THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.07.2009

+ WP(CRL) 37/2009

SMT. MALINI MUKESH VORA ... Petitioner

- versus –

UNION OF INDIA AND ORS ... Respondents

Advocates who appeared in this case:

For the Appellant : Mr C. Hari Shankar with Mr C. M. Jaykumar and Mr Jagdish N.
For the Respondents 1 & 2 : Mr Satish Aggarwal with Mr Sirish Aggarwal
For the Respondent No. 3 : Mr Ravindra Adsure with Mr Vishal S. Madke

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J

1. This writ petition has been filed by the wife of Mr Mukesh Nagindas Vora, who is sought to be detained under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'COFEPOSA'). The said detention order which is sought to be challenged was passed by the respondent No. 2 [Joint Secretary, Government of India, Ministry of

Finance, Department of Revenue (COFEPOSA) Section] New Delhi. Although the detention order and consequently the grounds of detention are not on record because the same have not yet been served on Mukesh Nagindas Vora, it is an admitted position that such a detention order has been passed on 13.03.2001.

2. However, a copy of the detention order dated 07.03.2001 passed in the case of the co-detenu Iqbal Mohan Amritlal Mehra as well as the grounds on which the said detention order was issued in respect of the said co-detenu, have been placed on record as annexures P-3 and P-4 to the writ petition. It is the case of the petitioner that the grounds for detention in respect of the co-detenu Iqbal Mehra are virtually identical to the grounds for detention pertaining to the petitioner's husband. It was pointed out by the learned counsel that the co-detenu's matter was taken up by the Advisory Board and by an order dated 23.05.2001, the Central Government, after having considered the report of the Advisory Board, revoked the detention order and directed that Mr Iqbal Mehra be released from the COFEPOSA detention forthwith. The report of the Advisory Board revealed that the retraction of the co-detenu Mr Kiran Vora made on 28.02.2001 had not been placed before the detaining authority prior to the issuance of the detention order. According to the said report of the Advisory Board, the said document was a vital document which ought to have been placed before the detaining

authority. The view taken by the Advisory Board was that the non-placement of the said document before the detaining authority and consequent non-consideration thereof impaired the satisfaction arrived at by the detaining authority resulting in vitiating the order of detention. Consequently, the Advisory Board came to the conclusion that, *inter alia*, the non-consideration of the retraction statement of the co-detenu Mr Kiran Vora vitiated the order of detention and, therefore, the detention of Iqbal Mehra, under the provisions of COFEPOSA could not be justified. The Advisory Board was, therefore, of the opinion that sufficient cause did not exist for the detention of Mr Iqbal Mehra. On 22.05.2001 itself, the Advisory Board, for the reasons recorded in the report relating to the co-detenu Iqbal Mehra, was also satisfied that the detention order has not been rightly made against another co-detenu, Mr Kiran Nagindas Vora. The Advisory Board, therefore, gave its opinion that sufficient cause did not exist for the detention of the said Mr Kiran Nagindas Vora. Consequently, the Central Government revoked the detention order even in respect of Mr Kiran Nagindas Vora by an order dated 23.05.2001.

3. In this factual context, the learned counsel for the petitioner drew our attention to the grounds of detention of the co-detenu Mr Iqbal Mehra. He drew our attention to paragraph 2 thereof wherein the name of the petitioner's husband (Mukesh Vora) is mentioned. At the end of

the same paragraph, there is a reference to the group comprising of Mr Iqbal Mehra, Mr Kiran Vora, Mr Manish Vora, Mr Mukesh Vora and Mr Brij Mehra. The common allegation is that the said group received payments against fake procurement bills raised by the front companies of the said group on the exporters. The learned counsel for the petitioner then submitted that the co-detenu Mr Kiran Vora made, in all, four statements alleged to be voluntary statements under Section 108 of the Customs Act, 1962. The first statement was allegedly made on 30.08.2000 which is referred to in paragraph 7 of the said grounds of detention in respect of the co-detenu Iqbal Mehra. At the end of paragraph 7 itself, it is noted that there were no business dealings between Mr Kiran Vora and his companies and Mukesh Vora's companies. The second statement alleged to have been made by Mr Kiran Vora is dated 03.10.2000.

4. Two further statements are alleged to have been made by Mr Kiran Vora on 24.02.2001 and 25.02.2001 as would be clear from paragraph 17 of the grounds of detention of the co-detenu Mr Iqbal Mehra. The earlier two statements, that is, of 30.08.2000 and 03.10.2000 had been retracted by Mr Kiran Vora on 13.02.2001. It is, thereafter, that the other two statements of 24.02.2001 and 25.02.2001 had allegedly been given by Mr Kiran Vora. However, even these two statements were retracted by Mr Kiran Vora on 28.02.2001 as would be

apparent from the opinion of the Advisory Board in the case of Iqbal Mehra. It is the non-placement of this retraction dated 28.02.2001 which led to the revocation of the detention orders in respect of the co-detenus Iqbal Mehra and Kiran Vora. The learned counsel for the petitioner submitted that it is in the alleged statements of Mr Kiran Vora dated 24.02.2001 and 25.02.2001 that there are serious allegations against the petitioner's husband (Mukesh Vora) and it is in these statements that the latter's alleged role has been given in detail. Therefore, the retraction letter of 28.02.2001 retracting these statements was a material document insofar as Mukesh Vora was concerned. It is apparent from paragraph 25 of Iqbal Mehra's grounds of detention that it is only the retraction letter of 14.02.2001 which has been considered by the detaining authority. There being no mention of the retraction letter of 28.02.2001 retracting the subsequent statements dated 24.02.2001 and 25.02.2001.

5. On the basis of these circumstances, the learned counsel for the petitioner submitted that the same principles which applied in the case of the co-detenus Mr Iqbal Mehra and Mr Kiran Vora would also be applicable in the case of the petitioner's husband (Mukesh Vora). He submitted that the only difference between the present case and that of the co-detenus Mr Iqbal Mehra and Mr Kiran Vora are that those persons had been taken into custody after the detention orders and

grounds of detention had been served upon them, whereas in the present case, the petitioner has not been served with the detention order nor the grounds of detention inasmuch as he has been out of India.

6. The learned counsel placed reliance on the decision of the Supreme Court in the case of ***Alpesh Navinchandra Shah v. State of Maharashtra & Others*: *2007 (2) SCC 777.*** It was also contended by the learned counsel that this is a case of non-communication / non-consideration of a retraction made by a co-detenu to the detaining authority. When material documents are not supplied to the detaining authority or are not considered by the detaining authority, the detention order, even at the pre-execution stage, is liable to be set aside. For this proposition, the learned counsel placed reliance on the Supreme Court decision in the case of ***Deepak Bajaj v. State of Maharashtra & Anr: 2008 (14) SCALE 62***. Apart from this, the learned counsel submitted that the alleged incident which has formed the basis of the detention order was of 2000 and the detention order itself is of 2001. Placing reliance on the Supreme Court decision in the case of ***Maqsood Yusuf Merchant v. Union of India & Anr: Crl. A. 1337/2008*** decided on 22.08.2008, he submitted that the live link between the detention order and its execution having been snapped, the detention order deserves to be revoked. He submitted that the decision in ***Maqsood Yusuf***

Merchant *(supra)* has also been followed by a Division Bench of this Court in the case of ***Gopa Manish Vora v. Union of India & Anr.: WP(Crl) 2444/2006*** decided on 10.02.2009. According to the learned counsel for the petitioner the only response to this submission that can be discerned from the counter-affidavit filed on behalf of the respondents is that the petitioner having absconded and thereby evaded the service of the detention order cannot be permitted to take this plea. He submitted that for whatever reasons, if a detention order is not served upon the proposed detenu for a great length of time, the detention order may itself lose relevance. This is so because the extreme measure of preventive detention is a permissive encroachment on the liberty of an individual provided there are clear reasons for such preventive detention. The objective of preventive detention is the prevention of the happening of certain prejudicial activities. If there is no history of any prejudicial activity in the interregnum between the making of the detention order and the number of years that have passed by, the link between the detention order and its object has severed. Therefore, in such a case, detaining a person after a lapse of a great length of time, would serve no purpose and the detention order ought to be set aside.

7. The learned counsel appearing on behalf of the respondents raised a preliminary objection to the maintainability of this writ petition

on the ground of lack of territorial jurisdiction of this Court to entertain the present petition. We may point out at the outset that no such plea qua territorial jurisdiction was taken by the respondents in their counter-affidavit. However, since the learned counsel for the respondents strongly urged this point, we are considering the same. The point urged by the learned counsel for the respondents was that everything material in this case has happened outside the territorial jurisdiction of this Court. The only thing that has happened within the jurisdiction of this Court is the issuance of the detention order and the grounds of detention. He submitted that since the detention order has not been served upon the petitioner's husband, it cannot constitute part of cause of action. Consequently, placing reliance on the Supreme Court decision in the case of ***Kusum Ingots and Alloys Limited v. Union of India & Anr.: 2004 (6) SCC 254*** he submitted that this Court would not have territorial jurisdiction to entertain the present writ petition. The learned counsel also referred to the following decision of this Court:-

> ***Shri Satya Sai College of Education v. National Council for Teacher Education: WP(C) 6216/2008***, a decision of a learned Single Judge of this Court delivered on 07.01.2009.

8. With regard to the merits, the learned counsel for the respondents submitted that the petitioner has challenged the order of detention in respect of her husband on essentially two counts. The first being that

the detention order was illegal since its inception inasmuch as the material document being the retraction of Mr Kiran Vora of 28.02.2001 was not placed before the detaining authority and that for the same reason the detention orders in respect of the co-detenus Iqbal Mehra and Kiran Vora have been revoked. The second plea raised by the petitioner was that the detention order, which may have been legal at the time it was issued, has now become stale with efflux of time and, therefore, cannot be given effect to any further.

9. With regard to the first plea raised by the petitioner, the learned counsel for the respondents submitted that this plea cannot be taken by the petitioner inasmuch as the petitioner has not established that the retraction was not in the list of relied upon documents which was annexed with the grounds of detention of the petitioner's husband. Therefore, it cannot be stated with certainty as to whether the retraction was placed before the detaining authority or not. The learned counsel further submitted that, without prejudice to this submission, even if it is presumed that the retraction was not placed before the detaining authority, it will still have to be seen as to whether the retraction was a relevant document or not for considering the case of the petitioner's husband.

10. With regard to the second plea taken by the petitioner, the learned counsel for the respondents submitted that the petitioner cannot take advantage of his own wrong. He further submitted that this plea does not fall within any of the exceptions enumerated in the decision of the Supreme Court in ***Additional Secretary to the Government of India & Others v. Smt. Alka Subhash Gadia and Another : 1992 Supp (1) SCC 496***. The learned counsel also relied upon the decision of the Supreme Court in the case of ***Naresh Kumar Goyal v. Union of India: (2005) 8 SCC 276.*** The learned counsel also submitted that in ***Gopa Manish Vora*** *(supra)* the principle laid down in ***Naresh Kumar Goyal*** *(supra)* was not brought to the notice of the Court in the proper perspective and, therefore, this Court did not have occasion to consider the same. The learned counsel for the respondents also placed reliance on the decision of the Court in the case of ***Union of India & Ors v. Atam Parkash & Anr: 2009 (1) SCC 585*** wherein, according to the learned counsel for the respondents, delay in execution had been held to be no ground for quashing of a detention order. The learned counsel for the respondents submitted that while in ***Atam Parkash*** *(supra)*, the Supreme Court's decision in ***Deepak Bajaj*** *(supra)* was not noticed, in ***Deepak Bajaj*** *(supra)* also, the earlier decision of the Supreme court in ***Sayed Taher Bawamiya v. Joint Secretary to the Government of India: (2000) 8 SCC 630*** had not been considered or noticed. According to the learned counsel for the respondents, while in ***Deepak***

Bajaj *(supra)* the Supreme Court held that the exceptions laid down in ***Alka Subhash Gadia*** *(supra)* were not exhaustive but only illustrative, a three judge Bench of the Supreme Court in the case of ***Sayed Taher Bawamiya*** *(supra)* held that those exceptions were exhaustive. Consequently, the learned counsel for the respondents urged that the decision in ***Sayed Taher Bawamiya*** *(supra)* would prevail over the ratio laid down in ***Deepak Bajaj*** *(supra).* He submitted that this aspect of the matter was neither raised nor considered in the decision of this Court in ***Gopa Manish Vora*** *(supra).* Consequently, he submitted that a great delay in the execution of the detention order was not a ground for its quashing.

11. The learned counsel for the respondents further submitted that the decision in ***Gopa Manish Vora*** *(supra)* was based on the decision of the Supreme Court in the case of ***Maqsood Yusuf Merchant*** *(supra).* He submitted that the facts of ***Maqsood Yusuf Merchant*** *(supra)* were different from those of the present case. While in ***Maqsood Yusuf Merchant*** *(supra)* the Union of India had categorically accepted the plea that the petitioner had not indulged in prejudicial activities after the passing of the detention order, this is not so in the present case.

12. It was also contended on behalf of the respondents that the writ petition cannot be allowed on the ground that the detention order had become stale with efflux of time if an adequate explanation could be furnished for the delay in execution of the same. He placed reliance on ***Naresh Kumar Goyal*** *(supra)* as also on ***T. A. Abdul Rahman v. State of Kerala & Ors: (1998) 4 SCC 741*** and ***Abdul Salam v. Union of India: (1990) 3 SCC 15.*** He submitted that in the context of the present case the delay in execution of the detention order is satisfactorily explained on the part of the respondents inasmuch as the petitioner has been absconding and has remained outside India for all these years. The detention order could not be served upon the petitioner on account of the conduct of the petitioner and not by reason of any failure on the part of the respondents. Thus, the learned counsel for the respondents submitted that the plea that the detention order had become stale with efflux of time and, therefore, had lost its relevance cannot be accepted. For all these reasons, the learned counsel urged this court to reject the writ petition.

13. In rejoinder, particularly to the plea of territorial jurisdiction, the learned counsel for the petitioner submitted that Article 226 of the Constitution of India as it stood prior to the 15th amendment, did not provide for the situs of the cause of action as a circumstance for deciding the territorial jurisdiction of a High Court. Prior to the 15th

amendment as interpreted in ***Lt. Col. Khajoor Singh v. Union of India and Anr.: AIR 1961 SC 532 = 1961 (2) SCR 828***, the High Court within whose limits the orders are passed would have jurisdiction to entertain a writ petition *de hors* the question of where the cause of action arose. Article 226 (1) of the Constitution has reference to the location of the authority or the person or government to whom the writ is to be issued. The learned counsel submitted that subsequent to the decision in ***Khajoor Singh*** *(supra)*, the Constitution (15th Amendment) Act, 1963 was enacted. The Statement of Objects and Reasons, *inter alia*, read as under:-

> "Under the existing Article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend Article 226 so that when any relief is sought against any Government, authority or person for any action taken, the High Court within whose jurisdiction the cause of action arises may **also** have jurisdiction to issue appropriate directions, orders or writs."
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> (emphasis supplied)

The learned counsel, therefore, contended that because of the introduction of sub-Article (1-A) by virtue of the 15th Amendment to the Constitution in 1963 which was subsequently renumbered as sub-Article (2) by virtue of the 42nd Amendment, the territorial jurisdiction of the High Courts were not curtailed but were amplified. The

introduction of concept of situs of the cause of action provided the High Courts with an extension of the territorial jurisdiction insofar as writ petitions were concerned. Prior to the amendment, the High Courts could only issue writs to the Government, authority or person located within its territory. After the said amendment, by virtue of Article 226(2), as it now stands, the High Courts can issue writs to governments, authorities or persons even outside its territory provided part of the cause of action had arisen within their respective territories.

14. The learned counsel also drew our attention to the Supreme Court decision in ***Kusum Ingots*** *(supra)* and in particular to paragraph 20 wherein the Supreme Court observed that *"a distinction between a legislation and executive action should be borne in mind while determining the said question."* He submitted that in the present case we are concerned with an executive action and not a piece of legislation. Therefore, the decision in ***Kusum Ingots*** *(supra)* which, in any event, did not run counter to the submissions made on behalf of the petitioner, would not have any application in the present case, it being a case of a challenge to an executive action.

15. The learned counsel for the petitioner also placed reliance on a Division Bench decision of this Court in the case of ***Smt. Rama***

Devi v. K.A. Gafoor and Others*: *ILR (1976) I Delhi 72 wherein it was observed that "*there can be and is really no doubt about the fact that High Court within whose territorial jurisdiction the order of detention is made and / or the person is detained will have jurisdiction*". The learned counsel for the petitioner reiterated his submissions with regard to the merits of the matter and urged that the detention order be set aside.

16. Having set out the arguments of the counsel for the parties, we shall now take up for consideration the first issue with regard to the preliminary objection raised by the respondents on the ground of alleged lack of territorial jurisdiction of this Court in considering the present writ petition. We are, for deciding this question, accepting the plea, although there is no factual foundation laid out in the counter-affidavit, that everything, except the issuance of the order and the making of the grounds of detention, happened outside the territory of Delhi. Two aspects require consideration. The first aspect is that the issuance of the detention order and the drawing up of the grounds of detention, itself constitutes a material, essential and /or integral part of the cause of action. Thus, even if we are to consider the question of territorial jurisdiction from the standpoint of Article 226 (2) of the Constitution of India, this Court would certainly have jurisdiction to

entertain the present writ petition. The second aspect is with regard to the maintainability of this writ petition in the backdrop of Article 226 (1) of the Constitution of India. Article 226 of the Constitution originally read as under:-

> "226. (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government, within whose territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose.
>
> (1) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32".

The said provision was considered in the case of ***Election Commission, India v. Saka Venkata Rao: 1953 SCR 1144, Hari Vishnu Kamath v. Syed Ahmed Ishaque & Others: 1955 (1) SCR 1104*** and ***Khajoor Singh*** *(supra)*. The position of law as it stood after the decision of the Supreme Court in ***Khajoor Singh*** *(supra)* was that the place where the cause of action arose had no relevance for the purposes of determining the territorial jurisdiction of the High Court. What was of relevance was where the person, authority or government to whom the writ was to be issued was located. If such person, authority or government was within the territory over which the High Court exercised jurisdiction, then such High Court would have had territorial jurisdiction. But if

such person, authority or government was beyond the territory over which the High Court exercised jurisdiction then the said High Court could not issue a writ to such person, authority or government and consequently a writ petition seeking the issuance of such a writ would not be maintainable before such High Court. But, after the said decision in the case of ***Khajoor Singh*** *(supra),* as pointed out by the learned counsel for the petitioner, clause (1-A) was introduced, by way of the 15th amendment to the Constitution, in Article 226. This clause (1-A), as already pointed out, was subsequently was renumbered as clause (2) by the 42nd amendment to the Constitution. Article 226(2) reads as under: -

> "226 (2). The power conferred by Clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."
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> (underlining added)

17. It is obvious that by virtue of the 15th amendment and by introduction of Article 226 (2), the concept of the place where the cause of action arose, wholly or in part, also became relevant for the purposes of determining the territorial jurisdiction of High Court. This, however, did not mean that the concept of territorial jurisdiction under Article 226 (1) was obliterated and that the question of territorial jurisdiction

for the purposes of considering the question of maintainability of writ petition had only to be considered with reference to Article 226(2). It is important to remember that the decisions of the Supreme Court in the case of ***Saka Venkata Rao*** *(supra)* and ***Khajoor Singh*** *(supra)* were rendered in the context of Article 226 (1) and at a time when Article 226(2) was not there in the Constitution. We may note that in ***Navinchandra N.Majithia v. State of Maharashtra and Others: 2000 (7) SCC 640***, the Supreme Court had observed that the introduction of Article 226(2) had widened the width of the area in respect of writs issued by different High Courts. A Division Bench of this court in the case of ***Smt. Rama Devi*** *(supra)* had gone into this issue as to what was the effect of introduction of Article 226(2) in the Constitution of India. In paragraph 26 of the said decision, the Division Bench remarked : -

> "….. The amendment was only a liberalizing provision; it surely did not take away jurisdiction which was already there; it was only a case of conferring additional jurisdiction i.e. to those States, which did not have jurisdiction previously, provided a part of the cause of action at least arose in the concerned States. In this sense it would not even be accurate to say that the amendment is invoked for the purpose of investing any fresh jurisdiction in this Court: what has been got rid off by the amendment is the disability in the matter of issuing writs, directions etc. outside the territorial limits of the concerned High Court. As it has been worded this amendment only makes it even clearer than before that this High Court could issue a writ or other direction under Article 226 of the Constitution to run outside the territorial limits of the Union Territory of Delhi."

With respect, we adopt the same reasoning. In fact, this view has also been taken by one of us (Badar Durrez Ahmed, J.) in ***Jayaswals Neco Limited v. Union of India and Others*** : ***WP(C)2103/2007*** delivered on 02.07.2007 with which we are in full agreement.

18. The effect of the introduction of Article 226(2) is that those High Courts could also exercise jurisdiction under the said Article for issuing writs in relation to territories outside their normal jurisdiction provided the cause of action, in whole or in part, arose within their territorial limits. Article 226 (1) empowers a High Court to issue a writ to a person, authority or government located within its territorial limits irrespective of where the cause of action arose. On the other hand, Article 226(2) permits the High Courts to issue writs to persons, authorities or governments located beyond the territory of the State in which the High Court is located, provided a cause of action, in whole or in part, arises within the territory of the State. It is, therefore, clear that Article 226(2) operates as an extension of territorial jurisdiction of the High Court and not as a curtailment thereof. Article 226(2) supplements and does not supplant Article 226(1).

19. The learned counsel for the petitioner had placed strong reliance on the decision of the Supreme Court in the case of ***Kusum Ingots*** *(supra)*. It must be noted that in ***Kusum Ingots*** *(supra)* itself, as

pointed out by the learned counsel for the petitioner, a distinction has been drawn between a challenge to a legislation and a challenge to an executive action. ***Kusum Ingots*** *(supra)* dealt with a challenge to the exercise of a legislative power and not to an executive action. A detention order is purely an executive action and, therefore, the ratio in ***Kusum Ingots*** *(supra)* would not have application in the present context.

20. In any event, in ***Kusum Ingots*** *(supra)*, the Supreme Court, *inter alia*, concluded that:-

(a) Passing of a legislation by itself does not confer any right to file a writ petition unless a cause of action arises therefor;

(b) Situs of office of Parliament, legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action;

(c) The High Court within whose jurisdiction a legislation is passed, would not have the sole territorial jurisdiction but all the High Courts where cause of action arises, will have jurisdiction.

The last conclusion is clarified in ***Mosaraf Hossain Khan v. Bhageeratha Engg. Ltd: (2206) 3 SCC 658*** wherein, the Supreme Court, referring to their decision in ***Kusum Ingots*** *(supra)*, observed as under:-

> "in that case it was clearly held that **only** because the High Court within whose jurisdiction a legislation is passed, it would not have the **sole** territorial jurisdiction but all the High Courts where cause of action arises, will have jurisdiction."
>
> (emphasis supplied)

It is obvious that by the use of the words 'only' and 'sole', the Supreme Court clarified that the High Court within whose jurisdiction a legislation is passed would not have jurisdiction to entertain a writ petition merely because or only because such a legislation was passed unless and until the person seeking the writ also has a cause of action for approaching that High Court. In case the cause of action arises in some other territory but in respect of a legislation passed within the jurisdiction of a particular High Court, then that High Court would not have the sole territorial jurisdiction but all the High Court where the cause of action arose would also have jurisdiction. We may also notice the later decision in ***Alchemist Limited and Another v. State Bank of Sikkim and Others: JT 2007 (4) SC 474*** wherein the Supreme Court traced the legislative history of Article 226 (2) of the Constitution and, *inter alia*, concluded that:-

> "The effect of the amendment was that the accrual of cause of action was made **an additional ground** to confer jurisdiction on a High Court under Article 226 of the Constitution."
>
> (emphasis supplied)

21. Thus, whether the present case is viewed from the standpoint of Article 226(1) or from the standpoint of Article 226(2), this Court would have territorial jurisdiction to entertain the present writ petition.

22. We now consider the arguments of the counsel on merits. As pointed out above, the petitioner had taken two pleas on the question of merits. The first plea was that the detention order was illegal since its inception inasmuch as a relevant and material document, namely, the retraction letter of Kiran Vora dated 28.02.2001 had not been placed/ considered by the detaining authority and that on the basis of this fact, the detention order of the co-detenus Iqbal Mehra and Kiran Vora had been revoked based upon the opinions of the Advisory Board. The second point urged on the part of the petitioner was that even if it be assumed that the detention order was legal and valid at the time it was passed, it has now become stale and the link between the detention order and the object of detention has been snapped through efflux of time and consequently, the detention order has lost its relevance. Insofar as the second plea is concerned, this Court in the case of ***Gopa Manish Vora*** *(supra)* had placed reliance on a Supreme Court decision in the case of ***Maqsood Yusuf Merchant*** *(supra)* where the Supreme Court had observed that despite the order of detention having been passed as far back as on 19.03.2002, the same not having been executed till the date of the Supreme Court decision on 22.08.2008 and there

being no indication of the proposed detenu therein having indulged in any prejudicial activities after 2002, the Supreme Court felt that the continuation of the detention order would be an exercise in futility and the same, therefore, be not given any effect to any further. In ***Maqsood Yusuf Merchant*** *(supra)*, the Union of India had conceded that since the order of detention had been passed, the proposed detenu had not indulged in any prejudicial activity. But, in ***Gopa Manish Vora*** *(supra)* as also in the present case, there is no such concession on this point. However, as in ***Gopa Manish Vora*** *(supra)*, in this case also, there is no evidence placed before us to indicate that the proposed detenu (Mr Mukesh Vora) had indulged in any prejudicial activities after the passing of the detention order on 13.03.2001. In fact, when this matter came up for hearing on 23.04.2009, the learned counsel for the respondent Nos. 1 and 2 sought some time to file an additional affidavit indicating as to whether the petitioner had been involved in any prejudicial activities between the date of the passing of the detention order and now. This Court acceded to that request and permitted the respondents to file such an affidavit within two weeks. However, no such affidavit has been filed by the respondent Nos. 1 and 2. The case was finally heard on 20.05.2009, 22.05.2009 and 25.05.2009. The respondents had ample opportunity to file such an affidavit but they chose not to do so. The only plea taken by the learned counsel for the respondents was that all this while the

petitioner's husband has been absconding and, therefore, they are not in a position to indicate as to whether the petitioner's husband has indulged in any prejudicial activity in the interregnum or not. This, we are afraid, is not a satisfactory answer. Going by the record, there is nothing to indicate that after the passing of the detention order on 13.03.2001, the proposed detenu Mr Mukesh Vora has indulged in any prejudicial activity. As observed in ***Gopa Manish Vora*** *(supra)* the whole object of preventive detention is to detain a person in order to prevent him from indulging in prejudicial activities. The detention, however, is based on his past conduct. Assuming that at the time when the detention order was passed, there may have been reason to do so, but the live link between the prejudicial activities and the purpose of detention has been snapped by the passage of time and the lack of any material on record to show that the proposed detenu has continued to indulge in such activities.

23. The learned counsel for the respondents stated that the petitioner's husband cannot take advantage of his own wrong inasmuch as it is he who has been absconding and has been avoiding arrest. On a similar plea being raised in ***Gopa Manish Vora*** *(supra)*, this Court observed as under:-

> "It could be said that the passage of time between the date of the detention order and its execution was the result of the proposed detenu avoiding arrest and, therefore, he cannot

> be permitted to take advantage of his own wrong. But, we must remember that preventive detention is not by way of punishment for a past wrong and is only a means to detain a person from continuing with his prejudicial activities in the future for a specified length of time. What the proposed detenu has done in the past cannot be washed away and if the allegations against him are established in the judicial / *quasi*-judicial proceedings, he shall have to suffer the consequences thereof. The fact that he has been declared a proclaimed offender also does not get washed away. He has tried to avoid the due process of law and that is something for which he will have to suffer the consequences. But, this does not mean that he has to be detained so as to prevent him from indulging in prejudicial activities when there is no evidence of his having indulged in any such activity for over seven years. We are not saying that the detention order, when passed, was or was not valid. What we are saying is that the requirement of executing the detention order today has lost its relevance and as observed by the Supreme Court in ***Maqsood Yusuf Merchant*** *(supra)*, the continuation of the detention order in these circumstances would be an exercise in futility and ought not to be given effect to any further."

Consequently, we are of the view that the detention order in the present case has lost its relevance through the combined effect of passage of time and lack of any evidence of any prejudicial activity on the part of the proposed detenu (Mukesh Vora).

24. Intertwined with the issue which we have discussed in the immediately preceding paragraphs, is the question of maintainability of a writ petition challenging a detention order at the pre-execution stage. That issue also came up for consideration in ***Gopa Manish Vora*** *(supra)*. One of the points of controversy in that decision was whether

the circumstances mentioned in ***Alka Subhash Gadia*** *(supra)* were exhaustive or merely illustrative. What was observed in ***Alka Subhash Gadia*** *(supra)* was, *inter alia*, as under:-

> "Thirdly, and this is more important, it is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. **The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre- execution stage are necessarily very limited in scope and number**, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other grounds does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question."
>
> (emphasis supplied)

As observed in ***Gopa Manish Vora*** *(supra)* a plain reading of the above extract clearly indicates that the High Court in exercise of its powers under Article 226 is not precluded from entertaining grievances against any detention order prior to its execution. From the above extract it is also apparent that such power has been used in proper cases and that the grounds on which the courts have interfered with the detention orders at the pre-execution stage are very limited in scope and number.

The instances in which the Courts have interfered with detention orders at the pre-execution stage have then been set out in the five circumstances mentioned in the above extract. It is obvious that what was said in ***Alka Gadia*** *(supra)* was that courts have the power and that they have sparingly used that power in the instances indicated therein. This did not mean that it is only in those instances that the court could exercise its extra ordinary power to entertain grievances against detention orders prior to their execution. This view is also taken in ***Deepak Bajaj*** *(supra)* in the following words:-

> "As already stated above, a judgment is not a statute, and hence cannot be construed as such. In Smt. Alka Subhash Gadia's case (supra) this Court only wanted to lay down the principle that entertaining a petition against a preventive detention order at a pre-execution stage should be an exception and not the general rule. We entirely agree with that proposition. However, it would be an altogether different thing to say that the five grounds for entertaining such a petition at a pre-execution stage mentioned in Smt. Alka Subhash Gadia's case (supra) are exhaustive. In our opinion they are illustrative and not exhaustive."

25. In ***Gopa Manish Vora*** *(supra)*, after considering the several decisions of the Supreme Court, including:-

(1) ***Additional Secretary to the Government of India & Others v. Smt. Alka Subhash Gadia and Another : 1992 Supp (1) SCC 496;***

(2) ***N. K. Bapna v. Union of India and Ors****: (1992) 3 SCC 512;*

(3) ***Subhash Muljimal Gandhi v. L. Himingliana and Anr: (1994) 6 SCC 14;***

(4) ***Administration of the National Capital of Delhi, Raj Niwas v. Prem Singh: 1995 Supp (4) SCC 252;***

(5) ***Union of India & Ors v. Parasmal Rampuria: (1998) 8 SCC 402;***

(6) ***Union of India v. Amrit Lal Manchanda & Anr: (2004) 3 SCC 75;***

(7) ***Union of India & Others v. Vidya Bagaria: (2004) 5 SCC 577;***

(8) ***State of Maharashtra and Ors. v. Bhaurao Punjabrao Gawande : AIR 2008 SC 1705;*** and

(9) ***Union of India & Ors v. Atam Parkash & Anr: 2009 (1) JCC 49.***

(10) ***Rajinder Arora v. Union of India& Ors: (2006) 4 SCC 796;***

(11) ***T. A. Abdul Rahman v. State of Kerala & Ors: AIR 1990 SC 225;***

(12) ***Sayed Taher Bawamiya v. Joint Secretary to the Government of India: (2000) 8 SCC 630;***

(13) ***Naresh Kumar Goyal v. Union of India:(2005) 8 SCC 276;*** and

(14) ***Deepak Bajaj*** *(supra),*

this court followed the view taken by the Supreme Court in ***Deepak Bajaj*** *(supra)*, after observing that it lays down the law accurately and elaborately and though the decision in ***Atam Parkash*** *(supra)* was later in point of time than the decision in ***Deepak Bajaj*** *(supra)*, it had been rendered without noticing the decision in ***Deepak Bajaj*** *(supra).*

Consequently, this Court took the view that a writ petition would be maintainable at the pre-execution stage even in circumstances other than those mentioned in ***Alka Gadia*** *(supra).*

26. We are bound by that view and, in any event, do not see any reason to adopt a different approach.

27. Thus, the fact that this writ petition is maintainable even at the pre-execution stage coupled with the fact that in the passage of over eight years since the passing of the detention order, there is no evidence on record of any prejudicial activity on the part of the proposed detenu Mr Mukesh Vora, in itself is sufficient for us to conclude that the detention order has lost its relevance today.

28. Now, coming to the question of whether the detention order was invalid since its inception, we must remind ourselves that in the case of the co-detenus Mr Iqbal Mehra and Mr Kiran Vora, the detention orders have been revoked subsequent to the opinions of the Advisory Board to the effect that the retraction of Mr Kiran Vora dated 28.02.2001 was not considered by the detaining authority. To this, the arguments advanced on the part of the respondents, is that it cannot be established as a fact that the said retraction dated 28.02.2001 was not placed before the detaining authority. In the short synopsis of

submissions made on behalf of the respondents 1 and 2 submitted after the conclusion of hearing in this case, in paragraph 3.1 thereof it has been stated that "this Court on 22.05.2009 had perused the grounds of detention but not relied on documents". First of all, we do not understand as to how such a remark could be made. There is no question of having placed or not placed any reliance on the documents because the judgment was then yet to be delivered. All the material which was placed by the counsel for the parties before the Court has been seen and examined, where is the question of relying or not relying upon documents? It is unfortunate that such submissions are made in writing. In any event, we cannot penalize the respondents for the folly of their counsel and, therefore, we have particularly taken note of the fact that appended to the grounds of detention in the case of the co-detenu Iqbal Mehra is an index of documents. In that index at serial No. 48, the retraction application of Mr Kiran Vora dated 26.02.2001 is mentioned. From this, the learned counsel for the respondents is possibly trying to build up a case that the retraction of Kiran Vora had been placed before the detaining authority. At this juncture, we may state that the case of the petitioner is not merely of non-placement of the relevant materials, but non-consideration of the retraction statement of 26.02.2001 / 28.02.2001. To substantiate this, the learned counsel for the petitioner had relied upon paragraph 25 of the grounds of

detention in respect of the co-detenu Mr Iqbal Mehra wherein the only retraction that is mentioned is the retraction letter dated 14.02.2001.

29. Considering the discussion above, while we may grant it to the respondents that the issue as to whether the detention order in the case of the petitioner's husband suffered from the same defects as in the case of the co-detenus Mr Iqbal Mehra and Mr Kiran Vora cannot be ascertained inasmuch as neither the detention order nor the grounds of detention in respect of the petitioner's husband have been placed on record, but, this does not enable us to detract from the position that, in any event, the detention order has now lost all relevance and now has no link or connection with the object it sought to achieve. This being the position, the only conclusion which we can arrive at is that the detention order be cancelled. It is so directed.

30. The writ petition stands allowed to the aforesaid extent. There shall be no order as to costs.

BADAR DURREZ AHMED, J

AJIT BHARIHOKE, J

July 03, 2009
SR