PETITIONER:
S M F SULTAN ABDUL KADER

Vs.

RESPONDENT:
JT. SECY., TO GOVT. OF INDIA & ORS

DATE OF JUDGMENT: 28/05/1998

BENCH:
G.T. NANAVATI, S.SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVATI, J.

The petitioner has filed this petition under Article 32 of the Constitution challenging the order of detention passed against him under Section 3 (1) of the COFEPOSA Act 1974. The order is challenged on three grounds, namely, (1) there was delay in passing the detention order (2) there was delay in execution of the detention order and (3) a copy of the written proposal made by the sponsoring authority to the detaining authority was not supplied to the petitioner.

It is not necessary to state the facts leading to the of the detention order as we are inclined to allow this petition on the second ground raised by Mr, K.K. Mani, learned counsel for the petitioner. The order of detention was passed on 14.3.1996. The petitioner came to be detained on 7.8.1997. The contention raised by Mr. Mani is that there was undue delay in execution of the order and that clearly indicates that there was no genuine satisfaction on the part of the detaining authority regarding the necessity of immediate detention of the petitioner in order to prevent him from committing and continuing to commit the prejudicial activity alleged against him. In reply to this contention raised by the petitioner what the detention order could not be executed immediately as the petitioner was absconding. In paragraph 12 of the counter affidavit filed by the Joint Secretary to the Government of India it is stated as under:

> " Continuous efforts were made by the State Police on the following dates to apprehend the detenue- 25.04.1996, 20.05.1996, 30.06.1996, 23.07.1996, 28.08.1996, 24.09.1996, 15.10.1996, 26.11.1996, 18.12.1996, & 20.12.1996, 17.1.97, 27.2.97, 26.3.97, 26.3.97, 24.4.97, 29.6.97 and 7.8.97.
>
> But for the sustained efforts by the Police authorities at Nagore, he would not have been apprehended now."

The joint Secretary has not explained why not attempt

was made from 14.3.96 to 25.4.96 to apprehend the detenue and put him under detention even though the detention order was passed on 14.3.96. It further appears that on attempt was made to see that the petitioner was immediately apprehended. No serious efforts were made by the Police had tried to find out the petitioner. It is also not stated where they looked for him and what inquiries were made to find out his whereabouts. The Joint Secretary himself had made no effort to find out from the Police authority as to why they were not able to apprehend him and yet they were not successful in finding him out. There is also no material to show that the detaining authority had made any serious attempt during this whole period of delay to find out if the detention order remains unexplained. The unreasonable delay in executing the order creates a serious doubt regarding the genuineness of the detaining authority as regards the immediate necessity of detaining the petitioner in order to prevent from carrying on the prejudicial activity referred to in the grounds of detention. We are of the opinion that the order of detention was passed by the detaining authority not in lawful exercise of the power vested in him. We, therefore, allow this petition, set aside and quash the order of detention and direct that the petitioner be set at liberty forthwith unless his presence is required in jail in connection with any other case.