MADAN LAL ANAND ETC.

v.

UNION OF INDIA AND ORS.

OCTOBER 26, 1989

[MURARI MOHON DUTT AND S. NATARAJAN, JJ.]

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974: Section 3—Detention Order—Factum that detenu has retracted confession to be placed before detaining authority: the requirement that each day's delay must be explained not a megical formula.

Practice and Procedure: Affidavit—Deponent who has no personal knowledge about any fact—May on basis of other facts—Make submissions to the Court.

The petitioner, Madan Lal Anand, was detained alongwith two other persons, under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—COFEPOSA ACT. In the grounds of detention it was *inter alia* alleged that the detenu had imported polyester filament yarn and polyester fibre in the names of M/s Jasmine and M/s Expo International on the basis of "Actual User" advance licences obtained under the Duty Exemption Entitlement Certificate Scheme on the condition that they would manufacture ready-made garments out of the imported polyester filament and export the same; that they had no intention to manufacture or export the manufactured goods, as there was neither any machinery at their so-called factory nor any power connection; that investigations had revealed that both the firms had sold the imported polyester filament yarn in contravention of the orders and conditions of the advace licences; and that the said firms were benami firms and Madan Lal Anand had played a very active and major role for obtaining advance licences in the names of the said firms, importing the yarn and selling it in the local market.

The three detenu, including Madan Lal Anand, filed a petition in the High Court of Punjab and Haryana praying for the issuance of a writ of *habeas corpus* and challenging the validity of the order of detention. The High Court dismissed the petition.

Before this Court it was contended on behalf of the detenu that:

A (i) as the detenu was prevented from complying with the condition of the advance licence within six months of the first clearance by the issuance of an abeyance order by the Dy. Chief Controller of Imports & Exports, the provision of section 111(o) of the Customs Act was not violated, for the goods could not be confiscated and, accordingly, there was no question of sumuggling within the meaning of section 2(e) of the COFE-
B POSA ACT read with section 2(39) of the Customs Act, 1962; (ii) certain documents/orders, including the abeyance order, which could influence the subjective satisfaction of the detaining authority in favour of the detenu were not placed before him; (iii) while the detaining authority had relied upon and referred to the confessional statement of the detenu, the retraction made by the detenu was not placed before the
C detaining authority; (iv) the counter affidavit not having been sworn by the detaining authority himself, the averments made therein should not be taken notice of; (v) there was delay in considering the representation of the detenu; and (vi) the life of each of the advance licences having expired, there was no chance of the detenu now involving himself in smuggling activities.

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Dismissing the appeal as well as the writ petition this Court,

HELD: (1) In view of cluase (o) of section 111 of the Customs Act, 1962 if any goods exempted from payment of duty is imported without observing the condition, subject to which the exemption has been made,
E it will be a case of smuggling within the meaning of section 2(e) of the COFEPOSA ACT. [740D]

(2) It was more than certain that the imported goods would not and could not be utilised in accordance with the condition of the advance licence, the provision of section 111(o) of the Customs Act was
F violated on the very importation of the goods. There was, therefore, no substance in the contention that there was no smuggling in this case. [741D]

(3) Even if certain documents/orders had not been placed before the detaining authority that could not, in the least, affect the subjective satisfaction of the detaining authority. [742D]

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Kirpal Mohan Virmani v. *Tarun Roy,* [1988] 2 Crimes 196; *Vakil Singh* v. *State of Jammu & Kashmir,* [1975] 3 SCC 545 and *Kirit Kumar Chaman Lal Kundaliya* v. *Union of India,* [1981] 2 SCC 436, referred to.

H (4) The detenu was not prejudiced for non-supply to him of the

copies of certain documents and accordingly there was no substance in the contention that there was non-application of mind by the detaining authority. [745C] A

(5) Even assuming that the ground relating to the confessional statement made by the detenu under section 108 of the Customs Act was an inadmissible ground as the subsequent retraction of the confessional statement was not considered by the detaining authority, still then that would not make the detention order bad, for, in the view of this Court, such order of detention shall be deemed to have been made separately on each of such grounds. Therefore, even excluding the inadmissible ground, the order of detention can be justified. [746A-B] B

Prakash Chandra Mehta v. *Commissioner & Secretary, Government of Kerala,* [1985] Suppl. SCC 144, referred to. C

(6) There can be no doubt that a deponent who has no personal knowledge about any fact may, on the basis of some other facts, make his submission in court. [746G] D

(7) Merely because the detaining authority has not sworn an affidavit, it will not in all circumstances be fatal to the sustenance of the order of detention. [747H]

P.L. Lakhanpal v. *Union of India & Ors.,* [1967] 1 SCR 433; *Asgar Ali* v. *District Magistrate Burdwan & Ors.,* [1974] 4 SCC 527 and *Suru Mallick* v. *State of West Bengal,* [1975] 4 SCC 470, referred to. E

(8) There was no laches or negligence on the part of the detaining authority or the other authorities concerned in dealing with the representation of the detenu. The observations made by this Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasize the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. [749C-D] F

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Mst. L.M.S. Ummu Saleema v. *Shri B.B. Gujaral,* [1981] 3 SCC 317, explained.

(9) The said two firms had really no existence and were the benami concerns of the detenu, and the detenu if released, may indulge in such economic offences in setting up fictitious firms and taking out H

A **advance licences in the name of such firms. [750B]**

Achla Kakkar **v.** *Administrator, Union Territory of Delhi & Ors.*, **[1988] Crl. Law Journal 1896, distinguished.**

ORIGINAL JURISDICTION: Writ Petition (Criminal) No.
B 222 of 1989 etc.

(Under Article 32 of the Constitution of India).

Kapil Sibal, Arvind K. Nigam and Ms. Kamini Jaiswal for the Petitioners.

C V.C. Mahajan, Subba Rao and P. Parmeshwaran for the Respondents.

The Judgment of the Court was delivered by

D **DUTT, J.** Elaborate submissions have been made by the learned Counsel for both the parties and, accordingly, we proceed to dispose of the case on its merit after granting special leave.

This appeal is directed against the judgment of the High Court of Punjab & Haryana, dismissing the writ petition filed by three detenu
E including one Madan Lal Anand, the husband of the appellant, challenging the validity of the orders of detention, all dated September 30, 1988, passed by the Joint Secretary to the Government of India, the detaining authority, under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, hereinafter referred to as the 'COFEPOSA Act'. So far as the detenu Madan
F Lal Anand is concerned, the order of detention was passed 'with a view to preventing the detenu from abetting the smuggling of goods and dealing is smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods'. The order of detention along with the grounds of such detention was served on the detenu on October 18, 1988 and a declaration under section 9 of the
G COFEPOSA Act was made on November 2, 1988 and served on him on November 3, 1988.

The grounds of detention that were served on the detenu run into several pages. It is not necessary to reproduce all the grounds, but we may state only the relevant allegations against the detenu as made in
H the grounds of detention.

It is alleged that information was received that polyester filament yarn and polyester fibre imported in the name of M/s. Jasmine, B-3/7, Vasant Vihar, New Delhi, and M/s Expo International, C-224, Defence Colony, New Delhi, under the Duty Exemption Entitlement Certificate Scheme (DEEC Scheme), were being disposed of in the local market without fulfilling export obligations in contravention of the provisions of the Notification No. 117/CUS/78 dated 9.6.1978 (as amended) and the conditions of Advance Import Trade Control Licences.

M/s. Jasmine obtained five "Actual User" advance licences in the financial year 1984-85 from the Joint Chief Controller of Imports & Exports, New Delhi, for the import of polyester filament yarn and polyester fibre free of customs duty under the DEEC Scheme. Under this Scheme, M/s. Jasmine were granted the said licences subject to the conditions, *inter alia*, that they would manufacture readymade garments (resultant products) out of the imported polyester filament yarn and polyester spun yarn and export the resultant products abroad within a period of six months from the date of the first clearance of the imported consignment in terms of the conditions of the advance licences and the conditions of the said Notification dated 9.6.1978.

By virtue of the other advance licences, excepting the fifth licence dated 9.1.1985, the said M/s. Jasmine imported the polyester filament yarn without payment of import duty amounting to more than Rs.3 crores. It is the case of the detaining authority that in respect of the imported yarn M/s. Jasmine have not fulfilled their export obligation in respect of the polyester filament yarn got cleared by them against the above licences thereby violating the provisions of the said Notification dated 9.6.1978 and the conditions of the advance licences and, consequently, the provision of section 111(o) of the Customs Act, 1962.

In the applications made to the Joint Chief Controller of Imports & Exports, New Delhi, for the grant of advance licences, one Naresh Chadha and Madan Lal Chadha were declared as the Partners of M/s. Jasmine and the address of their factory premises was declared as Khasra No. 694/205, Village Lado Sarai, New Delhi, which on investigation was found to cover the whole village of Lado Sarai. During the last quarter of 1985 M/s. Jasmine shifted their factory premises to 374, Ram Darbar, Industrial Area, Phase—II, Chandigarh. On enquiry, it came to light that M/s. Jasmine did not manufacture any ready-made garments in the said premises. The raw-material imported by the firm

A was never brought to either of the said two premises for the purposes of manufacture. They had no intention to manufacture or export the goods, as there was neither any machinery at the so-called factory premises nor power connection.

M/s. Expo International also obtained five "Actual User" advance B licences in the financial year 1984-85 from the Joint Chief Controller of Imports & Exports, New Delhi, for the import of polyester filament yarn and polyester fibre, free of customs duty, under the DEEC Scheme. They were also required to manufacture the resultant products out of the imported polyester filament yarn and polyester fibre and to export out of India resultant products within a period of six C months from the date of clearance of the first consignment of raw-material in terms of the conditions of the advance licences and the provision of the said Notification dated 9.6.1978.

M/s. Expo International also imported polyester filament yarn under three advance licences without payment of customs import duty D amounting to Rs.49.29 lakhs against the first licence dated 29.5.1984 'and Rs.1.17 crores against the second and third licences dated 3.8.1984 and 11.9.1984, but did not clear the imported material. The other two licences were not utilised by them.

In ground No. 15, it has been stated that investigations con- E ducted by the Customs and Central Excise Staff, Chandigarh, have revealed that both the said firms have not fulfilled their export obligations so far in terms of the advance licences granted to them and also in terms of the provisions of the said Notification dated 9.6.1978 (as amended) issued under section 125 of the Customs Act. Investigations have also revealed that both the firms have sold the polyester filament F yarn cleared by them without payment of duty in contravention of the provisions of the above Notification and conditions of the advance licences.

It is the case of the detaining authority in the grounds of detention and the counter affidavit filed on behalf of the respondents that G the said firms, namely, M/s. Jasmine and M/s. Expo International are benami firms of the detenu including the detenu Madan Lal Anand. Although the said Naresh Chadha and Krishan Lal Chawla are stated to be the Partners of M/s. Jasmine and the said Naresh Chadha to be the Proprietor of M/s. Expo International, they were ciphers and the detenu had been taking out the advance licences in the benami of the H said two firms. Further, the said two firms had no factory anywhere,

and that they had no intention to comply with the conditions of the licences, that is, to export the resultant products out of the imported material for which the advance licences were issued. A

The detenu Madan Lal Anand was arrested on 21.6.1988 under section 104 of the Customs Act for his involvement in the import, clearance and sale of polyester filament yarn and polyester fibre in the B names of the above two firms and on his application he was released on bail. Again, the Chief Judicial Magistrate, Chandigarh, granted bail to the detenu on 11.7.1988 and adjourned the case *sine die*.

In paragraph 47 of the grounds of detention, it has been stated by the detaining authority that the detenu has played a very active and C major role for obtaining advance licences in the names of the said firms, importing the polyester filament yarn and polyester fibre, getting the same cleared from Bombay Customs and also for selling it in the local market in India in violation of the conditions of the said Notification dated 9.6.1978 and also of the advance licences. The detenu has been abetting the smuggling of the goods and also has been D dealing with smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods. The three detenu including Madan Lal Anand filed a writ petition in the High Court of Punjab & Haryana praying for the issuance of a writ of *habeas corpus* and challenging the validity of the order of detention on a number of grounds. The High Court by an elaborate judgment overruled all the E contentions made on behalf of the detenu and upheld the order of detention and dismissed the writ petition. Hence this appeal by special leave.

It has been already noticed that one of the conditions of the advance licences issued to the said firms was that the importer would F manufacture ready-made garments out of the imported polyester filament yarn and polyester fibre and export the resultant products abroad within a period of six months from the date of first clearance of the imported consignments in terms of the conditions of the advance licences. With reference to the said conditions in the licences, it is urged by Mr. Sibal, learned Counsel appearing on behalf of the appel- G lant, that there was no smuggling of goods or any abetment of the smuggling of goods as alleged in the order of detention. In support of this contention, the learned Counsel has placed reliance upon the definition of "smuggling", as contained in section 2(e) of the COFEPOSA Act. Section 2(e) provides that "smuggling" has the same meaning as in clause (39) of section 2 of the Customs Act, 1962 H

A and all its grammatical variations and cognate expressions shall be construed accordingly. Section 2(39) of the Customs Act defines "smuggling" in relation to any goods as meaning any act or omission which will render such goods liable to confiscation under section 111 or section 113 of the Customs Act. It is not disputed that the relevant provision is clause (o) of is section 111 which provides as follows:

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> "111. The following goods brought from a place outside India shall be liable to confiscation:
>
> (o) Any goods exempted, subject to any condition from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which a condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."

C

In view of clause (o) of section 111, if any goods exempted from D 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.

It is strenuously urged on behalf of the appellant that as an abeyance order was passed against M/s. Expo International on March E 27, 1985 before the expiry of six months from the date of first clearance of the goods imported by it on December 6, 1984, the said firm was prevented from complying with the condition of the advance licence, namely, that the ready-made garments were to be manufactured out of the imported polyester filament yarn and polyester fibre and the resultant products were to be exported abroad within a period F of six months from the date of the first clearance. It is submitted on behalf of the appellant that as the detenu was prevented from complying with the condition of the advance licence within six months of the first clearance by the issuance of an abeyance order by the Dy. Chief Controller of Imports & Exports, the provision of section 111(o) of the Customs Act was not violated, for the goods could not be confiscated G and, accordingly, there was no question of smuggling within the meaning of section 2(e) of the COFEPOSA Act read with section 2(39) of the Customs Act, 1962. It is urged that the detaining authority should have taken into cosideration the above fact and should not have passed the impugned order of detention.

H Attractive though the contention is, we regret we are unable to

accept the same. It is true that before the expiry of six months from the date of the first clearance of the imported goods, an abeyance order was passed against M/s. Expo International. The question is whether by such abeyance order the said firm or the detenu was prevented from manufacturing the ready-made garments and exporting the same within six months from the date of the first clearance. In the grounds of detention, it has been clearly stated with all relevant particulars that the said two firms had really no existence and they did not have any factory whatsoever or any manufacturing device for the purpose of manufacturing ready-made garments. It is apparent from the grounds of detention and the counter-affidavit filed on behalf of the respondents that with a view to procuring the licences for the purpose of importation of the goods without payment of any duty and for selling the same in the market, the said firms were created and/or set up by the detenu including the detenu Madan Lal Anand. In these circumstances, no exception can be taken to the passing of the abeyance order against M/s. Expo International and, as it was more than certain that the imported goods would not and could not be utilised in accordance with the condition of the advance licence, the provision of section 111(o) of the Customs Act was violated on the very importation of the goods. There is, therefore, no substance in the contention made on behalf of the appellant that there was no smuggling in this case and, as such, the order of detention was not at all justified. The contention is rejected.

Next it is urged on behalf of the detenu that certain documents/orders relating to the firm M/s. Expo International, which could influence the subjective satisfaction of the detaining authority in favour of the detenu, were not placed before him at the time he passed the order of detention. The said documents/orders are as follows:

> (1) Abeyance Order No. 120/84-85/H dated the 27th March, 1985 issued by the Dy. Chief Controller of Imports & Exports to M/s. Expo International under clause 8D of the Imports Control Order, 1955 as amended, placing the firm under abeyance for a period of six months w.e.f. the date of the issue of the order (Annexure E to Cr. Writ 545/88).
>
> (2) Order dated the 29th March, 1985 issued by the office of the Chief Controller of Imports & Exports, New Delhi, to M/s. Expo International suspending the operation of the said five advance import licences granted to them (Annexure G to Cr. Writ 545/88).

(3) Show cause notice dated the 26th December, 1985 issued by the office of the Chief Controller of Imports & Exports to M/s. Expo International under section 4-L for action under section 4-I of the Imports and Exports (Control) Act, 1947 as amended, and under clause 8 of the Imports (Control) Order, 1985 (as amended) Annexure H to Cr. Writ 545/88).

(4) Show cause notice dated the 27th March, 1985 issued by the office of the Chief Controller of Imports & Exports to M/s. Expo International under clause 10 for action under clause 9(1)(a) & (d) of the IMPORTS (Control) Order, 1955 as amended as to why the five import licences should not be cancelled and rendered ineffective (Annexure F to Cr. Writ 545/88).

Even assuming that the above documents/orders 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 has been discussed above, the abeyance order was passed on the detenu when the authorities concenred found that the above two firms had no factories and, therefore, there was no question of their manufacturing ready-made garments from the imported material and exporting them within a period of six months from the date of first clearance in accordance with the conditions under the advance licences. The show cause notices issued to the said firm, M/s. Expo International, also would reveal that the detenu had failed to comply with the condition of the licences and, indeed, there was no chance of the conditions being complied with inasmuch as there was no manufacturing devices of the said firms. We are of the view that even if the documents/orders had not been placed before the detaining authority that could not, in the least, affect the subjective satisfaction of the detaining authority.

At this stage, we may state a few more facts. M/s. Expo International filed a civil revision petition, being C.R. No. 306 of 1986, under Article 227 of the Constitution of India in the Punjab & Haryana High Court through its alleged Proprietor, Naresh Chadha. In this petition, M/s. Expo International prayed for the quashing of the show cause notices dated December 26, 1985 referred to above. Another civil revision petition, being C.R. No. 3694 of 1985, was filed by M/s. Jasmine through its alleged Partner, Krishan Lal Chawla, *inter alia*, praying for release of certain documents to the said firm so as to

enable it to have its goods released from the Bombay Port. It is significant to notice that in C.R. No. 306 of 1986, copies of all the said show cause notices dated December 26, 1985 and a copy of the said abeyance order dated December 27, 1985 were anexed. Further, in C.R. No. 3694 of 1985 three miscellaneous applications were filed, namely, C.M: Applications Nos. 3199, 3498 and 3702 of 1988. These applications have been mentioned in paragraphs 41, 42 and 43 of the grounds of detention. Again, in paragraph 28 of the grounds of detention the said C.R. No. 306 of 1986 has been referred to as follows:

> "As per Civil Revision No. 306 of 1986 filed in the Punjab & Haryana High Court at Chandigarh, the factory premises were shifted somewhere in Mohali, but specific address of the factory was not declared either to the Joint Chief Controller of Imports & Exports, New Delhi, or to any other department."

It is apparent from the facts stated above that the detaining authority had before him the petitions numbered as C.R. No. 306 of 1986 and C.R. No. 3694 of 1985, for he had referred to these civil revision petitions in the paragraphs mentioned above. The grievance of the detenu that the said abeyance order and the shw cause notices were not placed before the detaning authority has no factual foundation whatsoever inasmuch as the copies of the same were annexed to the petition in C.R. No. 3694 of 1985.

Another complaint has been made by the detenu that while the detaining authority had referred to the said C.R. No. 306 of 1986 and C.R. No. 3694 of 1985, he should have forwarded copies of the said civil revision petitions to the detenu so that he could make an effective representation against the order of detention. So far as C.R. No. 306 of 1986 is concerned, it has been already noticed in what context the same was referred to in paragraph 28 of the grounds of detention. In C.R. No. 3694 of 1985, three civil miscellaneous applications were filed and the detaining authority had forwarded to the detenu copies of all the said three civil miscellaneous applications. But, he did not forward to the detenu a copy of the civil revision petition.

The learned Counsel for the appellant has placed much reliance on a decision of the Delhi High Court in *Kirpal Mohan Virmani* v. *Tarum Roy and others,* [1988] 2 Crimes 196. In that case, the Delhi High Court has taken the view that the copies of important documents and circumstances which have a material bearing or could have

A influenced the subjective satisfaction of the detaining authority should be supplied to the detenu. It has been observed that if such documents are not supplied to the detenu, the detaining authority will then base his subjective satisfaction to detain a person without the help of the material documents even though to some extent or to a large extent the same go in favour of that person and that, accordingly, such a B situation cannot be allowed to exist nor the liberty of an individual can be put to peril at the whims of the detaining authority. In taking that view, the Delhi High Court also noticed the following observation made by this Court in *Vakil Singh* v. *State of Jammu & Kashmir and another,* [1975] 3 SCC 545:

> C " 'Grounds' within the contemplation of Section 8(1) means materials on which the order of detention is primarily based. Apart from the conclusions of facts 'grounds' have a factual constituent also. They must contain the pith and substance of primary facts but not subsidiary facts or evidential details."

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Although the Delhi High Court has referred to the above observation of this Court, it has not considered the effect of such observation. The above observation lends support to the contention made on behalf of the respondents that only copies of documents on which the order of detention is primarily based should be supplied to the detenu E and not any and every document. We must not, however, be understood to say that the detaining authority will not consider any other document. All that has to be shown is that any document which has bearing on the subjective satisfaction of the detaining authority but not relied upon by him was before the detaining authority at the time he passed the order of detention.

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In the instant case, the detaining authority had placed reliance upon three civil miscellaneous applications filed in the said C.R. No. 3694 of 1985 and supplied to the detenu copies of the said three civil miscellaneous applications. We do not find any substance in the contention made on behalf of the detenu that a copy of the civil revision G petition should have also been supplied to him. The decision of this Court in *Kirit Kumar Chaman Lal Kundaliya* v. *Union of India,* [1981] 2 SCC 436 does not, in our opinion, help the contention of the detenu. In the instant case, really the three civil miscellaneous applications have been referred to in the gounds of detention and not the civil revision petition, mentioning of which is necessary in order to identify H the civil miscellaneous applications.

As regards C.R. No. 306 of 1986, the detaining authority has in paragraph 28 of the grounds of detention referred to the shifting of the factory premises by M/s. Expo International somewhere in Mohali, but no specific address of the factory was declared by the firm either to the Joint Chief Controller of Imports & Exports or to any other authority. Mentioning of that fact in the grounds of detention does not, in our opinion, necessarily require the detaining authority to supply a copy of the civil revision petition in C.R. No. 306 of 1986. At the same time, it has to be presumed that the petition in the said civil revision case was before the detaining authority and he had to go through it otherwise he could not mention in the grounds of detention the fact of the shifting of the factory premises without disclosing any specific address of the same. In the circumstances, we are of the view that the detenu was not prejudiced for the non-supply to him of the copies of the documents mentioned above and, accordingly, there is no substance in the contention that there was non-application of mind by the detaining authority.

The next contention of the detenu is that while the detaining authority had relied upon and referred to the confessional statement of the detenu as recorded by the Collector under section 108 of the Customs Act, in the grounds of detention, the retraction made by the detenu was not placed before the detaining authority for his consideration. It is urged that if the retraction had been considered by the detaining authority, his subjective satisfaction could have been in favour of the detenu and against making an order of detention.

It is desirable that any retraction made should also be placed before the detaining authority. But, that does not mean that if any such retraction is not placed before the detaining authority, the order of detention would become invalid. Indeed, this question came up for consideration before a Three-Judge Bench of this Court in *Prakash Chandra Mehta* v. *Commissioner and Secretary, Government of Kerala,* [1985] Suppl. SCC 144. In that case, a similar contention was made. This Court in overruling the contention has referred to section 5-A of the COFEPOSA Act and has observed as follows:

> "Section 5-A stipulates that when the detention order has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly that if one irrelevant or one inadmissible ground had been taken into consideration that would not make the detention order bad."

A In the instant case, even assuming that the ground relating to the confessional statement made by the detenu under section 108 of the Customs Act was an inadmissible ground as the subsequent retraction of the confessional statement was not considered by the detaining authority, still then that would not make the detention order bad, for in the view of this Court, such order of detention shall be deemed to B have been made separately on each of such grounds. Therefore, even excluding the inadmissible ground, the order of detention can be justified. The High Court has also overruled the contention of the detenu in this regard and, in our opinion, rightly.

In this Court, the counter-affidavit that has been filed on behalf C of the respondents had been affirmed by Shri Kuldip Singh, Under Secretary to the Government, and not by the detaining authority himself. It is urged by Mr. Sibal, learned Counsel for the detenu, that the counter-affidavit not having been sworn by the detaining authority himself, the averments made therein should not be taken notice of. One of the averments made in the counter-affidavit is, *inter alia,* as D follows:

> "The said Revision Petition No. 306/86 does find mentioning in para 28 of the grounds of detention. Therefore, the said C.R. along with the above said four documents which were part thereof, was before the detaining authority, E though the same were not relied upon in the grounds of detention."

The four documents referred to in the above statement are the said abeyance order and the show cause notices referred to hereinbefore. It is submitted that the deponent of the affidavit not being the F detaining authority was not competent to say that the said documents were not relied upon by the detaining authority. It is true that the deponent could not say whether the said documents were relied upon or not, but in the facts stated in the counter-affidavit this part of the statement of the deponent, namely, that the said documents were not relied upon by the detaining authority, should be taken to be his sub- G mission. There can be no doubt that a deponent who has no personal knowledge about any fact may, on the basis of some other facts, make his submissions to court. We do not think that any importance should be attached to the said statement made by the deponent in the counter-affidavit.

H No personal allegation of *mala fide* or bias has been made by the

detenu against the detaining authority. If such an allegation had been made, in that case, the detaining authority should have himself sworn the counter-affidavit either in this Court or in the High Court. In *P.L. Lakhanpal* v. *Union of India & Ors.*, [1967] 1 SCR 433, it has been observed by this Court that since no allegation of malice or dishonesty has been made in the petition personally against the Minister, it is not possible to say that his omission to file an affidavit in reply by itself would be any ground to sustain the allegation of *mala fides* or non-application of mind. That observation also applies to the instant case where no personal allegation has been made against the detaining authority.

In *Asgar Ali* v. *District Magistrate Burdwan and Others,* [1974] 4 SCC 527, the District Magistrate of Burdwan, who passed the order of detention, did not file his affidavit and this Court observed as follows:

> "Although normally the affidavit of the person actually making the detention order should be filed in a petition for a writ of *habeas corpus*, the absence of such an affidavit would not necessarily be fatal for the case of the respondents. It would indeed depend upon the nature of allegations made by the detenu in the petition for determing whether the absence of affidavit of the person making the detention order introduces a fatal infirmity. In case an allegation is made that the officer making the detention order was actuated by some personal bias against the detenu in making the detention order, the affidavit of the person making the detention order would be essential for repelling that allegation. Likewise, such an affidavit would have to be filed in case serious allegations are made in the petition showing that the order was *mala fide* or based upon some extraneous considerations. In the absence of any such allegation in the petition, the fact that the affidavit filed on behalf of the respondents is not that of the District Magistrate but that of the Deputy Secretary, Home (Special) Department of the Government of West Bengal would not by itself justify the quashing of the detention order."

Again, in *Suru Mallick* v. *State of West Bengal*, [1975] 4 SCC 470, the affidavit was not filed by the detaining authority and in spite of that this Court upheld the validity of the order of detention.

Thus, merely because the detaining authority has not sworn an

affidavit, it will not in all circumstances be fatal to the sustenance of the order of detention. The contention in this regard is, therefore, unsound and is rejected.

The next ground of attach to the order of detention is the delay in considering the representation of the detenu. It is not disputed that the representation of the detenu dated January 17, 1989 which was received by the Ministry of Finance, COFEPOSA Cell, New Delhi, on 18.1.1989 was rejected and the rejection memo was communicated to the detenu on 20.2.1989. *Prima facie* it appears that there has been a long gap between the receipt of the representation, the consideration thereof and the communication of the result of such consideration to the detenu. In paragraph XXIV of the counter-affidavit filed on behalf of the respondents, it has been stated as follows:

> "The representation dated 17.1.1989 was received in COFEPOSA Unit of the Ministry on 18.1.1989 under cover of letter dated 17.1.1989 of Central Jail, Tihar. The representation was sent to CCE Chandigarh for comments on 19.1.1989. Comments of Collector were received on 18.2.1989. Under cover of Collector's letter dated 9.2.1989. The representation along with comments were analysed by the Under Secretary and put up to the detaining authority and JS on 13.2.1989. 11.2.1989 & 12.2.1989 were holidays. The detaining authority rejected the representation addressed to him on 13.2.1989 and marked the file to MOS (R)/FM for consideration of representation addressed to Central Government. MOS (R) rejected the representation subject to approval by FM on 17.2.1989. FM rejected the representation on 17.2.1989. The rejection memo was issued on 20.2.1989. 18.2.1989 and 19.2.1989 were holidays."

At the hearing of this appeal, the learned Counsel for the respondents handed over to us a list of dates showing that a number of holidays intervened between one date and another and hence the apparent delay. It appears that the Collector of Central Excise & Customs received the representation for his comments on 23.11.1989 and handed over the same to the dealing officer for comments on 24.1.1989 and the Collector's comment was made on 9.2.1989. Between 25.1.1989 and 8.2.1989 a number of holidays intervened, namely, 26.1.1989 (Republic Day), 28.1.1989 and 29.1.1989 (Saturday and Sunday), and 4.2,1989 and 5.2.1989 (Saturday and Sunday). On

9.2.1989, it was sent to the Ministry of Finance (COFEPOSA CELL), New Delhi, and was received by that Ministry on 10.2.1989. 11.1.1989 and 12.2.1989 being Saturday and Sunday were holidays. On 13.2.1989, it was put up before the Joint Secretary, COFEPOSA, and was sent to the Minister of State (Revenue). The file was received back after the rejection of the representation and such rejection was communicated to the detenu on 20.2.1989. The two intervening dates, namely, 18.2.1989 and 19.2.1989 being Saturday and Sunday were holidays.

It is clear from the above statement that there was no laches or negligence on the part of the detaining authority or the other authorities concerned in dealing with the representation of the detenu. In *Mst. L.M.S. Ummu Saleema* v. *Shri B.B. Gujaral and Another,* [1981] 3 SCC 317 it has been observed that the time imperative can never be absolute or obsessive, and that the occasional observations made by this Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a megical formula, the slightest breach of which must result in the release of the detenu. In the instant case, the detaining authority has explained the delay in the disposal of the representation made by the detenu and, accordingly, the order of detention cannot be rendered invalid on that ground.

Lastly, it is argued that the life of each of the advance licences has long expired and, therefore, there is no chance of the detenu in involving himself in smuggling activities, as he would not be in a position to import any goods by virtue of the advance licences. It is submitted that the object of such detention is not punitive, but is preventive. As there is no chance for the detenu to act in violation of the provisions of the COFEPOSA Act, the detention order should be quashed on that ground.

In support of that contention strong reliance has been placed on behalf of the detenu on a decision of the Delhi High Court in *Achla Kakkar* v. *Administrator, Union Territory of Delhi and Others,* [1988] Crl. Law Journal 1896, where it has been observed that the recurrence of breach of such economic offence can be effectively prevented by black listing the person concerned, his detention under the COFEPOSA Act was in the nature of punishment liable to be quashed. In that case also, the detenu imported polyester zips and sold the same in the market without complying with the conditions of the advance li-

A cences. There is, however, an important point of distinction between the facts of that case and those of the instant case before us. In that case, the licences were issued in the name of the detenu himself. But here the licences were issued not in the name of the detenu, but to the name of the said two firms which, according to the detaining authority, had really no existence and were the benami concerns of the detenu. It B is contended by Mr. Mahajan, learned Counsel appearing on behalf of the respondents, that if the detenu is released, he may indulge in such economic offences in setting up fictitious firms and taking out advance licences in the name of such firms.

We have taken into consideration the allegations made in the C grounds of detention and in the counter-affidavit and it appears that in the names of the said two firms huge amount of export duty has been evaded and the imported goods, which have been allowed to be cleared, have been sold in the market. We are unable to accept the contention made on behalf of the detenu that the goods were cleared and sold under the orders of the High Court. It has been rightly D observed in the impugned order of the High Court that, surely, the High Court did not permit the detenu to sell the goods in the market. It may be that a part of the imported goods has not been allowed to be cleared and stands forfeited to the Government, but that is no ground in favour of the detenu. The Government may realise a part of the duty by selling those goods, but that is neither here nor there. The fact E remains that the detenu got the goods cleared and sold the same in the market. We find no reason not to accept the contention of the respondents that the licences were procured by the detenu with a view to importing the goods duty free and selling the same in the market and thereby making a huge profit to the loss and detriment of national economy.

F

After giving our anxious consideration to all aspects of the case, we uphold the judgment of the High Court and dismiss the appeal.

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G The disposal of the above appeal means the disposal of the writ petition. The writ petition is, accordingly, dismissed.

R.S.S. Appeal and Petition dismissed.