

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

MONDAY, THE SECOND DAY OF MARCH
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION Nos.32710, 33777, 33338 and 32150 of 2014

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BETWEEN

Saroj Mehendi.

... PETITIONER

AND

The Government of Andhra Pradesh, Rep. by its Chief Secretary,
Secretariat Buildings, Hyderabad and two others.

...RESPONDENTS

**Counsel for the Petitioners: MR. D. PRAKASH REDDY
For MR. D. PURNACHANDRA REDDY
MR. T. NIRANJAN REDDY
For MR. T.NAGARJUNA REDDY**

Counsel for the Respondents: ADVOCATE GENERAL (AP)

The Court made the following:

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COMMON ORDER:

Since the issue involved and grounds raised in these writ petitions, being common, the writ petitions are heard and disposed of by this common order.

WP.No.32710 of 2014:

2. The mother of the detenu is the petitioner herein and seeks a Mandamus to declare the detention order dated 27.08.2014 passed by the second respondent, as confirmed by the first respondent under G.O.Rt.No.3405 General Administration (Law and Order) Department dated 10.10.2014 as illegal and unconstitutional and seeks consequential release of the detenu Mr. Vikram Mehendi alias Vikram.

3. The affidavit of the petitioner states that by order of the second respondent the detenu was detained on the ground that he is a goonda within the meaning of Section 2(g) of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 hereinafter referred to as the Act 1 of 1986.

The detention order was stated to have been reviewed by the Advisory Board on 26.09.2014 satisfying itself that there is sufficient cause for detention. Accordingly, the Government confirmed the order of detention and issued the aforesaid G.O., detaining the petitioner for a period of 12 months from the date of detention i.e. 01.09.2014.

The order of detention served on the detenu shows that there are 20 instances from 02.08.2012 to 14.07.2014 wherein the involvement of the detenu was shown in 10 instances. In para 4 of the affidavit, the petitioner has narrated the manner in which and the place from where the detenu was taken into custody by the Task Force Police and it is alleged that the detenu was later shown to have been involved in various offences while he was away at Myanmar and not in India.

4. Mr. D. Prakash Reddy, learned senior counsel for the petitioner, has contended in support of the writ petition by elaborating the grounds raised in the writ affidavit and *inter alia*, the principal contentions raised are:

1. The order of detention passed by the second respondent is without jurisdiction inasmuch as the Officer, who passed the order, was only an in-charge District Collector in the absence of regular Collector and District Magistrate and as such, under Section 3(2) of the AP Act 1 of 1986 only the officer delegated with power by the State Government viz. the Collector and District Magistrate could have passed the detention order and not by an officer, who is merely holding the post as in-charge.
2. The detention order and the material in support thereof, which was furnished to the detenu was in English and Telugu languages whereas the detenu is conversant only with Hindi language and the in the absence of the translation of the said documents in Hindi language, the detenu has lost a valuable right of making a representation against the detention.
3. Out of the number of cases, referred to in the detention order, the detenu was granted bail in 3 crimes but the said fact was not brought to the notice of the detaining authority and as such, the satisfaction arrived at by the detaining authority suffers from suppression of relevant facts.
4. The detention order referring to the detenu not mending his ways in spite of so many crimes registered and in spite of charge sheets, being filed in those cases, is clearly an erroneous submission of fact made, as no charge sheets are filed in any of the cases referred to in the detention order.

WP.No.33777 of 2014:

5. The wife of the detenu seeks a Mandamus against the orders of the second respondent dated 27.08.2014 detaining the detenu under the AP Act 1 of 1986. The Advisory Board, which has examined the case of the detenu, also confirmed the detention by order dated 25.09.2014 and thereafter, the

first respondent confirmed the order of detention vide G.O.Rt.No.3401 General Administration (Law and Order) Department dated 10.10.2014 detaining the detenu for a period of 12 months from the date of detention i.e. 01.09.2014.

The detention order refers to the involvement of the detenu in 10 crimes between 02.08.2012 and 16.07.2014.

6. Learned counsel for the petitioner has, *inter alia*, elaborated upon the following points in support of the writ petition:

1. The order of detention passed by the second respondent is without jurisdiction inasmuch as the Officer, who passed the order, was only an in-charge District Collector in the absence of regular Collector and District Magistrate and as such, under Section 3(2) of the AP Act 1 of 1986 only the officer delegated with power by the State Government viz. the Collector and District Magistrate could have passed the detention order and not by an officer, who is merely holding the post as in-charge.
2. The affidavit states that the detenu is an illiterate and had studied up to second standard in Urdu medium and that he knows Urdu and Kannada languages only. However, the detention order and the material in support thereof were furnished in English and Telugu languages and thereby, the detenu has lost a valuable right of making a representation against the detention order.
3. The names of the detenu in all the cases registered is shown as Hameed Katikanahalli, however, the petitioner states that the name of detenu is Hameed Khan s/o. Mohd. Khan and the detenu is different from the person found involved in the crimes. Hence, due to mistaken identity, the detenu was taken into custody mistaking him for one Hameed Katikanahalli.
4. The affidavit also refers to various instances and the place from where the detenu was taken into custody and later shown as having been involved in various crimes.
5. The detenu was granted bail in Cr.No.94 of 2014, which was not brought to the notice of the detaining authority and as such, the subjective satisfaction of the detaining

authority is vitiated.

6. The detention order refers to Cr.Nos.52/2014, 69/2012, 244/2013 and 151/2013 before different police stations whereas all these cases were long back transferred to the Forest Range Officer of ... Forest Range and registered as O.R case but that case was not brought to the notice of the detaining authority and as if the crimes are registered before different police stations, the detention order was passed.

WP.No.33338 of 2014:

7. The wife of the detenu has questioned the detention order passed by the second respondent dated 27.08.2014 under AP Act 1 of 1986. The said order was examined by the Advisory Board and on finding the detention as valid, the same was confirmed by the first respondent under G.O.Rt.No.3403 General Administration (Law and Order) Department dated 10.10.2014.

8. Mr. T. Niranjan Reddy, learned senior counsel for the petitioner, *inter alia*, raised various contentions in support of the writ petition.

It may be mentioned that the petitioner had not raised grounds relating to competency of the second respondent in passing the detention order and the said ground was sought to be raised by seeking permission of this Court and as per orders in WPMP.No.44665 of 2014 dated 20.02.2015, the said application, having been ordered, learned senior counsel adopted the arguments of the learned senior counsel for the petitioner in WP.No.32710 of 2014 so far as this ground is concerned viz. the second respondent on the date of passing of the order was neither the Collector nor District Magistrate empowered to pass the said order in terms of Section 3(2) of the AP Act 1 of 1986.

9. Learned senior counsel also raised another ground vide the aforesaid WPMP that the detenu is conversant and understands only Tamil language whereas the detention order and the material in support thereof, which was served to the detenu was in English and Telugu languages. It is also stated

that on request of the detenu,
the detention order and the grounds of detention were served on him in Tamil language only on 07.11.2014 long after lapse of three months from the date of detention and long after this writ petition was filed. Hence, the detenu's right to make an effective representation was denied to him. Learned senior counsel also urged that the detenu was granted bail in 3 of the crimes referred to in the detention order but that fact was not brought to the notice of the detaining authority and thereby, the subjective satisfaction arrived at by the detaining authority is vitiated.

WP.No.32150 of 2014:

10. The brother-in-law of the detenu has questioned the detention order passed by the second respondent on 27.08.2014 under AP Act 1 of 1986 and the Advisory Board, having concurred, the first respondent confirmed the same vide impugned G.O.Rt.No.3400 General Administration (Law and Order) Department dated 10.10.2014.

11. Learned senior counsel for the petitioner, *inter alia*, raised various contentions in support of the writ petition.

It may be mentioned that the petitioner had not raised grounds relating to competency of the second respondent in passing the detention order and the said ground was sought to be raised by seeking permission of this Court and as per orders in WPMP.No.44644 of 2014 dated 20.02.2015, the said application, having been ordered, learned senior counsel adopted the arguments of the learned senior counsel for the petitioner in WP.No.32710 of 2014 so far as this ground is concerned viz. the second respondent on the date of passing of the order was neither the Collector nor District Magistrate empowered to pass the said order in terms of Section 3(2) of the AP Act 1 of 1986.

12. Learned senior counsel also contended that the detention order and the grounds of detention were served on the detenu in English and Telugu

languages whereas the detenu is conversant and understands Urdu language only. Hence, the detenu's right to make an effective representation was denied to him. Learned senior counsel also contended that the detention order refers to 28 crimes but it does not refer to the fact that the detenu was released in 21 crimes and was already on bail in various crimes, which fact also was not brought to the notice of the detaining authority. Hence, the subjective satisfaction reached by the detaining authority is vitiated.

13. Learned Advocate General, who appeared in support of the impugned detention orders, submitted, *inter alia*, that in view of the provisions of Section 29(3) of the Code of Criminal Procedure, the Officer in-charge was fully competent to discharge the function of the District Collector and under G.O.Rt.No.2945 General Administration (SC.A) Department dated 23.08.2014 it was specifically stated that while granting permission to the Collector, Chittoor District to attend 7th Leaders in Governance Programme at Singapore between 25.08.2014 and 02.09.2014, the Joint Collector, Chittoor is kept in-charge of the post of the Collector in Chittoor in the absence of the Collector. Learned Advocate General, therefore, contends that the officer in-charge functions as Collector and District Magistrate for all purposes and was fully competent to pass the detention orders as any other District Collector would have passed.

14. So far as communication of the detention order and the grounds in the language in which the detenu is conversant is concerned, learned Advocate General pointed out that when the detenu was served with the detention order and the grounds, in none of the cases, there was no protest and further, the respective detenu acknowledged the service of the said documents and as stated in the counter affidavit, the detenues were also explained the contents of the said documents. Learned Advocate General also pointed out that the detenu in WP.No.32710 of 2014 has been frequently traveling abroad and even as per his contentions, it cannot be accepted that he is not conversant with English language. Learned Advocate General

contended that even otherwise, as per the request of the respective detenu, the detention order and the grounds were served in the language in which he demanded, hence, there is no prejudice caused on this ground to any of the detenu. To the extent of bails granted to the detenus in some of the criminal cases, learned Advocate General relied upon a specific para in the respective counter affidavits where the detaining authority has specifically states that mere non-mentioning of bails granted, has no way affected the subjective satisfaction of the detaining authority and hence, the order of detention cannot be said to be vitiated on any of the principal contentions raised by the learned senior counsel in these writ petitions.

15. Learned senior counsel for the petitioners as well as learned Advocate General placed reliance upon several decisions in support of their respective contentions, reference to which will be made hereunder at appropriate place.

16. As mentioned above, though the learned senior counsel for the petitioners raised various other ancillary contentions, as referred to above, the main thrust of the submissions being detailed hereinabove, the following points arise for consideration:

1. Whether the detention order passed by the in-charge District Collector, respondent No.2, in each of these cases is valid in terms of Section 3(2) of the AP Act 1 of 1986.
2. Whether the detention order of the respective detenu is vitiated on account of non-furnishing of the detention order and the grounds to the respective detenu in the language in which he is conversant.
3. Whether the subjective satisfaction arrived at by the detaining authority is vitiated, as the orders granting bails to the respective detenu in some of the crimes referred to in the order of detention has resulted in suppression of relevant information from the notice of the detaining authority.

POINT No.1:

17. The detention order having been passed by the in-charge Collector is not in factual controversy in any of these cases and it is also not in controversy that the Officer, who passed the detention order, was in-charge Collector and District Magistrate. The competency of the in-charge Collector and District Magistrate is, therefore, required to be examined in the light of the provisions of Section 20 Cr.P.C as well as Section 3 of the AP Act 1 of 1986 and for the sake of convenience, both the said provisions are extracted hereunder:

“20. Executive Magistrates:-

(1) In every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

(2) The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have ¹[such) of the powers of a District Magistrate under this Code or under any other law for the time being in force [as may be directed by the State Government].

(3) Whenever, in consequence of the office of a District Magistrate becoming, vacant, any officer succeeds temporarily to the executive administration of the district, such officer shall, pending the order of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this code on the District Magistrate.

(4) The State Government may place an Executive Magistrate in charge of sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the sub-divisional Magistrate.

[(4A) The State Government may, by general or special order and subject to such control and directions as it may deem fit to impose, delegate its powers under sub-section (4) to the District Magistrate.]

(5) Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area.”

Section 3 of AP Act 1 of 1986

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“3. Power to make orders detaining certain persons: -

- (1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.
- (2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1) exercise the powers:

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period, from time to time by, any period not exceeding three months at any one time.
- (3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after making thereof, unless, in the meantime, it has been approved by the Government."

18. It would be noticed from the above that sub-clause (3) of Section 20 Cr.P.C specifically provides for a situation when a temporary vacancy arises with regard to the office of the Collector and District Magistrate and the Government is empowered to notify the Officer, who shall discharge the functions of Collector and District Magistrate. It is in those circumstances that the Government had issued G.O.Rt.No.2945 dated 23.08.2014, referred to above, specifically authorizing under clause 4 that '*The Joint Collector, Chittoor is kept in charge of the post of Collector, Chittoor during the absence of Sri Siddharth Jain, IAS*'. The Officer, who passed the detention order was undisputedly the Joint Collector, Chittoor and was placed as in-charge in the post of Collector by virtue of the aforesaid G.O. Since there is no factual dispute with regard to the above, it has be considered whether the said Officer was empowered under Section 3(2) of the AP Act 1 of 1986.

19. As would be noticed from the extracted provisions above, the power of detention exclusively vests with the State Government. However, under Section 3(2) the State is empowered to delegate the said power to the Commissioner of Police and the Collector and District Magistrate. However, the said delegation can only be for a period not exceeding three months. In other words, the Government delegates its power to the specific officers, as above, empowering them to discharge the functions of the Government under Section 3 of the AP Act 1 of 1986. Since the delegation is limited for a period of three months we find that the State Government has been issuing successive G.O's after expiry of every three months. The aforesaid empowerment/delegation by the State Government being in favour of specified officers, as above, it cannot be said that said delegation enures to the officer, who is kept in-charge of the post of Collector and District Magistrate. If such interpretation is accepted, it would amount to holding that the delegate viz. the District Collector could sub-delegate his power to any such officer kept in-charge of the post of the Collector and District Magistrate. Even otherwise also, under Section 20(3) Cr.P.C any officer kept in-charge of the post of the Collector and District Magistrate must discharge all his functions in that capacity but for the purpose of Section 3(2) of the AP Act 1 of 1986, the delegation of power by the State Government is only on the specified officer and is not a general delegation so as to empower any officer discharging the functions of the Collector and District Magistrate. Section 3 of the AP Act 1 of 1986 is required to be read strictly as it provides for a law relating to detention without recourse to due procedure established under law. Thus, the object, language and purpose of Section 3(2) of the AP Act 1 of 1986 would stand defeated if any other officer acting as the Collector and District Magistrate discharges the functions as a delegate of the Government under Section 3(2) of the AP Act 1 of 1986. Hence, even accepting that the Government had kept the Joint Collector in-charge of the post of the Collector and District Magistrate in

terms of Section 20(3) of Cr.P.C, it cannot be said that the Joint Collector was also authorized to pass an order of detention under Section 3(2) of the AP Act 1 of 1986.

20. Learned senior counsel for the petitioner has placed reliance upon a decision of the Kerala High Court in **SINDHU v. STATE OF KERALA**^[1] and the relevant portion is extracted hereunder:

“... We are unable to agree. The expression 'District Magistrate having jurisdiction' appearing in Section 3(2) must be understood in the light of the expressions "his jurisdiction" and "such jurisdiction" appearing later in Section 3(2). They deal with territorial jurisdiction. There are 14 districts in the State and 14 District Magistrates. Each one can exercise jurisdiction only within the territory of his district. The expression "District Magistrate having jurisdiction" read in the context and in the light of the expressions 'his jurisdiction' and "such jurisdiction" appearing later in Section 3(2) must definitely be held to mean the District Magistrate having territorial jurisdiction and not any person occupying the seat of the District Magistrate temporarily to meet administrative exigencies. At any rate, the language of Section 3(2) cannot enable us to construe that any incumbent holding the office of the District Magistrate temporarily will also be competent to pass an order under Section 3(2) in exercise of the delegated authority.

11. The notification issued under Section 3(2) which we have already extracted above also refers only to the District Magistrates of the 14 districts and certainly the expression 'District Magistrate' in the notification is not elastic enough to accommodate within it persons temporarily discharging the duties of the District Magistrate.

That takes us to Section 13(2) of the GC Act. We have already extracted Section 13(2). First of all, it must be noted that Section 13(2) can apply only where powers are conferred under an "Act". In this case the Act does not confer any power.

12. The Act only enables conferment of power by delegation and does not itself confer power on any District Magistrate- Conferment of power is under the notification issued under Section 3(2). Section 13(2), the language of the provision? makes it very clear can apply only where conferment of power is under an "Act". The expression 'Act' is also defined in the GC Act and we extract below Section 2(3) of the GC Act. 2(3); "Act" shall mean a Proclamation or Act of Travancore or Cochin, an Act or Ordinance of Travancore Cochin, an Act passed by the Legislature of the State of Kerala, an Ordinance promulgated by the Governor under Article 213 of the Constitution or, where with respect to the State of Travancore-Cochin or Kerala the

power to make laws is vested in the President or other authority under sub-clause (a) of Clause (1) of Article [357](#) of the Constitution, any law made in exercise of such power.

We have no hesitation to agree that the expression 'law' will include Acts, rules and notifications in a generic sense; but the language of Section 13(2) clearly shows that the conferment of the power must be under an Act to attract Section 13(2) and the Act as defined under Section 2(3) does not at all refer to any notification. Though the expression 'law' may include such notifications under the Act, in this case conferment of power must be held to be under the notification and not under the Act- For that reason, it appears to us that Section 13(2) may not specifically apply to a District Magistrate in charge like the 3rd respondent herein who is really only an Additional District Magistrate.

Moreover, it must also be seen that a contrary intention excludes the application of Section 13(2) of the Act.

Is there a contrary intention expressed in the KAAPA or under the Code to make Section 13(2) inapplicable to an Additional District Magistrate in charge and forbidding him from exercising powers under Section 3(2)? That is the next question to be considered. Contrary intention under Section 13(2) of the GC Act may be express or implied. There is nothing in the language of Section 13(2) that insists on an express statement of the contrary intention in the statutes. We have already adverted to the fact that the Government delegates the powers only to a District Magistrate and to strictly come within the definition of District Magistrate, there must be a notification under Section [20\(1\)](#) appointing the incumbent as a District Magistrate. The scheme of the KAAPA shows that delegated authority to exercise the onerous and sublime function of preventive detention is entrusted by the Government only to chosen and specified District Magistrates, Section [3\(1\)](#) which insists that even the sponsoring must be by an authority of and above the rank of a Superintendent of Police does again persuade us to hold that only a District Magistrate *stricto sensu* can be clothed with jurisdiction to exercise the delegated authority under Section [3\(2\)](#).

16. We take cue from the said reasons which were accepted by the Supreme Court. We take note of the nature of the function to be performed. Draconian powers of preventive detention conferred under the Act can be exercised only by the Government or its specified delegates. Persons temporarily in charge cannot be safely entrusted with the responsibility of discharging such onerous duties. It appears to us that the decision in *Hari Chand* (Supra) can safely help us to come to the conclusion that the power under Section 3(2) cannot be

exercised by anyone other than a District Magistrate properly appointed under Section [20\(1\)](#).”

The Division Bench of the Kerala High Court also referred to and relied upon the ratio of the Supreme Court in **HARI CHAND AGARWAL v. BATALA ENGINEERING CO. LTD** [AIR 1969 SC 483] where similar question with regard to the Additional District Magistrate discharging the functions of a District Magistrate under the Defence of India Act fell for consideration and it was held that when the statute uses the word ‘District Magistrate’ it cannot include the Additional District Magistrate, who is below the rank of the District Magistrate.

21. Learned senior counsel also placed strong reliance upon another decision of the Supreme Court in **STATE OF M.P. v. BHUPENDRA SINGH** ^[2]. The aforesaid decision dealt with the charge sheet filed against the respondent under Sections 4 and 5 of the Explosive Substances Act, 1908. A revision petition filed before the high Court of Madhya Pradesh was allowed on the ground that consent of the Central Government as was required under Section 7 of the said Act was not properly obtained. In the appeal by Special Leave before the Supreme Court, the question that fell for consideration was that the delegation by the Central Government under Section 7 of the Act in favour of the District Magistrate in the State of Madhya Pradesh can be exercised by the Additional District Magistrate as was done in that case. The impugned exercise of power by the Joint Collector and Executive Magistrate as Additional District Magistrate for the District of Gwalior under Cr.P.C. was examined by the Supreme Court and it was held in paras 5 and 6 as under:

“5. It is difficult to accept the submission. The power of granting consent under Section [7](#) of the said Act rests with the Central Government. The Central Government has delegated it to the District Magistrate. It is, in our view, not competent for the State Government to further delegate to the Additional District Magistrate a power of the Central Government which the Central Government has delegated to the District Magistrate.

6. The decision of this Court in Hari Chand Aggarwal v. Batala Engineering Co. Ltd. air 1996 Sc 483 : (1969 Cri LJ 803) is also of some relevance. This Court said that where, by virtue of a notification under Section 20 of the Defence of India Act, the Central Government had delegated its powers under Section 29 to a District Magistrate, an Additional District Magistrate was not competent to requisition property under Section 29 simply because he had been invested with all powers of a District Magistrate under Section 10(2)."

In the light of the ratio of the decisions aforesaid, it has to be held that the order of detention passed by the Joint Collector, who was in-charge to second respondent, was ultravires Section 3(2) of the AP Act 1 of 1986.

Point No.1 is answered in the negative.

POINT No.2:

22. In support of the contention of the learned senior counsel for the petitioner in WP.No.32710 of 2014 that the detenu knew only Hindi language, learned senior counsel placed reliance upon the material papers filed by the respondents, which include the facts of the case in Cr.No.63 of 2014 on the file of the Rompicherla Police Station.

It is stated in the said facts that one ASI translated the said questions posed by the police to the detenu from Telugu to Hindi and answers of the detenu from Hindi to Telugu were recorded. Learned senior counsel relied upon the aforesaid documents to bring to the notice of this Court that even according to the police the detenu was conversant only with Hindi language and as such, non-furnishing of the detention order and the grounds in the language in which he is conversant has resulted in serious prejudice to the detenu as he could neither understand nor make any effective representation against the detention order and thereby, the valuable right of the detenu is lost.

23. In support of the said contention, learned senior counsel relied upon a decision of the Supreme Court in **HARIKISAN v. STATE OF MAHARASHTRA**^[3] wherein it was held in paras 8 and 9 as follows:

"8. We do not agree with the High Court in its conclusion that in every case communication of the grounds of detention in English, so long

as it continues to be the official language of the State, is enough compliance with the requirements of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detenu must be given the grounds in a language which he can understand, and in a script which he can read, if he is a literate person.

9. The Constitution has guaranteed freedom of movement throughout the territory of India and has laid down detailed rules as to arrest and detention. It has also, by way of limitations upon the freedom of personal liberty, recognised the right of the State to legislate for preventive detention, subject to certain safeguard in favour of the detained person, as laid down in cls. (4) & (15) of Art. [22](#). One of those safeguards is that the detained person has the right to be communicated the grounds on which the order of detention has been made against him, in order that he may be able to make his representation against the order of the detention. In our opinion, in the circumstances of this case, it has not been shown that the appellant had the opportunity, which the law contemplates in his favour, making an effective representation against his detention. On this ground alone we declare his detention illegal, and set aside the Order of the High Court and the Order of Detention passed against him.”

The same ratio is culled out from another decision of the Supreme Court, relied upon by the petitioner, in **LALLUBHAI JOGIBHAI PATEL V. UNION OF INDIA** ^[4]. Para 20 of the decision, which is relevant, is, therefore, extracted hereunder:

“20. It is an admitted position that the detenu does not know English. The grounds of detention, which were served on the detenu, have been drawn up in English. It is true that Shri C.L. Antali, Police Inspector, who served the grounds of detention on the detenu, of detention in Gujarati to the detenu. But, that is not a sufficient compliance with the mandate of Article [22\(5\)](#) of the Constitution, which requires that the grounds of detention must be "communicated" to the detenu. "Communicate" is a strong word. It means that sufficient knowledge of the basic facts constituting the 'grounds' should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the 'ground' to the detenu is to enable him to make a purposeful and effective representation. If the 'grounds' are only verbally explained to the detenu and nothing in writing is left with him,

in a language which he understands, then that purpose is not served, and the constitutional mandate in Article [22\(5\)](#) is infringed. If any authority is needed on this point, which is so obvious from Article [22\(5\)](#), reference may be made to the decisions of this Court in *Harikishan v. State of Maharashtra*, (1962) Supp 2 SCR 918 : (AIR 1962 SC 911) and *Hadibandhu Das v. District Magistrate* (AIR 1969 SC 43) (ibid)."

24. Learned senior counsel for the petitioner also made a reference to another Constitutional Bench decision of the Supreme Court in

DR. RAM KRISHAN BHARDWAJ v. STATE OF DELHI ^[5] wherein it was held as follows:

"... The question however is not whether the petitioner will in fact be prejudicially affected in the matter of securing his release by his representation, but whether his constitutional safeguard has been infringed. Preventive detention is a serious invasion of personal liberty and such meager safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court. In this case, the petitioner has the right under article [22\(5\)](#) as interpreted by this Court by majority to be furnished with particulars of the grounds of his detention "sufficient to enable him to make a representation which on being considered may give relief to him." We are of opinion that this constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained, subject of course to a claim of privilege under clause (6) of article [22](#). That not having been done in regard to the ground mentioned in sub-paragraph (e) of paragraph 2 of the statement of grounds the petitioner's detention cannot be held to be in accordance with the procedure established by law within the meaning of article [21](#). The petitioner is therefore entitled to be released and we accordingly direct him to be set at liberty forthwith."

To the same effect is another decision of the Supreme Court in **CHAJU RAM v. STATE OF J AND K** ^[6] where the detenu was an illiterate and was served with detention order and the grounds in English language. The Supreme Court held in relevant portion of para 9 as follows:

"9. ... The detenu is an illiterate person and it is absolutely necessary that when we are dealing with a detenu who cannot read or understand English language or any language at all that the grounds of detention should be explained to him as early as possible in the

language he understands so that he can avail himself of the statutory right of making a representation.

To hand over to him the document written in English and to obtain his thumb impression on it in token of his having received the same does not comply with the requirements of the law which gives a very valuable right to the detenu to make a representation which right is frustrated by handing over to him the grounds of detention in an alien language. We are therefore compelled to hold in this case that the requirement of explaining the grounds to the detenu in his own language was not complied with.”

25. Learned Advocate General, on the contrary, points out from para 5 of the affidavit in WP.No.32710 of 2014 that there was no protest by the detenu when the detention order and the grounds were served in English and Telugu languages. Learned Advocate General also supplemented the said contention by pointing out that the detenu in WP.No.32710 of 2014 was traveling abroad frequently and it is difficult to accept that the detenu did not know English language. Learned Advocate General also placed strong reliance upon a decision of the Supreme Court in **PRAKASH CHANDRA MEHTA v. COMMISSIONER AND SECRETARY, GOVT. OF KERALA**^[7] where also on the facts of that case the Supreme Court held in para 63 as under:

“63. It will be appropriate to deal with the first ground. Whether the grounds should have been communicated in the language understood by the detenus? The Constitution requires that the grounds must be communicated. Therefore it must follow as an imperative that the grounds must be communicated in a language understood by the person concerned so that he can make effective representation. Here the definite case of the petitioner's father is that he does not understand English or Hindi or Malayalam and does understand only Gujarati language. The facts revealed that the detenu Venilal was constantly accompanied and was in the company of his daughter as well as son both of them knew English very well. The father signed a document in Gujarati which was written in English which is his mercy petition in which he completely accepted the guilt of the involvement in smuggling. That document dated 30 June, 1984 contained, inter alia, a statement "I myself am surprised to understand what prompted me to involve in such activity as dealing in Imported Gold. He further asked for mercy. There is no rule of law that commonsense should be put in cold storage while considering constitutional provisions for safeguards against misuse of powers by authorities though these constitutional provisions should be strictly

construed. Bearing this salutary principle in mind and having regard to the conduct of the detenu - Venilal Mehta specially in the mercy petition and other communications, the version of the detenu Venilal is feigning lack of any knowledge of English must be judged in the proper perspective. He was, however, in any event given by 30 June, 1984 the Hindi translation of the grounds of which he claimed ignorance. The gist of the annexures which were given in Malayalam language had been stated in the grounds. That he does not know anything except Gujarati is merely the *ipse dixit* of Venilal Mehta and is not the last Word and the Court is not denuded to its powers to examine the truth. He goes to the extent that he signed the mercy petition not knowing the contents, not understanding the same merely because his wife sent it though he was sixty years old and he was in business and he, was writing a time when he was under arrest his room had been searched, gold biscuits had been recovered from him. Court is not the place where one can sell all tales. The detaining authority came to the conclusion that he knew both Hindi and English. It has been stated so in the affidavit filed on behalf of the respondent. We are of the opinion that the detenu Venilal Mehta was merely feigning ignorance of English.”

Hence, learned Advocate General submitted that the detenus are merely feigning ignorance of the language, in which the detention order and the grounds were served, to raise a contention to invalidate the order of detention.

26. Learned Advocate General also submitted the original representation dated 06.09.2014 against the order of detention and the grounds thereof addressed to the Chief Secretary, Government of Andhra Pradesh, in WP.No.32150 of 2014. Learned Advocate General contends based upon the said representation that it is made in English language. However, in the body of the representation it is mentioned as if the detenu is conversant only with Kannada and Urdu languages. Another representation of the detenu in WP.No.33777 of 2014 dated 20.09.2014 is also produced, which is also in English language.

In that representation also, the detenu has stated that though it is in English language, the detenu is illiterate having studied up to second class in Urdu medium and knows only Urdu and Kannada languages and has only learnt to sign in English. In para 21 of the representation, the detenu specifically

states that he is not in a position to make effective representation, as the important material mentioned in the grounds of detention is not furnished including the bail orders granted in his favour. The detenu also states that the translated copies and xerox copies are illegible and he has to completely depend upon others to know what is there in the said documents. Since the representation earlier referred to is written by the brother-in-law of the detenu and the representation second referred to though purported to be written by the detenu, he specifically states that he has to depend on others and is deprived of right to representation. Therefore, his claim that he knows only Kannada and Urdu languages is required to be taken into consideration.

27. Learned Advocate General also relied upon a Division Bench decision of this Court in WP.No.17439 of 2009 dated 28.10.2009 wherein this Court rejected similar contention on the ground that no complaint was made to the authorities with regard to the communicated order of detention and the grounds being in English language. This Court held that the detenu allegedly is an illiterate but he put his signature in English and as such, the bonafides on the part of the detenu in raising the said ground was doubted and consequently, the said ground was rejected.

28. I find it difficult to accept the contentions of the learned Advocate General in the light of the ratio of the various decisions of the Supreme Court, referred to above and the record relating to the facts of these cases on hand where it is the specific contention of the learned senior counsel for the petitioner, based on the record produced by the respondents themselves, that none of the detenus in these cases were conversant and could understand English and Telugu languages in which the detention order and the grounds were supplied to them. Article 22(5) of the Constitution of India mandates that as soon as the order of detention is made, the authority making the order shall as soon as may communicate such person the grounds on which the order is made so as to enable him the earliest opportunity of making a representation against the said order. The words 'as

soon as' as well as the words 'communicate to such person the grounds ... afford him the earliest opportunity of making a representation' are, therefore, significant. Hence, the prejudice to the detenus and the infraction of Article 22(5) of the Constitution of India being evident on the facts of each of these writ petitions, the infraction of the Constitutional mandate invalidates the order of detention and the grounds in each of these cases.

Point No.2 is also answered in the affirmative.

POINT No.3:

29. As has been noted above, learned senior counsel for the petitioners contended that the detenus having been released on bail in more than one crime listed in the order of detention, it was essential that the said fact was brought to the notice of the detaining authority. It is also argued that the subjective satisfaction of the detaining authority would depend upon whether it is apprised of the orders granting bail to the respective detenu and had that been brought to the notice of the detaining authority, it is possible that the detaining authority would not have reached the conclusion that the detention is necessary in public interest when a competent criminal Court had enlarged the respective detenu on bail.

30. Strong reliance is placed upon a decision of the Supreme Court in **RUSHIKESH TANAJI BHOITE v. STATE OF MAHARASHTRA** ^[8] and particularly, paras 8 to 13 thereof, which are extracted hereunder:

"8. It would be, thus, seen that the order releasing the detenu on bail in the crime registered on August 14, 2010 and the order relaxing the bail condition were passed by the Judicial Magistrate, 1st Class, Dharangaon much before the issuance of detention order dated January 10, 2011. However, the detention order or the grounds supplied to the detenu do not show that the detaining authority was aware of the bail order granted in favour of the detenu on August 15, 2010.

9. In a case where detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper

satisfaction.

10. In the present case, since the order of bail dated August 15, 2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority.

11. A three Judge Bench of this Court in the case of *Rekha v. State of Tamil Nadu* (2011) 5 SCC 244, decided recently held as under:

“**25.** In this connection, it may be noted that there is nothing on the record to indicate whether the detaining authority was aware of the fact that the bail application of the accused was pending on the date when the detention order was passed on 08.04.2010. On the other hand, in para 4 of the grounds of detention it is mentioned that "Thiru. Ramakrishnan is in remand in crime No. 132/2010 and he has not moved any bail application so far". Thus, the detaining authority was not even aware whether a bail application of the accused was pending when he passed the detention order, rather the detaining authority passed the detention order under the impression that no bail application of the accused was pending but in similar cases bail had been granted by the courts. We have already stated above that no details of the alleged similar cases has been given. Hence, the detention order in question cannot be sustained.

12. In *Rekha* (supra), the detention order was held to be bad as the detaining authority was not aware of the fact that the bail application of the detenu was pending on the date when the detention order was passed. In the present case, the detenu was already released on bail but the detaining authority was not aware of the fact of grant of bail to the detenu.

13. A reference to the decision of the majority view in *Vijay Narain Singh v. State of Bihar* (1984) 3 SCC 14, may not be out of the context. In paragraph 32 of the Judgment, Venkataramiah, J. (as His Lordship then was) speaking for the majority observed as follows:

“**32.** ... When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.”

31. As would be evident in that case also, the orders granting bail were not

placed before the detaining authority and as such, the detaining authority was not aware of the bail granted to the detenu. In this context, it is also necessary to notice another contention of the learned senior counsel for the petitioner in WP.No.32710 of 2014 that in none of the cases charge sheets were filed. However, the detention order refers as if in spite of charge sheets, being filed, the detenus have not changed their morals and illegal activities. Evidently,

the detaining authority was misled into believing that charge sheets are filed in the criminal cases, referred to in the order of the detention, whereas, in fact, all those cases are pending investigation and in none of the cases, charge sheets are filed. Hence, on this ground also the subjective satisfaction arrived at by the detaining authority would stand vitiated.

32. Per contra, learned Advocate General submits and relies upon various paras of the counter affidavit where the detaining authority itself has stated that merely not providing the information with respect to bails granted to the respective detenu in some of the cases has no way affected the subjective satisfaction. Learned Advocate General relied upon a decision of the

Supreme Court in **HARADHAN SAHA V. STATE OF WEST BENGAL** ^[9]

and in para 32 thereof, it was held as follows:

“32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention.

An order of preventive detention is also not a bar to prosecution.”

The relevant portion of para 34 is also relied upon to substantiate that the detention order is not vitiated merely because the police arrest person and later enlarges him on bail may not be a bar against the District

Magistrate issuing order for preventive detention.

“34. ... First merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the CrPC would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the CrPC and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behavior of a person based on his past conduct in the light of the surrounding circumstances.

33. In support of the subjective satisfaction of the detaining authority, learned Advocate General relied upon a decision of the Supreme Court in **RAM BALI RAJBHAR v. STATE OF WEST BENGAL**^[10] and particularly, para 13 thereof, which is extracted hereunder, to contend that the detaining authority had reached subjective satisfaction of need to detain the person as preventive action and the said subjective satisfaction cannot be substituted by the discretion of the Court.

“13. We think that the High Court of Calcutta while dismissing the Writ Petition, need not have expressed any opinion about the worth of the affidavit sworn by Lal Monah Jadav, the tea shop owner. That, we think, is the function of authorities constituted under the Act for deciding questions of fact. On a Habeas Corpus petition, what has to be considered by the Court is whether the detention is prima facie legal or not, and not whether the detaining authorities have wrongly or rightly reached a satisfaction on every question of fact. Courts have, no doubt, to zealously guard the personal liberty of the citizen and to ensure that the case of a detenu is justly and impartially considered and dealt with by the detaining

authorities and the Advisory Board. But, this does not mean that they have to or can rightly and properly assume either the duties cast upon the detaining authorities and Advisory Board by the law of preventive detention or function as Courts of Appeal on questions of fact. The law of preventive detention, whether we like it or not, is authorised by our Constitution presumably because it was foreseen by the Constitution-makers that there may arise occasions in the life of the nation when the need to prevent citizens from acting in ways which unlawfully subvert or disrupt the bases of an established order may outweigh the claims of personal liberty.”

34. Learned Advocate General placed reliance upon a decision of the Supreme Court in **SUNILA JAIN v. UNION OF INDIA**^[11] and contended that merely because bails obtained by the respective detenu in some of the cases were not placed before the detaining authority, would not vitiate the subjective satisfaction.

However, a reading of paras 8 to 13 of the said decision would show in that particular case the detaining authority was aware of the orders under which the detenu was released on bail and merely because the bail applications were not placed before the detaining authority,

it was held not to vitiate the subjective satisfaction. In my view, placing of bail application and the bail order before the detaining authority are two different and distinct aspects and hence, the orders granting bail was within the knowledge of the detaining authority,

the said decision holds that mere bail applications, being not before the detaining authority, would not vitiate the detention order. However, that would not apply to the facts of these cases.

35. I have deeply considered the said contentions on either side.

In my view, it was absolutely essential for the detaining authority to have been apprised of all the relevant facts and particularly, where a series of criminal cases against the detenu form the basis of the grounds of detention. It was, therefore, imperative for the detaining authority to be apprised of the

fact that the respective detenu was released on bail in more than one crime listed in the grounds, as that would, *inter alia*, lead to an inference that a competent criminal Court has chosen to enlarge on bail rather than holding the detenu in custody. Secondly, whether the investigation is in preliminary stage or whether the charge sheet is filed is also relevant information required to be apprised to the detaining authority and/or else the detaining authority could be misled into believing that in spite of filing of the charge sheets, the respective detenu did not mend his ways in spite of having been involved in several cases. Obviously, in none of the cases, the charge sheets are filed and the assumption of the detaining authority in that respect to the contrary clearly vitiates the detention order. In my view, therefore, point No.3 also has to be answered in the affirmative and the respective detention orders are liable to be quashed on that ground as well.

In view of the above, the writ petitions are allowed as prayed for. The detenus in the respective writ petitions are entitled to be released and are accordingly directed to be released forthwith unless their presence is required in any other criminal case and subject to appropriate proceedings in such criminal cases. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

March 2, 2015
DSK

[\[1\]](#) 2009 (4) KERT 725

[\[2\]](#) AIR 2000 SC 679

[\[3\]](#) ARI 1962 SC 911

- [\[4\]](#) AIR 1981 SC 728
- [\[5\]](#) AIR 1953 SC 318
- [\[6\]](#) AIR 1971 SC 263
- [\[7\]](#) `985 (SUPP) SCC 144
- [\[8\]](#) 2012 (2) SCC 72
- [\[9\]](#) AIR 1975 SC 2154
- [\[10\]](#) ARI 1975 SC 623
- [\[11\]](#) (2006) 3 SCC 321