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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 1462/2015

% *Judgment dated 28th October, 2015*

RAHUL KHANNA Petitioner

Through : Mr.Gaurav Duggal, Adv.

versus

UNION OF INDIA & ANR Respondents

Through : Mr.Sanjay Jain, ASG, Mr.Anurag
Ahluwalia and Ms.Shreya Sinha, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by the wife of detainee under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the Order or detention dated 12.2.2015 bearing F.No.673/01/2015-CUS. VIII passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (hereinafter referred to as 'COFEPOSA Act'). The petitioner also seeks a direction to set free her husband, who has been illegally detained by an order of detention dated 12.2.2013.
2. Although various grounds have been raised by the petitioner in the present writ petition, however, the learned counsel for the petitioner has primarily pressed the following grounds for quashing the order of detention:

- (i) The detaining authority did not have the benefit of the third retraction statement dated 28.1.2015;

- (ii) No live link between the incident and the detention order, which ground was subsequently not pressed;
 - (iii) Documents relied upon were not supplied, which ground was also subsequently not pressed, as it was pointed out during the hearing that the documents alleged to have not been supplied were in fact supplied to the detainee.
 - (iv) The only ground, which was strongly urged before this court, is that the copies of the relied upon documents i.e. from pages 272 to 311 were illegible and, thus, would amount to non-supply of relevant documents, which were relied upon by the detaining authority, to the detainee.
3. Mr.Duggal, learned counsel for the petitioner, submits that the statement of the petitioner was recorded on 21-22.12.2014. This statement was retracted on 23.12.2014. A second retraction statement was made on 30.12.2014 but the third retraction statement made on 28.1.2015 was not placed before the detaining authority and, thus, the detention order is bad in law and the same is liable to be set aside.
4. Mr.Jain, learned Additional Solicitor General, in response to the above submission, has submitted that the third retraction dated 28.1.2015 was considered by the detaining authority while passing the impugned order, which is evident upon reading of para 21.2 of the detention order. Para 21.2 of the detention order reads as under:

“21.2 On 28.01.2015 DRI moved an application before the ACJM, Siliguri with the request amongst others to reject the bail applications of all six accused (viz. S/Sh. Shyam Sundar Mishra, Sanjay Mishra, Rahul Khanna (i.e. you), Luv Kush Pandey, Bishnu Phuyal and Ang Karma Sherpa) and remand all the accused in judicial custody till the completion of investigation. As informed by

the Government counsel vide letter dated 11.02.2015 that on 28.01.2015, the bail application of S/Shri Shyam Sundar Mishra, and Sanjay Mishra was moved contending that the accused persons are in custody since 18.12.2014; that the case is a Magistrate triable and they are citizens of India and there is no chance of the abscondence (sic.). As further informed by the Government counsel vide letter dated 11.02.2015 that on 28.01.2015 S/Sh. Rahul Khanna (i.e. you) and Luv Kush Pandey filed a joint retraction petition alleging interalia that they (including you) were illegally lifted by DRI officers on 21.12.2014 and they (including you) were produced before the CMM, New Delhi on 23.12.2014; that they (including you) have been falsely implicated in the case and nothing incriminating was recovered from their (including your) respective business premises; that they (including you) want to retract from their (including your) so called voluntary statements, which were taken by the DRI officers forcefully and put them (including you) into fear of death.”

5. Mr.Jain also points out that the earlier two retraction statements were also dealt with by the detaining authority in detail in paras 19, 19.2 and 22 of the detention order. Mr.Jain further submits that all the retraction statements were identical in nature.
6. Mr. Duggal has next contended that illegible documents were supplied to the petitioner along with the grounds of detention and on this ground alone the detention order is liable to be set aside.
7. Mr.Duggal, learned counsel for the petitioner, has placed strong reliance on a decision rendered in the case of ***Union of India v. Ranu Bhandari***, reported at (2008) 17 SCC 348, more particularly paras 26 to 33, which read as under:

“26. We have indicated hereinbefore that the consistent view expressed by this Court in matters relating to preventive detention is that while issuing an order of detention, the Detaining Authority must be provided with all the materials available against the individual concerned, both against him and in his favour, to enable

it to reach a just conclusion that the detention of such individual is necessary in the interest of the State and the general public.

27. *It has also been the consistent view that when a detention order is passed all the material relied upon by the Detaining Authority in making such an order, must be supplied to the detenu to enable him to make an effective representation against the detention order in compliance with Article 22(5) of the Constitution, irrespective of whether he had knowledge of the same or not. These have been recognized by this Court as the minimum safeguards to ensure that preventive detention laws, which are an evil necessity, do not become instruments of oppression in the hands of the concerned authorities or to avoid criminal proceedings which would entail a proper investigation.*

28. *In most cases the decision of this Court have gone in favour of detenu when even one of the grounds of detention did not satisfy the rigors of proof of its genuineness as a foundational fact in support thereof. The decisions rendered in Ashadevi's case (supra), Mehrunissa's case (supra), Ayya @ Ayub's case [(1989) 1 SCC 374] and Ahamedkutty's case, all referred to hereinbefore, have relied on the principle that although the State is empowered to issue orders of preventive detention, since the liberty of an individual was in question, such power should be exercised by the Detaining Authority on consideration of relevant material, both against and in favour of the individual concerned, to arrive at a just conclusion that his detention was necessary in the interest of the public and to prevent him from continuing to indulge in activities which are against the public interest and the interest of the State.*

29. *This brings us to the next question as to whether even such material as had not been considered by the Detaining Authority while issuing the detention order, is required to be supplied to the detenu to enable him to make an effective representation against his detention.*

30. *The decisions cited by the Learned Additional Solicitor General in support of his contention that all documents mentioned in the detention order were not required to be served on the detenu, such as in J. Abdul Hakeem's case (supra), takes note of the earlier decisions in Ahamedkutty's case (supra) and Radhakrishnan Prabhakar's case (supra) which had make it mandatory for the*

Detaining Authority to supply copies of all documents which had been relied upon by the Detaining Authority to the detenu, whether he had knowledge of their contents or not. Of course, in Radhakrishnan Prabhakar's case (supra) it was also made clear that there is no legal requirement that a copy of every document mentioned in the order has to be supplied to the detenu. What is, therefore, imperative is that copies of such documents which had been relied upon by the Detaining Authority for reaching the satisfaction that in the interest of the State and its citizens the preventive detention of the detenu is necessary, have to be supplied to him. Furthermore, if in this case, the detenu's representation and writ petition had been placed before the Detaining Authority, which according to the detenu contained his entire defence to the allegations made against him, the same may have weighed with the Detaining Authority as to the necessity of issuing the order of detention at all."

8. In reply to the submission made by Mr. Duggal, learned Additional Solicitor General submits that copies of legible documents were supplied to the petitioner. Reliance on the Receipt dated 18.2.2015, which reads as under:

"Receipt dated 18-2-2015

Received grounds of detention issued vide F no 673/01/2015-CUS-VII dt 12-2-2015 by the Joint Secretary (COFEPOSA), Ministry of Finance, Department of Revenue, CEIB, New Delhi, running into 55 pages (fifty five pages only) along with the legible copies of List of relied upon documents and legible copy of relied upon documents running into 464 pages (including RUD from page 416 (1) to 416 (156).

R4D = Relied upon documents = 1 to 416 pages including 416 (1) to 416 (156). List of RUD = 6 pages (6 pages)

The Grounds of detention have been read over to me in english and explained to me in Hindi and I have understood the grounds of detention.

DATE 18-2-2015

*-SD- 18.2.2015
(RAHUL KHANNA)
COFEPOSA detenu
Siliguri Special Correctional home
Siliguri
West Bengal”*

9. Additionally, it is submitted by learned Additional Solicitor General that the grounds of detention were read over and explained to the detenu in Hindi and he had understood the same.
10. Mr.Jain further submits that the detenu has failed to show that in the absence of copies of legible documents whether any prejudice was caused to the detenu or not. Mr.Jain submits assuming the copies of the documents at pages 272 to 311 were illegible, no prejudice was in fact caused to the petitioner. Mr. Jain has also drawn the attention of the Court to the detention order, more particularly para 24.1 onwards, wherein in a tabulation form, details of mobile number, mobile service provider, person using the number, mobile number issued in the name of the person and address of the subscriber have been extracted with respect to the call conversations. It is, thus, contended that contents of those documents, which are illegible, stand extracted in the detention order, which run into approximately seven pages.
11. The sum and substance of the arguments of learned Additional Solicitor General is that illegible documents are the details of Call Detail Records (CDRs) and Subscriber Detail Records (SDRs) of various persons but what has been considered by the detaining authority are the relevant extracts, which connect the detenu with the call records, which portion stands duly extracted in the detention order and, thus, the petitioner

cannot claim any prejudice was caused to the detenue, as the relied upon information stand communicated to the detenue.

12. Mr.Jain has also placed reliance on a decision rendered by the Supreme Court of India in the case of ***State of Tamil Nadu And Another v. Abdullah Kadher Batcha And Another***, reported at (2009) 1 SCC 333 wherein it has been held that it is not a requirement that a copy of each and every document mentioned in the detention order is to be provided, but which is mandatory is that those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him. Paras 4 to 7 read as under:

“4. The High Court observed that in view of non supply of the documents a protection available, under Article 22(5) of the Constitution of India, 1950 (in short the ‘Constitution’), was violated. The High Court further held that in the absence of the required documents the detention was rendered illegal and accordingly the habeas corpus petition was allowed.

5. In support of the appeal it has been stated that the documents in question which were requested by the detenu to be supplied had nothing to do with the order of detention. It was pointed out that there is a difference between the narration of facts and the ground of detention. Undisputedly, the copy of the order in the writ petition which was sought was in fact supplied though at a later point of time. It is not understood as to how the order passed in writ petition which was dismissed can be a document about which the detenu had no knowledge. The High Court erroneously came to the conclusion that the relied upon documents were not supplied. Actually, the factual scenario is just to the contrary. As rightly contended by learned counsel for the State the documents were read over and an endorsement to that effect has been made by the detenu.

6. In Radhakrishnan Prabhakaran v. State of T.N. and Ors. (2000 (9) SCC 170, it was observed as follows:

"8. We may make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him. It is admitted by the learned counsel for the petitioner that the order granting bail has been supplied to him. Application for bail has been submitted by the detenu himself when the order of detention was passed which was subsequent to the order granting bail. We cannot comprehend as to how a prior order rejecting bail would be of any relevance in the matter when it was later succeeded by the order granting bail. But learned counsel emphasised that the counter filed by the Department was a relevant document, a copy of which has not been supplied to him."

The view in Radhakrishnan Prabhakaran's case (supra) was reiterated in J. Abdul Hakeem v. State of T.N. and Ors. (2005 (7) SCC 70) and Sunila Jain v. Union of India and Anr. (2006 (3) SCC 321).

7. The Court has a duty to see whether the non supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non supply of the documents called for had any effect on the detenu and/or whether non supply was prejudicial to the detenu. Merely because copies of some documents have been supplied they cannot by any stretch of imagination be called as relied upon documents. While examining whether non supply of a document would prejudice a detenu the Court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non supply thereof would prejudice to the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced."

13. While relying on the aforesaid decision, learned Additional Solicitor General submits that the Court must satisfy itself to see whether non-supply of any document in any way prejudiced the case of the detainee or that he was prevented from making an effective representation in the absence of these documents.
14. Mr.Jain also submits that in the present case the first representation was made on 31.3.2015, which was a detailed representation, running into more than 50 paragraphs, wherein the wife of the detainee had raised an objection for non-supply of certain documents. An objection was also raised with regard to the illegible documents.
15. A reading of the representation, however, would show that no prejudice would in fact cause to the detainee as the representation was exhaustive in nature. Para 30 reads as under:

“30. That the various mobile nos including 9816072296, 9851150553, 9841575566, 7379074678, 8800716174, 8768400943, 8443038860, 9779808323404, 97779813010617, 9779313013559, 9903697057, 7076726589, 8860598297, 8375849147, 8800716174, 9903697057, 9717120620, 7579149508 have been mentioned in the grounds of detention. No details of any enquiry made with the service providers and the subscribers of the said mobiles have been disclosed in the grounds of detention.”

16. Mr.Jain further submits that para 30 of the representation is factually incorrect as Para 24.1 onwards of the detention order provides all the necessary details.
17. We have heard learned counsel for the parties and given our thoughtful consideration to the matter. In the present case, an order of detention was passed with a view to prevent the petitioner from smuggling of goods, transportation, concealment of smuggled goods and dealing in smuggled

goods in future.

18. The first submission of learned counsel for the petitioner is that the order of detention is liable to be quashed as the detaining authority did not have benefit of the third retraction statement dated 28.1.2015. We find this submission of learned counsel for the petitioner to be factually incorrect as para 21.2 of the detention order, which has been reproduced in Para 4 aforegoing, has made a reference to the joint retraction dated 28.1.2015. Thus, the first submission of learned counsel for the petitioner is without any force.
19. The only other ground pressed before us was that the copies of relied upon documents from pages 272 to 311 were illegible and on this ground the order of detention should be quashed. Learned Additional Solicitor General has drawn the attention of the Court to the receipt dated 18.2.2015, which is reproduced in para 8 aforegoing, in support of his plea that while receiving the documents the petitioner had categorically stated that he had received legible copies of relied upon documents. This submission of Mr.Jain seems attractive but having examined the documents in Court, we find that even if such a receipt had been issued the fact remains that the documents were illegible.
20. The legal issue, which arises for consideration as to whether on account of illegible documents did the detainee suffer any prejudice or not. The Supreme Court in the case of *State of Tamil Nadu And Another* (supra) has held that there is no legal requirement that a copy of every document, which is mentioned in the detention order, is to be supplied to the detainee, but what is important is that copies of all those documents, as have been relied upon by the detaining authority for reaching the satisfaction that preventive detention of the detainee is necessary, are to be supplied to the detainee. It has further been held that the Court is duty bound to ascertain

as to whether non-supply of any document has in any way prejudiced the case of the detainee.

21. Applying the law to the facts of the present case, we find that the illegible documents have been referred to in the detention order and legible copies were required to be supplied to the detainee, however, attention of the Court has been drawn by the learned Additional Solicitor General to Para 24.1 onwards of the detention order wherein tabulations have been extracted showing mobile number, names of the mobile service provider, person using the mobile number, the mobile number issued in the name of the person and the address of the subscriber with respect to call conversations, all of which are the documents, which have been relied upon by the detaining authority for reaching the satisfaction that preventive detention of the detainee is necessary.
22. In view of the tabulations setting out clearly the necessary details, it cannot be said that the detainee has suffered any prejudice on account of illegible documents having been supplied, as the extracts of those very documents have been detailed in para 24.1 onwards running into almost nine pages of the detention order.
23. In view of above, we find no grounds to entertain the present writ petition, the same is without any merit and is dismissed accordingly. No costs.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

October 28, 2015/msr