

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 1391 OF 2015

Shri Rahul Ambadas Jadhav	}	
Age 21 years, residing at	}	
Parshi Bangla Zopadpatti,	}	
Ramwadi, Solapur.	}	
(At present detained at Yerwada	}	
Central Prison, Pune)	}	Petitioner

versus

1. The Commissioner of Police,	}	
Solapur	}	
	}	
2. The state of Maharashtra	}	
(Through Addl. Chief Secretary	}	
to Government of Maharashtra,	}	
Mantralaya, Home Department,	}	
Mantralaya, Mumbai)	}	
	}	
3. The Superintendent	}	
Yerwada Central Prison, Pune	}	Respondents

Mr. Udaynath Tripathi for the Petitioner.
Mr. Jayesh P. Yagnik-APP for the State.

**CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

DATED :- JUNE 25, 2015

ORAL JUDGMENT :- (Per S. C. Dharmadhikari, J.)

This Writ Petition under Article 226 of the Constitution of India challenges an order of detention dated 3rd February, 2015 passed by Respondent No. 1, invoking the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and

Dangerous Persons and Video Pirates Act, 1981 (for short “the MPDA Act”).

2) The Writ Petition is filed by the detenu. He is presently lodged at Yerwada Central Prison, Pune. The Petitioner states that the order of detention came to be passed and copy of the same is at Annexure 'A'. It was served on the detenu along with its Marathi translation. The copy of the grounds of detention (Annexure 'B') also came to be supplied and there is a compilation of documents marked as Annexure 'C', which came to be referred and relied upon by the Detaining Authority in arriving at the subjective satisfaction.

3) What has been disclosed before us is that the order of the detention refers to a FIR in CR No. 297 of 2014 and certain in-camera statements. Copies of the same are marked at Annexures 'D' and 'E' to the Writ Petition. The representation of the detenu was forwarded to the State Government on 26th March, 2015 requesting revocation of the order of detention.

4) The grounds on which the detention order has been challenged *inter alia* are that illegible copies of the documents in the compilation came to be provided and equally the Marathi translation of some of the documents relied upon has not been furnished to the

Detenue.

5) Mr. Tripathi learned Counsel appearing for the Petitioner firstly invited our attention to the impugned detention order and submits that the same was confirmed by the State Government. The detention order refers to a CR and which is alleging offences punishable under sections 392 and 34 of the Indian Penal Code. There are two in-camera statements. Mr. Tripathi first submitted that the Detaining Authority failed to comply with the Constitutional mandate enshrined in Article 22(5) thereof. It failed to take into account the relevant and material facts, namely, that the bail application of the Petitioner, filed before the Sessions Court, came to be rejected. The Petitioner was detained in Judicial Custody. He filed an application seeking bail in this Court, but that application is pending. Mr. Tripathi therefore submits that the mandate of Article 22(5) and both facets thereof are violated. He pressed the grounds in the Writ Petition and particularly the following:-

“.....

c. The Petitioner says and submits that he is a Maharashtrian and his mother-tongue is Marathi. The Petitioner has studied a little in Marathi medium. The Petitioner is able to read, write and understand Marathi only and no other language. The Petitioner says and submits that he has been furnished all documents in the compilation in English language alongwith their Marathi translation whereas no Marathi translation of about 18 pages vide page Nos. 389 to 401, 415 to 417, 55, 85 and 111 of the compilation are furnished to the Petitioner thereby the Petitioner is unable to make any effective

representation, as such the Petitioner's right to make representation guaranteed under Article 22(5) of the Constitution of India is violated. The Petitioner says and submits that the abovesaid documents are most relevant, vital and relied on documents being Sessions Court's order, Chief Judicial Magistrate's order and Bail Application pending in Bombay High Court. The order of detention is illegal and bad in law, liable to be quashed and set aside for non-furnishing translation of relied on documents to the detenu in the language understood by him. This also amounts to non-communication of grounds of detention violating first facet of Article 22(5) of the Constitution of India.
.....”

6) Thus, the Petitioner has pressed grounds (c) and (d) of the Writ Petition. Our attention is also invited to an affidavit in reply, which has been filed in this Writ Petition and according to Mr. Tripathi, the Deponent does not dispute the basic facts and as alleged, namely, the documents of which the translations were not supplied have indeed been referred to and relied upon. The argument of the Detaining Authority appears to be that no prejudice or loss is caused to the Petitioner because the Petitioner had knowledge of the contents of these documents of which translations were not supplied. Thus, it is an admitted position that Marathi translation of 18 pages was not provided. If the Petitioner does not understand English language, he is only familiar with and speaks in Marathi, then, such allegation in the Detaining Authority's affidavit will not carry the matter any further.

7) Mr. Tripathi, in support of his above submission, has relied upon the following decisions:-

- (i) *Nisar Jainuddin Mujawar vs. Commissioner of Solapur Writ Petition (Cri.) No. 262 of 2011*, dated 31st March, 2011.
- (ii) *Harikisan vs. State of Maharashtra and Ors. AIR 1962 SC 911. V 49 C 123*)
- (iii) *Ibrahim-Ahmad Batti @ Mohd. Akhtar Hussain @ Kandar Ahmed Wagher @ Iqbal @ Gulam vs. State of Gujarat and Ors. (1982) 3 SCC 440.*
- (iv) *Kamla Kanhaiyalal Khushalani vs. State of Maharashtra 1981 Cr. L. J. 353.*

8) On the other hand, Mr. Yagnik learned APP appearing for the Detaining Authority submits that the subjective satisfaction of the Detaining Authority is in no way vitiated nor the same is required to be interfered with in this Court's Writ Jurisdiction. The Petitioner has raised these objections though being fully aware of the contents of the documents. It is clear that these are nothing but copies of the bail applications filed and orders passed thereon. If the Petitioner has approached this Court and sought bail, then, he is aware of the contents of all these documents. Once the nature of the documents is taken into consideration and the knowledge of the same is attributable to the Petitioner, then, it is clear that no prejudice is caused to him. There is substantial compliance with the requirements in law. Hence, there is no substance in the Writ Petition and therefore it be dismissed. Reliance is placed upon a Judgment of the Hon'ble Supreme Court in the case of *Sitthi Zuraina Begum vs. Union of India and Ors.* reported in **(2002) 10 SCC 448.**

9) With the assistance of Mr. Tripathi and Mr. Yagnik, we have perused the Writ Petition and all Annexures thereof. Equally we have perused the affidavits filed on record.

10) The Petitioner has been detained under the MPDA Act and the order records that this is with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The powers which are conferred by sub-section (1) of section 3 enabling the Commissioner of Police, Solapur are invoked to pass the aforesaid detention order. It is an order therefore traceable to MPDA Act and the grounds which are supplied to the Petitioner, copy of which is at Annexure 'B' indicates that the Petitioner, a resident of Solapur has a criminal record. He is termed as a dangerous person and as he indulged in terrorising activities. His history has been referred and what appears to be relevant for our purpose is the reference in para 5(a) to the CR No. 297 of 2014 at Sadar Bazar Police Station, Solapur. This alleges offences punishable under sections 392 and 34 of the Indian Penal Code. It is registered on 22nd September, 2014 and it is stated that upon registration of the offences, investigations were carried out and the Detenue/Petitioner was arrested on 18th October, 2014. The remand to Police Custody till 19th October, 2014 has been referred and thereafter the remand to Magisterial Custody. The Detaining Authority,

while recording its subjective satisfaction in the order, refers to this CR and in para 7, he holds as under:-

“07. I have carefully gone through the material placed before me and I am subjectively satisfied that you are acting in a manner prejudicial to the maintenance of public order. To prevent your criminal activities, in the year 2012, a preventive action U/s. 110 of Cr. PC. was initiated against you by Sadar Bazar Police Station. In this case, on 03/10/2012, you had submitted a Bond U/s. 117 of Cr.PC. before Spl. Ex. Magistrate and A.C.P. Div. II. Solapur City. After taking such a preventive action, you have not stopped your criminal activities and you have reverted to commit many offences. I am aware that you are in magistrate custody in C.R.No.297/14 u/s 392, 34 IPC registered at Sadar Bazar Police Station, Solapur and applied for bail in Hon'ble High Court Mumbai. Law Officer of the office of the Commissioner of Police, Solapur opined that in future, if you will fulfill the conditions laid down by Hon'ble High Court Mumbai and submit proper surety, Hon'ble High Court may release you on bail on certain conditions in connection with C.R.No.297/14, u/s 392, 34 IPC which is registered at Sadar Bazar Police Station, Solapur. Taking into consideration the possibility of your bail, I am further satisfied that you are likely to revert to the similar activities prejudicial to the maintenance of public order in future and so it has become necessary to detain you under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (No. LV of 1981) (Amendment 1996 & 2009) to prevent you from acting in such a prejudicial manner in future too.”

11) Thus, it is apparent that the reference is to the above CR, the arrest of the Petitioner therein and the bail application filed. The Detaining Authority is aware of the application for bail filed in this Court. However, he records that the law officer in the office of the Commissioner of Police, Solapur opined that in future if the Detenue/Petitioner fulfills the conditions laid down by the High Court and submits proper surety, he is likely to be released on bail. The

materials and documents and index of which is at Annexure 'C' refers at Sr. No. 21 to papers submitted regarding bail application. Thus, the Detaining Authority referred and relied upon these bail applications and submitted from time to time. Therefore, it was incumbent upon it to have supplied to the Petitioner the Marathi translation thereof.

12) Mr. Tripathi is right in his submission that the mandate of Article 22 of the Constitution of India requires that when any person is detained in pursuance of order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. For the representation to be effective and meaningful, the Detenue must have before him all the documents and in the language with which he is conversant and familiar with. There is no denial of the basic averment in the affidavit in reply and as reproduced above with regard to the Petitioner being conversant only with Marathi language. None of these averments have been expressly dealt with, leave alone denied. What the Detaining Authority says in the affidavit and which must be read as a whole is that the grounds in the Petition are not true and correct. The translation copies are not furnished of page Nos. 189 to 401. It is a copy of Criminal Bail

Application No. 113 of 2015 filed by the detenu before the High Court and other pages 415 to 417 is nothing but copy of the Hon'ble Sessions Court's order, by which his application for bail was rejected. The specific statement on page 71 is that both the documents are within the knowledge of the Petitioner. He has filed the same. These are not vital documents and they have been merely referred by the Detaining Authority. Even if the translation is not given, then also the right to make effective representation is not denied. The relevant paras in the affidavit in reply read as under :

“

8. With reference to ground (c) of the Petition I say that the contents of this Para are not true and correct it is denied in Toto. I say that regarding the contents of the present that the translation copies are not furnished of page No.189 to 401 i.e. in fact which is copy of the Criminal Bail Application No.113/2015 filed by the present detenu before the Hon'ble High Court and the other pages i.e. 415 to 417 is nothing but order copy of the Hon'ble Sessions Court, Solapur by the said order the Bail Application of the detenu was rejected. And both the documents are within the knowledge of the present petitioner. And same is filed by the petitioner in the respectively Court along with the other documents i.e. order and Bail Application filed before the other court mentioned at page No. 55, 85 and 111. I say that the said documents are not the vital documents and the said documents are referred by me. Even if the translation are not given of the said documents then also the right of the present petitioner to make any effectively presentation can not be prejudicial as the said documents are nothing but the documents which are filed by the detenu himself. It can not be said that the detenu is confuse to make any

representation on the basis of the above mentioned documents.

I deny that for non furnishing of Marathi translation of the above mentioned documents the petitioner thereby unable to make the effective representation as such the petitioner right to make the representation guaranteed under article 22(5) of the Constitution of India is violated. I further deny that the above mentioned documents are most relevant, vital and relied on documents being Session Court as well as Chief Judicial Magistrate order and the Bail Application which is pending before the Hon'ble Court are vital. And therefore the order of detention is illegal and bad in law, liable to be quashed and satisfied for non furnishing translation of related documents in the language under should by the detenue and I further deny that this also among to non communication of grounds of detention, violating first facet of Article 22 (5) of the Constitution of India.

9. With reference to ground (d) and (g) of the Petition, I deny in Toto the contents of the present grounds and same are not true and correct it is denied in Toto.

I say that in my grounds of detention I subjectively satisfied that there is a possibility of bail of the detenue and therefore I further satisfied that the detenue are likely to revoke the similar activities prejudicial to the maintenance of public order in future and so it has become necessary to detain detenue to prevent him from acting in such a prejudicial manner in future.

I say that even applicant was in judicial custody from 18/10/2014 in C.R. No. 207/2014 and the present detention order passed on dt. 0302/2015. Also it is fact that, the bail application is pending before High Court.

I say that even in respect of the ground (g) I deny the contentions alleged by the detenue that para No.7 of ground of detention is erroneous. I say that as while arriving of the subjectively satisfaction in respect of there is possibility of the detenue will be released on bail by Hon'ble High Court and therefore the opinion expressed by the Law Officer which was placed in the referred

documents. I felt that the detenue was likely to released on bail in future therefore before arriving my subjectively satisfaction that detenue is likely to be released on bail this was the particulars relied by me and therefore my subject to sanctification regarding the possibility of the detenue may be released on bail is not the speculation but it is my subject to sanctification that if detenue may be granted the bail by the Hon'ble High Court and detenue is likely to repeat the similar activities prejudicial to the maintenance of public order.

... ..”

13) We have reproduced the said paragraphs in the affidavit-in-reply from page 73 to 75 verbatim.

14) We are of the view that apart from bad grammar and several errors of language, the Detaining Authority has filed an affidavit full of mistakes and it reported that the authorities insist that they need not be corrected. We inquired from Mr. Yagnik as to why the language of the affidavit in reply reads as above. The only explanation given by him is that the officers and Detaining Authority insist that the affidavits are drafted by them and they should be filed as they are without any corrections or changes by the office of the Public Prosecutor, High Court Bombay. We fail to understand such insistence and when it results in serious miscarriage of justice. If the errors and mistakes are basic and fundamental, incapable of being ignored or overlooked, then, depending upon other circumstances, a conclusion can be reached by the

Court that this is an attempt to somehow assist the detenue in securing a release order. A deliberate or intentional act of this nature and leaving the Court no alternative but to release the detenue can never go unnoticed or uncommented. All those responsible for such acts then have to suffer the legal consequences. The officers ought to be aware that familiar as they may be with the law and language, it is not their duty to appear before the Courts of law and regularly. There is a difference between a practicing Advocate and in the highest Court in the State and in the Detaining Authorities' familiarity and awareness of the detention laws. The Advocates are officers of the Court and perform a public duty. The Detaining Authority is a senior Police official, but his knowledge of law alone is not enough to effectively represent its case before this Court. Ultimately, appearance in a Court of law requires a blend of expertise, experience in arguing and presenting rival viewpoints. That function and duty be best left to be performed by Advocates. They render assistance to the Court by presenting several vital and material facts compiled in documents and equally present several facets of the law. If that is the basis on which they are engaged by the State and to argue its cases, then, we do not understand the insistence of the Police officers like the Detaining Authority as in the present case. We are of the opinion that such over enthusiasm on their part needs to be curtailed by their superiors.

Superiors must inform them and by written as well as oral instructions that henceforth they shall not insist on the affidavits being drafted or if drafted by them being filed as they are and without any changes and corrections. Their plain duty is to approach the Public Prosecutor and assist the concerned Public Prosecutor, who is engaged to appear on their behalf before this Court. They must supply him with relevant information and documents. At best they may give their comments in writing. They may also give draft of the affidavits to be filed, however, how and when they are to be filed and how they should read and what points are to be highlighted therefrom are matters best left to the arguing Public Prosecutor. The job of the Detaining Authority must end as above. Beyond that by their over-anxiety and undue enthusiasm they should not spoil the matters and cases of the State. A copy of this order and these remarks be forwarded to the Principal Secretary / Secretary in the Department of Home, Government of Maharashtra for necessary action at their end.

15) We are of the view that the detention order is referring to the bail applications before the Magistrate and equally the Sessions Court, non supply of the Marathi translation of these documents and which are demanded as are specifically referred and relied upon, vitiates the detention order. If these documents were merely referred

and not relied upon, as contended by Mr. Yagnik, then, there was no need for the Detaining Authority to have filed an affidavit and taken pages after pages to explain as to how he has not merely relied upon the rejection of the bail application by the Sessions Court, but the likelihood of the detenu securing bail in the High Court and thereafter continuing the activities prejudicial to the maintenance of public order. That is how he says in para 9 that there is a possibility of the detenu securing bail and he would indulge in similar activities and therefore he is satisfied that it has become necessary to detain him. Thus, the Marathi translations of these vital documents and which have been relied upon have not been supplied to the Petitioner. The order passed by the Detaining Authority stand vitiated on this ground alone.

16) We find that the reliance placed by Mr. Tripathi on a Division Bench Judgment of this Court in Writ Petition No. 262 of 2011 dated 31st March, 2011 is well placed. In this decision in the case of *Nisar Jainuddin Mujawar vs. The Commissioner of Police, Solapur and Ors.* this Court, after extensive reference to the oral arguments held that the law has been crystallised now by several decisions of the Hon'ble Supreme Court of India. In the event a document is merely referred and not relied upon, then, non supply of such a document would not prejudice the right of the Detenu of making an effective

representation. There is a distinction between a document which has been referred in the grounds of detention and a document which has been relied upon. The document which is merely referred would fall in a distinct category but if the document is relied upon, copy thereof must be supplied and with a translation in a language known to and understood by the Detenue. We find ourselves in complete agreement with this view of the Division Bench. It is not necessary to multiply the judgments simply because time and again the Hon'ble Supreme Court has held that in preventive detention matters, if the detained person is not conversant with English language, then, in order to satisfy the constitutional mandate, he must be given the grounds in a language he can understand and in a script he can read (see *Harkisan vs. State of Maharashtra & Ors. AIR 1962 SC 911*). In the view that we have taken, it is not necessary to refer to other decisions cited by Mr. Tripathi.

17) We have noted that time and again reliance is placed, as in this case, on section 5A of the MPDA Act. That reads as under:-

“5A Where a person has been detained in pursuance of an order of detention under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such ground; and accordingly -

(a) Such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are-

- (i) Vague,
- (ii) Non-existent,
- (iii) Not relevant,

(iv) Not connected or not proximately connected with such person, or

(v) Invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the State Government or an officer mentioned in sub-section (2) of section 3 making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) The State Government or such officer making the order of detention shall be deemed to have made the order of detention under the said section 3 after being satisfied as provided in that section with reference to the remaining ground or grounds.”

18) A reading thereof would indicate that if a person has been detained in pursuance of an order of detention under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such ground and accordingly it shall not be deemed to be invalid or inoperative in the event some of the grounds is or are vague, non existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever. It is in such cases that the order of detention cannot be said to be vitiated nor can the Court interfere with a subjective satisfaction. We fail to understand as to how this section has any application in the present case. When we find that there is exhaustive reference to only one CR in the present case and the events relating thereto, then, it is not possible to agree with Mr. Yagnik. It is not necessary to discern and find out whether other grounds are also incorporated and they would be sufficient to uphold the detention

order. The emphasis in the affidavit-in-reply is to a single case and a single ground. Hence, this is not a case covered by section 5A but the order of detention being vitiated by non compliance with the constitutional mandate. Therefore, this provision has no application to the facts and circumstances of the present case. Once this view is taken, then, any larger or wider controversy need not be decided.

19) Equally, the argument in this case of no prejudice being caused, we feel that it is not for Mr. Yagnik now to improve upon what has been held in the detention order and the explanation given in the affidavit and referred in extenso by us hereinabove. Once the Detaining Authority does not dispute that it referred and relied upon, the pages of the documents translated, copies of which are not supplied, then, the argument of their knowledge or the contents being known to the Petitioner cannot carry the case of the Detaining Authority any further. We are not concerned with the nature of the documents either. If the documents are themselves forming part of, extensively referred and relied upon and the foundation of the order is that in the event the Petitioner is released on bail by this Court, he would recommence his activities, then, the contention of Mr.Yagnik cannot be accepted. The decision relied upon by Mr. Yagnik will have no application in the facts and circumstances of the present case. The law has now been

crystallised and even in this regard by the Hon'ble Supreme Court. In the case of *Huidrom Konungjao Singh vs. State of Manipur and Ors.* reported in **AIR 2012 SC 2002** the Hon'ble Supreme Court has held as under:-

“5. In *Yumman Ongbi Lembi Leima v. State of Maharashtra & Ors.*, (2012) 2 SCC 176; (AIR 2012 SC 321), this Court held that personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order.

6. Whether a person who is in jail can be detained under detention law has been a subject matter of consideration before this Court time and again. In *Dharmendra Suganchand Chelawat & Anr. v. Union of India & Ors.*, AIR 1990 SC 1196, this Court while considering the same issue has reconsidered its earlier judgments on the point in *Rameshwar Shaw v. District Magistrate, Burdwan*, AIR 1964 SC 334; *Masood Alam v. Union of India*, AIR 1973 SC 897; *Dulal Roy v. District Magistrate, Burdwan*, AIR 1975 SC 1508; *Alijan Mian v. District Magistrate, Dhanbad*, AIR 1983 SC 1130; *Ramesh Yadav v. District Magistrate, Etah*, AIR 1986 SC 3151; *Suraj Pal Sahu v. State of Maharashtra*, AIR 1986 SC 2177; *Binod Singh v. District Magistrate, Dhanbad*, AIR 1986 SC 2090; *Smt Shashi Aggarwal v. State of U.P.*, AIR 1988 SC 596, and came to the following conclusion :

“The decision referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for this purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression “compelling reasons” in the context of making an order for detention of a person already in custody implies that there must be cogent material before the

detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.”

7. In *Amritlal & Ors. v. Union Government through Secretary, Ministry of Finance & Ors.*, AIR 2000 SC 3675 : (2000 AIR SCW 4203), similar issue arose as the detaining authority recorded his satisfaction for detention under the Act, in view of the fact that the person, who was already in jail, was going to move a bail application. In the grounds of detention it had been mentioned that there was “likelihood of the detenu moving an application for bail” and hence detention was necessary. This Court held that there must be cogent materials before the authority passing the detention order that there was likelihood of his release on bail.

(See also: *N. Meera Rani v. Govt. of Tamil Nadu*, AIR 1989 SC 2027, *Kamarunissa v. Union of India & Anr.*, AIR 1991 SC 1640 : (1991 AIR SCW 1630); and *Union of India v Paun Manickam and Anr.* AIR 2003 SC 4622 : (2003 AIR SCW 5423).

8. This Court while deciding the case in *A. Geetha v. State of Tamil Nadu & anr* AIR 2006 SC 3053: (2006 AIR SCS 4382), relied upon its earlier judgments in *Rajesh Gulati v. Govt. of NCT of Delhi*. AIR 2002 SC 3094 : (2002 AIR SCW 3563); *Ibrahim Nazeer v. State of T.N. & Ors.*, (2006) 6 SCC 64 : (AIR 2006 SC 3606 : 2006 AIR SCW 3565); and *Senthamilselvi v. State of T.N. & Anr.*, (2006) 5 SCC 676; (2006 AIR SCW 4648), and held that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of the detaining authority. His subjective satisfaction based on materials, normally, should not to be interfered with.

9. In view of the above, it can be held that there is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case. However, if the detention order is challenged the detaining authority has to satisfy the Court the following facts :

(1) The authority was fully aware of the fact that the detenu was actually in custody.

(2) There was reliable material before the said authority on the basis of which he could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order'

(3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary.”

20) Thus, there may not be any prohibition in law to pass a detention order in respect of a person who is already in custody in a criminal case, but if the detention order is challenged, the Detaining Authority must satisfy the Court that it was fully aware of the fact that the detenu was actually in custody. That there was reliable material before the authority on the basis of which he would have reason to believe that there was real possibility of his being released on bail and further indulge in activities prejudicial to maintenance of public order. We are not required to go into this controversy as we have can allow the Writ Petition accepting the ground enumerated above. In the view that we have taken, it is not necessary to refer to other grounds in the Petition which relate to non supply of legible documents. Even if we were to go into the details of this ground and agree with Mr. Tripathi, what we feel is that the detention order being vitiated and on a vital count, the Writ Petition must succeed.

21) As a result of the above discussion, Rule is made absolute in

terms of prayer clause (a). The Detenue is directed to be released forthwith, if not required in any other case.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)