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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2825 OF 2015**

Abhishek Pradip Tarkase	]
Age 20 years, residing at	]
Angulimal Nagar, Near Ashok Buddha	]
Vihar, P.S. Jaripatkar, Nagpur City	]
(At present Yerwada Central Prison	]
Pune)	].. Petitioner
	[Detenu]

Vs.

1. The Commissioner of Police	]
Nagpur City	]
	]
2. The State of Maharashtra	]
(Through Addl. Chief Secretary	]
to Government of Maharashtra	]
Mantralaya, Home Department	]
Mantralaya, Mumbai)	]
	]
3. The Superintendent,	]
Yerawada Central Prison, Pune	].. Respondents

....

Mr. U.N. Tripathi Advocate for Petitioner
Mr. J.P. Yagnik A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI ACTING C.J. &
SHRI.A.S.GADKARI, J.**

DATED : SEPT. 30 / OCT. 01, 2015

ORAL JUDGMENT: [PER ACTING CHIEF JUSTICE]

1 This petition is filed by detenu Abhishek Pradip Tarkase who has been detained under the provisions of The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (Amendment - 2009) (Hereinafter referred to as the "MPDA" Act.). He has challenged the order of detention dated 13.5.2015 issued by respondent no.1 Commissioner of Police, Nagpur City.

2 The order of detention was issued with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of public order and was served on the detenu along with grounds of detention and other documents which were placed before the detaining authority. This order of detention has been issued on the basis of two CRs. and two in-camera statements. The first CR is CR No. 635 of 2014 of Jaripatka Police Station which is under Section 307 read with Section 34 of IPC. The second CR is CR No. 3256 of 2015 of Jaripatka Police Station which is under Section 4 read with Section 25 of the Arms Act read with Section 135 of the Bombay Police Act. Thereafter reliance is placed on in-camera

statements of two witnesses i.e. witness "A" and witness "B". Both these witnesses have stated that the detenu demanded money from them and when these witnesses declined to give the amount to the detenu, the detenu whipped out a knife and placed it against the body of the witnesses. On seeing this, passersby ran away from the spot. Thereafter detenu took out money from the pocket of witnesses "A" and "B".

3 Mr. Tripathi, the learned advocate for the petitioner firstly contended that the detaining authority has not recorded any satisfaction in the grounds of detention regarding truthfulness of the incidents as stated in in-camera statements that he had reason to believe that the incamera statements are true and genuine, and hence, the order of detention is illegal and bad in law. He submitted that for non-disclosure of the subjective satisfaction of the detaining authority in the grounds of detention, the detention order is liable to be quashed. In support of this contention, Mr. Tripathi placed reliance on a decision of the Division Bench of this Court in the case of **Smt. Vijaya Raju Gupta Vs. Shri. R.H. Mendonca and others**, reported in **2001 ALL MR (Cri.) 48**. Mr. Tripathi

pointed out the observations in paragraph 6 of this decision, which are as under:

"6. There remains no doubt in the light of the law laid down by the Apex Court that in-camera statement of person / witness can be utilized by the detaining authority for the purpose of arriving at subjective satisfaction for passing the order of detention. However, the Apex Court made it clear that the facts stated in the materials relied upon should be true and have a reasonable nexus with the purpose for which the order is passed. Necessary corollary, therefore is that the detaining authority must be satisfied about the truthfulness of the statements made in the in-camera statements. Testing it from this touch-stone, we find that neither in the detention order nor in the grounds of detention, the detaining authority has stated anything that he was satisfied about the truthfulness of the statements made in the in-camera statements. In the present case the petitioner has set up specific case that in-camera statements were false and fabricated after the detenu was released on bail".

4 In the decision of ***Vijaya Gupta (supra)***, in the affidavit of detaining authority, a statement was made that detaining authority was subjectively satisfied that the contents

of the in-camera statements were true and genuine since it was verified by the Assistant Commissioner of Police. However, it was found that the English translation of the verification made by the Assistant Commissioner of Police below the in-camera statements reads, "my statement was translated to me in Hindi which is in accordance with what I stated." This means that the Assistant Commissioner of Police has only verified that the statement made by the witness was recorded as actually made by him. Therefore, it was observed that on the basis of this verification without there being something more by way of any contemporaneous document or material more over when no such statement is made in the grounds of detention that the statements made in the in-camera statement were believed to be true, it is very difficult to hold that the detaining authority was in fact subjectively satisfied that the assertions made in camera statements were true. In ***Vijaya Gupta (supra)***, it was further observed that the detaining authority has to apply his mind about the truthfulness of the assertions made in-camera statements which in the facts of the present case seems to have not been done which in our opinion vitiates the detention order.

5 Mr. Tripathi urged that in the present case also the detaining authority has not verified whether the contents of the in-camera statements are truthful and there is no contemporaneous record to indicate that the detaining authority had applied his mind to this fact and was subjectively satisfied that the contents of the in-camera statements were true. Mr. Tripathi urged that there was no statement to that effect in the grounds of detention and hence decision in **Smt. Vijaya Raju's case (supra)** is squarely applicable to the facts of the present case.

6 Mr. Tripathi after placing reliance on the decision in Vijaya Gupta (supra), submitted that when no such statement is made in the grounds of detention that the statements made in-camera were believed to be true, it is very difficult to hold that the detaining authority was in fact subjectively satisfied that the assertions made in the in-camera statements were true.

7 In reply the learned A.P.P. submitted that the Division

Bench of this Court in the decision in the case of **Smt. Zebunnisa Abdul Majid Vs. M.N. Singh and others**, reported in **2001 Cri. Law Journal 2759** had occasion to consider the judgment in the case of **Smt. Vijaya Gupta (supra)**. In the said decision, it has been observed as under:

"Mr. Chitnis urged that in the present case also the detaining authority has not verified whether the contents of the in-camera statements are truthful and there is no contemporaneous record to indicate that the detaining authority had applied his mind to this fact and was subjectively satisfied that the contents of the in-camera statements were true. Mr. Tripathi urged that there was no statement to that effect in the grounds of detention and hence decision in **Smt. Vijaya Raju's case (supra)** is squarely applicable to the facts of the present case.....

It is, however, not laid down that the detaining authority should expressly state in the grounds of detention that he had verified the contents of statements and found them to be true."

8 This Court in the case of **Zebunnisa Abdul Majid (supra)** in para 20 observed that in the decision of **Smt. Vijaya Raju's case (supra)** "the detaining authority in his affidavit had stated that the in-camera statements were verified by the

higher grade police officer of the rank of A.C.P. In the subsequent affidavits, he had expressed his satisfaction that the contents of the in-camera statements were true and genuine because they were verified by the A.C.P. The English translation of the verification made by the A.C.P. below the in-camera statements, made it amply clear that the A.C.P. had not verified the truthfulness of the contents of the statements. He had merely verified that the statements of the witnesses were recorded according to their say. Obviously, therefore, it cannot be said that the A.C.P. had verified the truthfulness of the contents of the in-camera statements". It was further observed that "if the A.C.P. had himself not verified whether the contents of the in-camera statements were true, the detaining authority could certainly not have recorded his satisfaction on the basis, thereof that the contents of the said statements were true". The observation of this Court in **Smt. Vijaya Gupta's case (supra)** on which Mr. Tripathi placed reliance will have to be read against this background. No conclusion can be drawn from it that in all cases the detaining authority must aver in the grounds of detention that he was subjectively satisfied about the truthfulness of the contents of

the in-camera statements. In fact in ***State of Gujarat Vs. Sunil Fulchand Shah, AIR 1988 SC 723 : (1988 Cri.L.J. 933)***, the Supreme Court has stated that "it is not necessary for the detaining authority to mention in the grounds his reaction in relation to every piece of evidence placed before him. Similar view has been taken by the Division Bench of this Court in Cri. Writ Petition No. 542 of 1995 delivered on 7.6.1996 / 11.6.1996".

9 Besides, the affidavit filed in the present case is entirely different from the one which was filed in ***Smt. Vijaya Gupta's case (supra)***. In the present case, in the affidavit of the detaining authority, we find that the detaining authority has clearly stated that "the secret in-camera statements i.e. witness "A" and witness "B" are recorded by the Police Inspector of Jaripatka Police Station, Nagpur who is a Gazetted Officer and the truthfulness of these statements is verified by the Assistant Commissioner of Police, Panchpaoli Division, Nagpur who is also a Special Executive Magistrate. It is further submitted that the detaining authority is fully satisfied with truthfulness of in-camera statements. It is further submitted

that witness "A" and witness "B" are secret witnesses and these witnesses were afraid of the criminal activities of the detenu and they apprehended grave danger to their lives and property at petitioner's hands. Hence, they are not willing to come forward and lodge complaints against the petitioner / detenu. However, on taking them into confidence these two witnesses i.e. witness "A" and witness "B" have come forward and given their statements which have been recorded in-camera after giving them an assurance that anonymity will be strictly maintained and they will not be called upon to give evidence in any court of law".

10 We also find on perusal of the in-camera statements that both in-camera statements show that the in-camera statements were verified by the Assistant Commissioner of Police. Thus, it is a fact that the ACP has verified whether the contents of the in-camera statements are true or not. When we ascertained from the noting found at the end of the in-camera statements, we found that the noting as stated earlier, clearly shows that both in-camera statements were verified by the Assistant Commissioner of Police. The averments made in

the affidavit of the detaining authority make it amply clear that the verification done in the present case is about the truthfulness of the in-camera statements. The averments in the affidavit in the present case are similar to the averments in the case of **Zebunnisa Abdul Majid (supra)**. Moreover, as stated earlier, in the case of **Zebunnisa Abdul Majid (supra)**, it was held that "it is, however, not laid down that the detaining authority should expressly state in the grounds of detention that he had verified the contents of statements and found them to be true".

11 Thereafter in support of his contention, Mr. Tripathi placed reliance on a decision dated 13.7.2015 of this Court Bench at Aurangabad in the case of **Ashish Robert Felix Vs. The Commissioner of Police Nagpur City in Criminal Writ Petition No. 390 of 2014 and on the decision dated 18.3.2014 of this Court in Cri. Writ Petition No. 245 of 2014 in the case of Mrs. Mrunali Virendra Lonare Vs. Commissioner of Police and others.**

12 On perusal of the decisions in the case of **Ashish Robert Felix (supra) and Mrs. Mrunali Virendra Lonare (supra)**, we find that the decision in the case of **Zebunnisa**

Abdul Majid (supra) was not cited and hence, the said decision did not come up for consideration in both these cases. Moreover, it appears that in both the cases there are no averments in the affidavit of the detaining authority in relation to the verification of in-camera statements as are found in the present case, hence, both these decisions cannot be made applicable to the facts of the present case. We say so because, in both the decisions we find that there is no reference to any such averment in the affidavit of the detaining authority. Had such averment been there in the affidavit of the detaining authority in both the cases, the learned A.P.P. would have definitely pointed out the same to the Court.

13 Thereafter reliance was placed by Mr. Tripathi on the decision of this Court in the case of **Zabin Salim Hamja Shaikh Vs. A.N. Roy**, reported in **2006 All MR (Cri.) 3324**. Mr. Tripathi pointed out that in the said case, the decision in the case of **Zebunnisa Abdul Majid (supra)** was taken into consideration and yet, the detention order was quashed. However, on perusal of the decision in the case of **Zebunnisa Abdul Majid (supra)**, it is noticed that the Divisional Assistant Commissioner

failed to verify regarding the truthfulness of the incidents as stated in both the in-camera statements. In the said case the Court perused the file and the notings therein and it was observed as under:

"From the file we have noted that the proposal was submitted by the Deputy Commissioner of Police who again in the mechanical manner stated that the incidents were found to be truthful and in any case he was not the officer who did the verification of the witnesses whose statements were recorded in-camera. The material which was placed before the detaining authority along with the proposal submitted by the DCP included the in-camera statements as well and the said statements lacked the legal requirements if they were held to be supporting the order of detention on the ground that the detenu is a dangerous person as defined under the MPDA Act. The learned APP relied upon the judgment of this Court in the case of **Zebunnisa Abdul Majid Vs. M.N. Singh and Ors.** reported in **2001(3) Mh.L.J. 365** and we must note that even in that case it is clear that the ACP had recorded the verification about the truthfulness of the incident."

14 Thus, on going through the decision in the case of **Zabin Salim Hamja Shaikh (supra)**, it is found that the Division

Bench was in agreement with the view taken in the case of ***Zebunnisa Abdul Majid (supra)***. However, as in the case of ***Zabin Salim Hamja Shaikh (supra)***, the file did not show that the Divisional Assistant Commissioner had verified regarding the truthfulness of the incidents as stated in the in-camera statements, and the detention order came to be passed, in such case, it was held that as the file did not reflect that the Divisional Assistant Commissioner had verified the truthfulness of the in-camera statements, later on filing of affidavit by the Assistant Commissioner of Police and the detaining authority would amount to filling in the gaps and such statements cannot be accepted now in support of the contentions made by the Assistant Commissioner of Police and the detaining authority that truthfulness of the incidents mentioned in the in-camera statements were verified. However, in the present case, the file clearly shows that the in-camera statements were verified by the Assistant Commissioner of Police and this material was placed before the detaining authority, hence, it cannot be said that the affidavit of the detaining authority amounts to filling in the gaps.

15 The second contention raised by Mr. Tripathi is found in ground (k) of the petition. In the said ground, it is stated that a representation was sent by the detenu on 26.6.2015 to the State Government making a request for supply of various documents as mentioned in paragraphs (b), (d), (e), (f) and (g) of the said representation. It is further stated in the said ground that if the detenu demands / requests for certain documents referred to in the grounds of detention, it cannot be denied or supplied belatedly. Mr. Tripathi submitted that even as of today he has not been supplied the above mentioned documents which he had requested for in his representation. The representation is annexed at Exh. D to the petition. Ground (b) is in two parts. Ground (b) states that detaining authority has referred to and relied on in-camera statements of witnesses "A" and "B" for arriving at his satisfaction, however, these two statements were not verified inasmuch as truthfulness of the incidents are not verified as well as the fear expressed by the witness is also not verified as per the requirement of law. We have already observed above in earlier paragraphs that both the in-camera statements have been verified by the Assistant Commissioner of Police and the copy

of the verification done by the Assistant Commissioner of Police has been furnished to the detenu. Both the in-camera statements have been verified as per the requirement of law. Thus, there is no merit in this contention.

16 In the second part of ground (b) of the representation, it is stated that dates of incidents are kept blank, hence, a request was made to furnish the dates of incidents mentioned in the in-camera statements. In this connection, it may be stated that the very reason in-camera statements are recorded is that witnesses due to fear of the detenu are not willing to come forward to give their statements against the detenu. It is only after making great efforts and after two witnesses i.e. "A" and "B" were taken into confidence, in-camera statements were recorded. In this view of the matter, the names, addresses, occupation, date and place of incidents in relation to these two in-camera witnesses were not disclosed to the detenu for which the detaining authority has claimed privilege under Article 22(6) of the Constitution of India. Moreover, in Section 8(2) of the MPDA Act, it is stated that nothing required the detaining authority to

disclose facts which it considers to be against the public interest, to disclose. In the in-camera statements of witnesses such particulars are not furnished to the detenu which would enable the detenu to identify the witness. It is in these circumstances that the date of incident has not been furnished to the detenu. Article 22(6) of the Constitution of India and Section 8(2) of the MPDA Act allow the detaining authority to withhold such particulars, hence, if such particulars are not furnished to the detenu, it would not vitiate the detention order.

17 In the decision of this Court in the case of ***Rushikesh Tanaji Bhoite Vs. State of Maharashtra and others***, reported in ***2011 All MR (Cri.) 2081***, it has been held that Section 8(2) of the MPDA Act, 1981 permits the authority to withhold the identity of the witnesses. By this observation, it presupposes that all particulars which would lead to the identification of the witness, can be withheld. These particulars are inclusive of not only the names of the witnesses but also date and place where the incident occurred. It is further noticed that the detaining authority in the grounds of detention has claimed

privilege in relation to the in-camera statements under Art. 22 (6) of the Constitution of India. He has claimed privilege in relation to name, address, occupation, date and place of incident. Looking to the fact that the detenu had created terror in the minds of people due to which, witnesses and victims were not coming forward to depose against him out of fear it was only when witnesses were taken into confidence and were given assurance that two witnesses came forward to give their in-camera statements. Furnishing of particulars whereby the incamera witness could be identified would defeat the object of recording incamera statements.

18 The next paragraph in the representation is paragraph (d) which states that no bail bonds relating to CR No. 635 of 2014 were either placed before the detaining authority or the copies thereof were furnished to the detenu. The detenu had requested to supply copies of bail bond documents to the detenu to enable him to make an effective representation. As far as the request for bail bond is concerned, it is seen that copies of application for bail and the bail order have been furnished to the detenu. All the

necessary material is found in these two documents. In fact, it is seen that the detaining authority has not even made a passing reference to the bail bond in the grounds of detention. In such case, if the detaining authority has not even made a passing reference to the said document in the grounds of detention, non-supply of such document, would not vitiate the detention order.

19 The detenu is required to know and peruse the most important document, which can be called as sheet-anchor of the allegations, to verify the same in context of the grounds. It is in fact, unnecessary to furnish copies of documents to which a casual or passing reference is made by the detaining authority during the course of narration of facts which was not relied upon by the detaining authority to impress his mind in making the order of detention. This has been so held by the Division Bench of this Court in ***Rushikesh Tanaji Bhoite (supra)***. In the present case the sheet anchor is the two CRs and two incamera statements and the fact that bail was granted to the detenu due to which it was possible for the detenu to again indulge in similar activities prejudicial to the

maintenance of public order. The bail application and bail order give all the particulars which are necessary for the detenu to make an effective representation. Thus, non-supply of bail bond cannot vitiate the order of detention.

20 The third document which the detenu has requested for is found in paragraph (e) of his representation which is purportedly a statement of Prashant Ravi Termurne which according to the detenu, is at page no.24 of the compilation. According to the detenu, the statement of Prashant Ravi Termurne does not bear any date, month and year and the detenu has requested for furnishing of the date, month and year of the statement of Prashant Ravi Termurne to enable him to make an effective representation. However, on going through the set of documents furnished to the detenu which have been handed over by Mr. Tripathi the learned counsel for the detenu, it is found that page no. 24 is not at all the statement of Prashant Ravi Termurne. Page no. 24 is in fact the arrest form of the detenu. In such case, there is no question of furnishing any such details as demanded by the detenu in relation to Page no. 24 of the compilation.

21 Thereafter in paragraph (f) of the representation, the detenu has requested for copy of the charge-sheet. It is the case of the detenu that the detaining authority in the grounds of detention has made a reference to the charge-sheet relating to CR No. 635 of 2014, even though no copy of charge-sheet was placed before the detaining authority or supplied to the detenu, hence, the detenu has requested for furnishing copies of the charge-sheet in both the cases. As far as this request is concerned, on going through the compilation of documents furnished to the detenu, we find that the charge-sheets in both CR Nos. 635 of 2014 and 3256 of 2015 have been supplied to the detenu which is seen from the Index of the compilation as well as from page nos. 42 to 47 and 65 to 66 of the compilation. Thus, there is no question of again supplying these charge-sheets to the detenu.

22 Thereafter, in paragraph (g) of the representation, the detenu has made a request for the statement of the accused, co-accused and independent witnesses. It is stated that these documents were neither placed before the detaining authority

nor copies thereof furnished to the detenu and non-supply of these statements has deprived of the detenu from making an effective representation. As far as this request is concerned, it is seen that no reference has been made to any of these documents in the grounds of detention. Thus, it is seen that the detaining authority has not placed any reliance at all on these documents. In such case, it is well settled that documents on which the detaining authority has not placed any reliance, need not be supplied to the detenu.

23 In ***Mst. L.M.S. Ummu Saleema Vs. B.B. Gujaral and another*** reported in ***AIR 1981 SC 1191***, the Supreme Court observed that "every failure to furnish copy of a document to which reference is made in the grounds of detention under section 3(1) of the Act is not an infringement of Art. 22(5), fatal to the order of detention. It is only failure to furnish copies of such documents as were relied upon by the detaining authority, making it difficult for the detenu to make an effective representation that amounts to a violation of fundamental rights guaranteed by Art. 22(5)". In the present case, it is seen that the detaining authority has not even made

a passing reference to any such document/s in the grounds of detention, hence, there is no question of supply of any such document to the detenu.

24 We may also refer to judgment of the Supreme Court in ***Kamarunnissa Vs. Union of India and another, AIR 1991 SC 1640***. The Supreme Court observed therein as under:

"it is not sufficient to say that the detenus were not supplied the copies of the documents in time on demand but it must further be shown that the non-supply has impaired the detenu's right to make an effective and purposeful representation. Following observations of the Supreme Court are material: 'Demand of any or every document, however irrelevant it may be for the concerned detenu, merely on the ground that there is a reference thereto in the grounds of detention, cannot vitiate legal detention order'....."

"In view of the above judgments of the Supreme Court, in our opinion, merely because the document is referred to in the grounds of detention, it is not obligatory on the detaining authority to supply it on demand made by the detenu. It is only such documents whose non-supply would impair the

detenu's right to make an effective representation which would vitiate the order of detention. In the instant case, as we have already stated the X-ray report was not even placed before the detaining authority. The averment made by the detaining authority in the grounds of detention is borne out by other material on record and the copies of that material have been supplied to the detenu. The contention that the charge was under Section 325 of the Indian Penal Code and, therefore, it was essential to supply X-ray report to indicate that the complainant had suffered grievous hurt cannot be accepted because the fact that he had suffered grievous hurt was clearly indicated in remand application and the copy thereof was supplied to the detenu".

25 This Court (Coram: S.C. Dharmadhikari and G.S. Kulkarni, JJ.) in the decision dated 25th June, 2015 in Criminal Writ Petition No. 1391 of 2015 (***Shri. Rahul Ambadas Jadhav Vs. The Commissioner of Police, Solapur and others***) has observed as under:

" 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 detenu."

26 In the present case, it is seen that all the documents which were relied on by the detaining authority on the basis of which the subjective satisfaction has been recorded, have already been furnished to the detenu. Non-furnishing of documents on the request of detenu on which documents the detaining authority has not relied upon and has not even made a passing reference in the grounds of detention would not vitiate the detention order.

27 Thereafter Mr. Tripathi raised the contention that page no.41 of the compilation is not a true translation of page no.40. If manually compared the Marathi translation at Item Nos. 2 and 3 of the said document is not found to be true and correct as there are omissions in the said translation. He further submitted that page no.40 is illegible and incomplete

inasmuch as the last column has not at all been translated. He submitted that as the translation is not true and correct translation and moreover, as the translation of last column of the document was not furnished to the detenu, the detenu could not make an effective representation, hence, the order of detention is illegal and bad in law and liable to be quashed and set aside. This ground has been raised in paragraph C of the Writ Petition. Mr. Tripathi placed reliance on the decision of the Division Bench of this Court dated 26.10.1989 in Cri. Writ Petition No. 915 of 1989 in the case of **Vijay Shrikrishna Padwal Vs. Union of India and Ors.** (Coram: Jahagirdar and Nirgudkar, JJ.) He placed reliance on paragraph 10 of the said decision. In the said paragraph, it is reflected that it is the duty of the detaining authority to furnish to the detenu the copies of the documents to which he referred and on which he placed reliance in the language known to the detenu. The view taken in the case of **Vijay Shrikrishna Padwal (supra)** appears to be that all the documents placed before the detaining authority ought to be furnished to the detenu. However, this is not the correct position in view of the various pronouncements of the Supreme Court. The Supreme Court in the case of

Kamarunnissa (supra), has held in para 14 of the decision that if the document is only referred to by the detaining authority in the grounds of detention, however, if the document is not relied upon by the detaining authority, it need not be supplied to the detenu.

28 Thus, in view of the pronouncement of the Supreme Court in the decision cited above, it is clear that the detaining authority has to furnish to the detenu only documents which have been relied upon by him to issue the order of detention. If the detaining authority has made a passing reference to any document in the grounds of detention, it is not necessary to furnish the same to the detenu. From this it becomes clear that it is not at all necessary to furnish to the detenu a document to which the detaining authority has not even made a passing reference in the grounds of detention.

29 In the present case, page 41 of the compilation is medical certificate of Prashant Ravi Tembhurne. Six injuries are stated in this certificate. According to Mr. Tripathi as far as injuries at Sr.nos. 2 and 3 are concerned, in the original document which is in English, the dimension of the 2nd

injury is given as 2.5 cm. x **1 cm.** x 0.6 cm. and the dimension of the 3rd injury is given as 3 cm x **2 cm** x 0.5 cm. Mr. Tripathi pointed out that in the Marathi translation, the dimension of injury no.2 is mentioned as 2.5 cm. x **1** x 0.6 cm. and the dimension of the 3rd injury is given as 3 cm x **2** x 0.5 cm. Mr. Tripathi pointed out that in the Marathi translation, in the second part of the injuries, it is not mentioned whether the dimension of the injuries was in centimeters or in inches. Mr. Tripathi submitted that due to this, the detenu could not make an effective representation and hence, the detention order is vitiated. As far as this contention is concerned, it is seen that the dimension of first and 3rd part of injury at Sr. Nos. 2 and 3 is mentioned in centimeters, in such case, obviously, the second part of the injury would also be in centimeters. The last part of the injury is shown in centimeter which shows that all the injuries were measured in centimeters. When some part of the injury is described in centimeter, all the parts of the injuries would be bound to be in centimeter. This is common knowledge. In this view of the matter, it cannot be said that any prejudice was caused to the detenu and the right of detenu to make an effective representation, was violated.

30 As far as the last column in this medical certificate at page no.40 is concerned, translation of the lines relating to remarks, has not been furnished to the detenu. On perusal of the injury certificate, it is seen that the nature of the injuries, size of the injuries, place of the injuries, where the injury was situated, type of injuries, type of weapon and age of the injury, have been furnished. The remarks in the last column would obviously be based on the first columns which are mentioned in the medical certificate. Nothing new would be mentioned in the remarks because these remarks would be based only on the first six columns in the injury certificate. There is no grievance that first six columns and the true and correct translation thereof, has not been furnished to the detenu. In this view of the matter, as far as the injury certificate is concerned, sufficient and material particulars thereof, have been furnished to the detenu for him to make an effective representation. In our view, the contents of the last column i.e. remarks column are not material. The Supreme Court in the case of ***Ibrahim Ahmad Batti Vs. State of Gujarat and others*** reported in ***AIR 1982 SC 1500***, has held that it is for the Court

to decide whether the material is relevant or not. Looking to the fact that sufficient description of the injuries have been furnished to the detenu, non-furnishing of translation of the last column, which in our opinion, is not even material, would not affect the right of the detenu to make an effective representation.

31 There is another aspect in relation to this medical certificate. This aspect is that the detaining authority has not made any reference at all in the grounds of detention to this medical certificate. From the pronouncements of the Supreme Court which we have culled out above, it is clear that the document which has not been referred to or relied upon by the detaining authority, need not be furnished and non-furnishing of such document, would not vitiate the order of detention.

32 Mr. Tripathi placed reliance on the decision of this Court in the case of ***Sandip Suresh Ghag Vs. The Commissioner of Police, Mumbai and others*** reported in ***2014 All MR (Cri.) 707***. He pointed out that in the said matter also there were discrepancies in the particulars relating to the

medical certificate and the detention order came to be quashed on that ground. The affidavit of the detaining authority in the present case clearly shows that he has not relied on this medical certificate. In this view of the matter, the ratio laid down by the Supreme Court in the case of ***Ummu Saleema (supra)*** and ***Kamrunissa (supra)*** would apply and non-supply of this document, would not vitiate the detention order. Moreover, these decisions of the Supreme Court on the point of furnishing relied upon documents, referred to documents and documents to which a reference has not even been made in the grounds of detention, were not pointed to the Division Bench of this Court in the case of ***Sandip Suresh Ghag (supra)***, hence, the Division Bench did not have the benefit of going through the same before arriving at its decision.

33 The learned APP has also placed reliance on the decision of the Division Bench of this Court in the case of ***Shadab Siddiq Khan Vs. A.N. Roy, Commissioner of Police Gr. Bombay and others***, reported in ***2006(1) Mh.L.J. 475***. In the said case after relying on the decisions of the Supreme Court in ***Ummu Saleema (supra)*** and ***Kamrunissa (supra)***, this Court in

respect of non-supply of medical report observed as under:

" In view of the above judgments of the Supreme Court, in our opinion, merely because the document is referred to in the grounds of detention it is not obligatory on the detaining authority to supply it on demand made by the detenu. It is only such documents whose non-supply would impair the detenu's right to make an effective representation which would vitiate the order of detention. In the instant case as we have already stated the X-ray report was not even placed before the detaining authority. The averment made by the detaining authority in the grounds of detention is borne out by other material on record and the copies of that material have been supplied to the detenu. The contention that the charge was under Section 325 of the Indian Penal Code and, therefore, it was essential to supply X-ray report to indicate that the complainant had suffered grievous hurt cannot be accepted because that he had suffered grievous hurt was clearly indicated in remand application and the copy thereof was supplied to the detenu."

34 In view of the above, there is no merit in all the three grounds raised by the learned counsel for the petitioner. Hence, the writ petition is dismissed. Rule is discharged.

A.S.GADKARI, J.

ACTING CHIEF JUSTICE

Kandarkar