associated officials, has raised the following principal allegations and contentions:

a) That the petitioner was involved in fraudulent transactions through 33 non-existent or 'dummy' firms, the details of which were revealed during a search conducted at the premises of M/s Buller Trades, a firm which was "under the petitioner's directorship"; and it was found that these firms were either registered in the petitioner's own name or in the names of his immediate relatives;

b) That 17 of these 33 firms purportedly exported goods worth Rs. 1,45,60,63,026/- (One Hundred Forty-five Crore Sixty Lac

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[6] cf. (2006) 4 SCC 796; paras 20 - 25

[7] cf. (2015) SCC OnLine Del 7284; para 59

[8] cf. (1989) 4 SCC 741 at Paras 10 - 12

Sixty-three Thousand Twenty-six Only) ***under 133 shipping bills*** but no export remittances have been realised against the said bills, while customs duty drawback in the sum of Rs. 3,02,35,243/- (Three Crore Two Lac Thirty-five Thousand Two Hundred Forty-three Only) and benefit of Rs. 12,72,25,116/- (Twelve Crore Seventy-two Lac Twenty-five Thousand One Hundred Sixteen Only) has been availed under the Integrated Goods & Services Tax Act, 2017 ('IGST Act');

c) That the Director of Revenue Intelligence (DRI), Kolkata intercepted export documents relating to a live consignment *vidé* shipping bill No. 9551237 dated 11.12.2018 in the name of M/s Buller Trades, which consignment was however processed 'only on-paper' and no goods were physically exported and no entry was found in the Cross Border Register maintained by Customs. Furthermore, the consignment covered by the said shipping bill was found to have been loaded onto a vehicle, which was registered as a 'tractor' and not a truck;

d) That all branch offices of M/s Buller Trades, except the main office in Delhi, were found to have fake or wrong addresses, meaning thereby, that these branches did not exist;

e) That summonses were issued to the petitioner on 04 occasions at the address of one of his firms M/s Global Impex, calling him to appear before the concerned officer on 25.06.2019, 16.07.2019, 22.08.2019 and 17.09.2019 but the petitioner failed to comply with such summons, consequent whereupon a criminal complaint was also filed against the petitioner under section 174 of the Indian Penal Code, 1860 ('IPC');

f) That the petitioner was operating under two identities, Naveen Kasera and Naveen Agarwal, which is indicative of his *mala-fidé* approach towards the law.

9. In support of their case, the respondents have placed reliance upon the following judicial precedents :

(i) ***Union of India v. Muneesh Suneja***[9], on the point that mere delay in passing the order of detention or its execution is not fatal;

(ii) ***Licil Antony v. State of Kerala & Another***[10], on the point that delay in passing the detention order is explained satisfactorily;

(iii) ***T.A. Abdul Rahman v. State of Kerala***[11], on the point that the test of proximity is not rigid or mechanical;

(iv) ***M. Ahamedkutty v. Union of India***[12], on the matter of subjective satisfaction of the detaining authority;

(v) ***Mohd. Nashruddin Khan v. Union of India & Ors***[13], on the issue of live-link between prejudicial activity and the object of detention;

(vi) ***Harmeet Singh v. Union of India***[14], on there being no hard and fast rule on the passing of the detention order.

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[9] cf. (2001) 3 SCC 92; para 7

[10] cf. (2014) 11 SCC 326; para 9

[11] cf. (1989) 4 SCC 741; paras 10-11

[12] cf. (1990) 2 SCC 1; para 10

[13] cf. 2021 SCC OnLine Del 4017; para 69

[14] cf. 2021 SCC OnLine Del 814; para 34 and 35

Discussion

On Prejudicial Activity :

10. At the outset, this court entertained some doubt as to how the allegation made against the petitioner amounted to 'smuggling' within the meaning of the Customs Act 1962, so as to amount to 'prejudicial activity' under the COFEPOSA Act. This query arose since, in the course of submissions before this court, it appeared that no goods were either imported into or exported out of India by the petitioner, whereby it was not clear as to how, when there was no cross-border transportation of goods, did the question of 'smuggling' arise.

11. This query was answered by the respondents on a *prima-facie* basis, by pointing-out that smuggling is defined in section 2(39) of the Customs Act 1962 as *:*

> *""smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113…"*
>
> (emphasis supplied)

and section 113(k) of the Customs Act, which refers to confiscation of goods attempted to be improperly exported, says :

> "*113. Confiscation of goods attempted to be improperly exported, etc.-*
>
> *…*
>
> *(k) any goods cleared for exportation which are not loaded for exportation on account of any wilful act, negligence or default of the exporter; his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;*"
>
> (emphasis supplied)

and that accordingly, since the essential allegation is that the petitioner *wilfully omitted to load for exportation*, goods that were cleared for that purpose, in an attempt to avail duty drawback and benefit under the IGST Act, that would *prima-facie* amount to smuggling, and consequently to prejudicial activity under the law. This court finds the foregoing explanation sufficient to proceed further to decide the validity of the detention order, *without however* expressing any final opinion on whether the petitioner's acts and omissions amount to smuggling or to prejudicial activity under the law.

On Delay in Passing Detention Order :

12. Before we assess the merits and demerits of the detention order in the petitioner's case, it would be useful to summarise the settled position of law in relation to preventive detention. The following decisions afford a brief conspectus of the legal landscape in that behalf :

12.1. In *T.A. Abdul Rahman* (supra), the Supreme Court observed as under in relation to delay in issuing a detention order :

> *"**10**. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, **the court has to scrutinise whether the***

detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case*."*

(emphasis supplied)

12.2. In ***Saeed Zakir Hussain Malik v. State of Maharashtra & Ors.***[15], in particular in paragraphs 22 to 28 thereof, the Supreme Court whilst considering the question of delay in passing detention orders, has observed as follows :

"22. In Rajinder Arora v. Union of India [(2006) 4 SCC 796: (2006) 2 SCC (Cri) 418] this Court considered the effect of passing the detention order after about ten months of the alleged illegal act. Basing reliance on the decision in T.A. Abdul Rahman [(1989) 4 SCC 741: 1990 SCC (Cri) 76] the detention order was quashed on the ground of delay in passing the same.

* * * * *

"27. As regards the second contention, as rightly pointed out by the learned counsel for the appellant, ***the delay in passing the detention order, namely, after 15 months vitiates the detention itself****. The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. Though there is no hard-and-fast rule and no exhaustive guidelines can be laid down in that behalf, however,* ***when there is undue and long delay between the prejudicial activities and the passing of detention order, it is incumbent on the part of the court to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a reasonable and acceptable explanation as to why such a delay has occasioned****.*

[15] (2012) 8 SCC 233

"28. It is also the duty of the court to investigate whether causal connection has been broken in the circumstance of each case. We are satisfied that in the absence of proper explanation for a period of 15 months in issuing the order of detention, the same has to be set aside. Since, we are in agreement with the contentions relating to delay in passing the detention order and serving the same on the detenue, there is no need to go into the factual details."

(emphasis in original)

12.3. In *Licil Antony* (supra), the Supreme Court further explained that though *mere delay* is not ground enough to set-aside a detention order, but if detention is premised on grounds that are ***stale*** or ***illusory*** or ***lack real nexus*** with the detention, then the detention order would be liable to be set-aside, in the following words :

*"**19.** The conclusion which we have reached is in tune with what has been observed by this Court in M. Ahamedkutty v. Union of India [(1990) 2 SCC 1 : 1990 SCC (Cri) 258] . It reads as follows: (SCC p. 8, para 10)*

> *"10. ... Mere delay in making of an order of detention under a law like COFEPOSA Act enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence, have been posing a serious threat to the economy and thereby to the security of the nation, the courts should not merely on account of the delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. Taking of such a view would not be warranted **unless the court finds that the grounds are stale or illusory or that there was no real nexus***

> ***between the grounds and the impugned order of detention***. *In that case, there was no explanation for the delay between 2-2-1987 and 28-5-1987, yet it could not give rise to legitimate inference that the subjective satisfaction arrived at by the District Magistrate was not genuine or that the grounds were stale or illusory or that there was no rational connection between the grounds and the order of detention."*
>
> (emphasis supplied)

12.4. More recently, in *Sama Aruna* (supra), the Supreme Court explained how a detention order would be vitiated by taking into account incidents so far back in the past, as would have no bearing on the immediate need to detain a person without trial. The Supreme Court observed :

> *"16. Obviously, therefore, the power to detain, under the 1986 Act can be exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities.* ***But the question is how far back ?*** *There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present.* ***That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account****. In Golam Hussain v. State of W.B. [Golam Hussain v. State of W.B., (1974) 4 SCC 530 : 1974 SCC (Cri) 566] this Court observed as follows : (SCC p. 535, para 5)*

> *"5. **No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil**. To rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. **We have to investigate whether the causal connection has been broken in the circumstances of each case**."*

Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities.

*"17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The **live and proximate link that must exist** between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. **A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention**. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. See G. Reddeiah v. State of A.P. [G. Reddeiah v. State of A.P., (2012) 2 SCC 389 : (2012) 1 SCC (Cri) 881] and P.U. Iqbal v. Union of India [P.U. Iqbal v. Union of India, (1992) 1 SCC 434 : 1992 SCC (Cri) 184] .*

The scope of judicial review

"18. While reviewing a detention order, a court does not substitute its judgment for the decision of the executive. Nonetheless, the court has a duty to enquire that the decision of the executive is made upon matters laid down by the statute as relevant for reaching such a decision. For what is at stake, is the personal liberty of a citizen guaranteed to him by the Constitution and of which he cannot be deprived, except for reasons laid down by the law and for a purpose sanctioned by law. As early as in Machindar Shivaji Mahar v. R. [Machindar Shivaji Mahar v. R., 1950 SCC OnLine FC 4 : AIR 1950 FC 129] , this Court observed : (SCC OnLine FC)

> *"... and it would be a serious derogation from that responsibility if the court were to substitute its judgment for the satisfaction of the executive authority and, to that end, undertake an investigation of the sufficiency of the materials on which such satisfaction was grounded.*
>
> *... The Court can, however, examine the grounds disclosed by the Government to see if they are relevant to the object which the legislation has in view, namely, the prevention of acts prejudicial to public safety and tranquility,* ***for "satisfaction" in this connection must be grounded on material which is of rationally probative value****."*

* * * * * *

*"**21. Incidents which are old and stale and in which the detenu has been granted bail, cannot be said to have any relevance for detaining a citizen and depriving him of his liberty without a trial**. This Court observed the following in Khudiram Das [Khudiram Das v. State of W.B., (1975) 2 SCC 81 : 1975 SCC (Cri) 435] : (SCC p. 92, para 9)*

> *"9. ... The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into*

account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. Partap Singh v. State of Punjab [Partap Singh v. State of Punjab, AIR 1964 SC 72]. If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider."

"22. We are of the view, that the detention order in this case is vitiated by taking into account incidents so far back in the past as would have no bearing on the immediate need to detain him without a trial. The satisfaction of the authority is not in respect of the thing in regard to which it is required to be satisfied. ***Incidents which are stale, cease to have relevance to the subject-matter of the enquiry and must be treated as extraneous to the scope and purpose of the statute****.*

"23. In this case, we find the authority has come to a conclusion so unreasonable that no reasonable authority could ever reach. A detaining authority must be taken to know both, the purpose and the procedure of law. It is no answer to say that the authority was satisfied. In T.A. Abdul Rahman v. State of Kerala [T.A. Abdul Rahman v. State of Kerala, (1989) 4 SCC 741 : 1990 SCC (Cri) 76], this Court observed, where the authority takes into account stale incidents which have gone-by to seed it would be safe to infer that the satisfaction of the authority is not a genuine one.

"24. The extent of staleness of grounds in this case compel us to examine the aspect of ***malice in law****. It is not necessary to say that there was an actual malicious intent in making a wrong detention order. .....*

* * * * * *

"26. ***The influence of the stale incidents in the detention order is too pernicious to be ignored, and the order must therefore go; both on account of being vitiated due to malice in law and for taking into account matters which ought not to have been taken into account****.*

(emphasis supplied)

Conclusions

13. In our view, the two questions, the answers to which would be dispositive of the present matter are : (i) *whether there was a live-link or a causal connection between the prejudicial activity, in which the petitioner is alleged to have indulged, and the passing of the detention order;* and *(ii) whether the grounds on which the detention order is premised are 'stale' or 'illusory' or have 'no real nexus' with the need for placing the petitioner under prevention detention.*

14. To address the above aspects, we called upon the respondents to place on record a tabulated summary of the timeline of important dates and events in the present case, to assess whether there was such a live-link and causal connection; and to be sure that the grounds for detention are not stale or illusory and that they bear real nexus with the petitioner's detention.

15. Consequently, the respondents filed a time-chart dated 04.08.2021 setting-out the dates and events that give a complete picture of the goings-on in the matter, from the very first instance when DRI Officers started looking into the questionable exports that the petitioner is alleged to have engaged in.

16. A close and careful perusal of the time-chart discloses that the 'actual activity' which the petitioner is alleged to have done was of having '*exported certain goods only on-paper*' ***vidé shipping Bill No. 9551237 dated 11.12.2018***, whereby, as the allegation goes, the vehicle carrying goods was found to have been a tractor (presumably, as opposed to a truck or other goods carrier) and no goods were in fact loaded for onward export, though duty drawback and benefit

under the IGST Act are alleged to have been availed. The *other dates contained in the time-chart from 11.12.2018 all the way upto the passing of the impugned detention order dated 15.01.2021*, which order was served upon the petitioner on 23.01.2021, *do not disclose any other prejudicial* ***activity*** which the petitioner can be said to have undertaken after 11.12.2018. Though it is alleged that the petitioner indulged repeatedly in prejudicial activity by way of *133 shipping bills* issued by various business entities connected with him, there is no reference in the time-chart to a single shipping bill other than the one dated 11.12.2018.

17. It is noticed that between 11.12.2018 and 15.01.2021, a close reading of the several dates mentioned in the time-chart shows, that these dates relate to recording of statements, conducting search of premises, preparation of reports, examination of allegedly mis-declared consignments (without disclosing the dates of such consignments), issuance of summonses, filing of complaints under section 174 IPC, remand and transit proceedings and other similar matters; but *there is not a single reference to any other or further business or transaction that the petitioner may have indulged in* between 11.12.2018 and 15.01.2021 that may be termed as 'prejudicial activity'.

18. Since, as the record discloses, the last act which the petitioner undertook, and which *may* amount to prejudicial activity, was on 11.12.2018, but the detention order was passed *more than 02 years later* on 15.01.2021, it is evident that the live-link or causal connection between the petitioner's preventive detention, *meant to forestall* the petitioner from indulging in any prejudicial activity, can surely be said to have snapped.

19. Furthermore, if, as we see it, the only activity specifically alleged against the petitioner is the one arising from shipping bill dated 11.12.2018, the ground for detention arising therefrom is clearly stale, illusory and lacks real nexus with a detention order passed more than 02 years later, on 15.01.2021.

20. In view of the foregoing discussion, we are of the view that detention order passed on 15.01.2021 and served upon the petitioner on 23.01.2021 cannot be said to be validly based upon alleged prejudicial activity undertaken by the petitioner on 11.12.2018. A gap of more than 02 years between the last alleged prejudicial activity undertaken by the petitioner cannot be the basis for a justifiable apprehension that the petitioner would indulge again in similar prejudicial activity, to prevent which he should be preventively detained.

21. Preventive detention being drastic State action based only upon suspicion arising from a person's past activity, can be allowed, as the settled legal position mandates, *only if there is a live, causal link* between a person's past activities and the need for passing of a preventive detention order. A preventive detention order is unsustainable on *stale or illusory grounds*, which have *no real nexus* with the past prejudicial activity. Delay in the passing and execution of a preventive detention order not only defeats the very purpose of such order, but more importantly, creates a doubt as to the necessity of adopting such a harsh measure against an individual, whereby the individual's liberty is curtailed on suspicion alone.

22. In the above view of the matter, we do not think that detention order dated 15.01.2021 answers the requirements of the law for preventively detaining the petitioner.

23. We accordingly quash and set-aside order dated 15.01.2021; and we direct that the petitioner be released from custody *forthwith,* unless his custody is required in any other matter.

24. The writ petition is disposed of in the above terms.

25. Other pending applications, if any, also stand disposed of.

26. A copy of this judgment be uploaded on the website of this court *forthwith.*

SIDDHARTH MRIDUL, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 30, 2021
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