

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

**HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

WRIT PETITION No.5729 OF 2016

ORDER: (Per Hon'ble Sri Justice A. Shankar Narayana)

The detenu herein is one Baddam Trilok Prasad alias Nagole Babu, son of Jagannadham, resident of Jaipuri Colony, Nagole, L.B. Nagar, Hyderabad, who is termed as 'Immoral Traffic Offender' as defined in clause (i) of Section 2 of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act No.1 of 1986) (for short 'the Act'), since he indulged in illegal activities of procuring gullible girls and women from other parts of the State, dragging the innocent major and minor women into prostitution and living on the earnings of prostitution, thereby highly endangering to the family system, harmful to the inhabitants of the locality, creating embarrassing situation to the families and also said activities leading to social unrest, contact wide spread contagious and sexually transmitted diseases like HIV, Syphilis, Gonorrhea etc, thus, endangering public health at

large which activities are prejudicial to the maintenance of public order and public health at large and thereby passed the order of detention by respondent No.2 on 23-11-2015 in Proceedings No.55/PD/CCRB/CUB/2015 against him.

2. His wife - Smt. B. Rajani filed the instant writ seeking a *Habeas Corpus* directing the respondents to release the detenu forthwith by setting aside the detention order passed by respondent No.2.

i) In the grounds, the petitioner states that the order of detention was passed after a gap of five months and, as such, the grounds of detention are stale, and there is no nexus between the grounds of detention and the crimes of which, the impugned order was passed.

ii) There is no material to warrant the detaining authority to exercise its power under the Act 1 of 1986 by arriving at the subjective satisfaction, as the Sponsoring Authority has failed to produce the relevant material, such as bail orders and bail applications before respondent No.1 before passing the order of detention and, thus, the detention order is vitiated.

iii) Respondent No.2 passed the order of detention in a mechanical manner basing on the

recommendation of the sponsoring authority and, thus, it lacks application of mind.

iv) The offences alleged against the detenu can be tried under general law before competent Criminal Courts and does not warrant invocation of the detention laws.

v) No approval was granted by respondent No.1 within the mandatory period of 12 days prescribed under the Act.

vi) The detention order was passed against the detenu, when the detenu himself was in judicial custody by the time the order was passed and, therefore, the question of indulging in such activities again does not arise.

vii) There was enormous delay in passing the order as proposals were made in the month of June, 2015 itself for issuing detention order. Since out of ten crimes relied on, eight crimes relate to the year 2014 and two crimes relate to 2015 and, as such, the crimes on which, the detaining authority relied on has no nexus with one another.

viii) The detaining authority failed to furnish copies to the detenu in the language known to him i.e., Telugu to enable him to make effective representation.

ix) The order of detention and the grounds of detention were served in Telugu language, but the

other papers on which the detaining authority relied on were served in English with which the detenu was not conversant and sought to set aside the order of detention.

3. Respondent No.2 - Commissioner of Police, Cyberabad Commissionerate, Hyderabad, filed counter having narrated the events mentioned in the order of detention and grounds of detention.

i) In respect of the ground that respondent No.2 without even referring to the bail orders granted by the competent Criminal Courts passed the order of detention in mechanical manner basing on the recommendations of the Sponsoring Authority, it is stated in the counter that they are all incorrect and, in fact, in the crime history of the detenu, it was specifically stated that he continued to indulge in offences after coming out on bail one after the other in earlier cases.

ii) In respect of ground that respondent No.1 failed to accord permission to approve the order of detention within a mandatory period of 12 days prescribed under the Act, nor placed the matter before the Advisory Board within three weeks, respondent No.2 states that the detention order was passed on 23-11-2015 and the detenu was detained on the same day and the Government approved the same on 03-12-2015 in

G.O.Rt.No.3172 of General Administration (Law and Order) Department i.e., within 12 days as required under Section 3 (3) of the Act and, accordingly, placed the matter before the Government on 14-12-2015 through Government letter No.422/L&O/A2/2015-1 within three weeks from the date of his detention as required under Section 10 of the Act, and even the Advisory Board rejected the case of the petitioner on 08-01-2016 and submitted its report to the Government within seven weeks from the date of his detention as required under Section 11 (1) of the Act and, therefore, the said grounds are without any merit.

iii) In regard to other grounds that the detention order was examined when the detenu was in judicial custody and when no application for bail was pending consideration in respect of the said crime, the question of indulging in such activities by the detenu does not arise and other incidental grounds referred to in the above, respondent No.2 states that though, series of cases were registered against the detenu since 2008 for similar offences, wherein he was arrested and released on bail, he did not mend his attitude and again involved in four cases referred to in the grounds of detention and after release in two cases, he again involved in similar offences in

Crime Nos.491 of 2014 of P.S. Vanastalipuram, 352 of 2015 of P.S. Chaitanyapuri registered against him under Sections 3, 4 and 5 of PIT Act and, therefore, there is no merit in the said submission.

iv) Concerning non-supply of copies of documents in his known language i.e., Telugu, respondent No.2 states that the detenu was read over and explained the contents of grounds of detention and having understood the same, he acknowledged the same by signing his name in English only and, therefore, the allegation that he is not conversant with English and that he knows only Telugu is false. It is stated that the gist of the offences committed by the detenu were translated in Telugu language and served on him and, therefore, no prejudice would be caused to the detenu.

4. Heard Sri Challa Dhanamjaya, learned counsel for the petitioner, and the learned Government Pleader for Home appearing for the respondents.

5. The learned counsel makes the following submissions:

i) On the first ground that the order of detention vitiates for the reason that the detenu was in judicial custody as on the date of passing of

the detention order i.e. 23-11-2015, the learned counsel places reliance on the decisions of the Hon'ble Supreme Court in **N. Meera Rani v. Government of Tamil Nadu and another**^[1], **Dharmendra Suganchand Chelawat v. Union of India and others**^[2], **Kamarunnisa v. Union of India and another**^[3], **Union of India v. Paul Manickam and another**^[4], **Rekha v. State of Tamil Nadu**^[5], and the Hon'ble Division Bench of this Court in **V. Uma Maheshwari v. The State of Telangana**^[6].

ii) In the context of failure to refer to the orders of bail in the order and grounds of detention which vitiates order of detention, the learned counsel places reliance on the decisions of the Hon'ble Supreme Court in **M. Ahamedkutty v. Union of India and another**^[7], **State of U.P. v. Kamal Kishore Saini**^[8], **V. Muragesh v. Collector and District Magistrate, Chittoor and others**^[9], **Durgam Subramanyam v. Govt. of A.P., rep. by its Chief Secretary, Hyderabad and others**^[10] and **Rushikesh Tanaji Bhoite v. State of**

Maharashtra and others [\[11\]](#).

iii) On the third ground that failure to furnish the bail orders before the detaining authority for its examination in recording its satisfaction and non-supply of the same to the detenu by the detaining authority, the learned counsel places reliance on the decisions of the Hon'ble Supreme Court in **Ramachandra A. Kamat v. Union of India and others** [\[12\]](#), **Smt. Icchu Devi Choraria v. Union of India** [\[13\]](#), **Shri Lallubhai Jogibhai Patel v. Union of India and others** [\[14\]](#), **Mehrunissa v. State of Maharashtra** [\[15\]](#), **Smt. Shalini Soni and others v. Union of India and others** [\[16\]](#), **Rushikesh Tanaji Bhoite's Case** (Supra 5), and **Vasnthu Sumalatha v. State of Andhra Pradesh** [\[17\]](#).

iv) On subjective satisfaction and in support of the ground that the detaining authority has passed the order of detention in a mechanical manner, on vague, irrelevant and non-existent grounds, the learned counsel places reliance on the decisions of the Hon'ble Supreme Court in **K. Nageswara Naidu v. Collector and**

**District Magistrate, Kadapa, Y.S.R. District,
Andhra Pradesh** [\[18\]](#).

v) The learned counsel also raised ground that the approval was not made within the mandatory period of 12 days prescribed under the Act and, therefore, the same is liable to be set aside.

Thus, according to the learned counsel for the petitioner, orders of detention passed by respondent No.2 as confirmed by respondent No.1 are unsustainable and, therefore, to set aside the same, letting the detenu free from detention.

6. On various contentions raised by the learned counsel, the learned Government Pleader for Home, in relation to subjective satisfaction recorded by the detaining authority, places reliance on the decision of the Hon'ble Supreme Court in **D.M. Nagaraja v. Government of Karnataka and others** [\[19\]](#). The Hon'ble Supreme Court while extracting various principles laid down by the Constitution Bench in **Haradhan Saha v. State of West Bengal** [\[20\]](#) in the context of the object of preventive detention held in paragraph No.9 thus:

“9. The essential concept of preventive detention is that the detention of a person is not to

punish him for something he has done but to prevent him from doing it. Even, as early as in 1975, the Constitution Bench of this Court considered the procedures to be followed in view of Articles 19 and 21 of the Constitution. [In Haradhan Saha vs. State of West Bengal & Ors.](#) (1975) 3 SCC 198, the Constitution Bench of this Court, on going through the order of preventive detention under Maintenance of Internal Security Act, 1971 laid down various principles which are as follows:-

".....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 Code of Criminal Procedure 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 Code](#) of Criminal Procedure 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 jeopardize 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 (sic) the order.

Fifth; the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances."

i) The learned Government Pleader also places reliance on the decision in **G. Reddeiah v. Government of Andhra Pradesh and another**^[21], rendered by the Hon'ble Supreme Court, wherein it was held that the detaining authority subjectively satisfied about the offences levelled against the detenu, habituality in continuing the same, difficult to control him under the normal circumstances, the detaining authority is free to pass an appropriate order under Section 3 of the Act by fulfilling the conditions stated therein.

ii) Concerning submission of the learned counsel based on the decisions in **Rekha's Case** (Supra 5) and **Yumman Ongbi Lembi Leima v. State of Manipur**^[22], that the offences herein

are of a nature which can be dealt with under general law before the criminal Courts and taking recourse to the provisions of the Preventive Detention is unwarranted, the learned Government Pleader places reliance on the decision of the Hon'ble Supreme Court in **Smt. Hemlata Kantilal Shah v. State of Maharashtra and another**^[23], extracting the law laid down by the Hon'ble Supreme Court earlier in **K.M. Chokshi v. State of Gujarat**^[24] stated in paragraph Nos.20 and 21 thus:

“ 20. The next point urged by Mr. Ram Jethmalani is that in the instant case, the proper course for the Government was to prosecute and convict the detenu for the offence, if any, for violation of the provisions of the Customs Act. In support of his contention he cites a decision of this Court reported in [1980] ; S.C.R. 54. In that decision, the Court after reviewing a number of cases summarised the law as follows:-

"The ordinary criminal process is not to be circum- vented or short-circuited by ready resort to preventive detention. But, the possibility of launching a criminal prosecution is not an absolute bar to an order of preventive detention. Nor is it correct to say that if such possibility is not present to the mind of the detaining authority the order

of detention is necessarily bad. However, the failure of the detaining authority to consider the possibility of launching a criminal prosecution may, in the circumstances of a case, lead to the conclusion that the detaining authority had not applied its mind to the vital question whether it was necessary to make an order of preventive detention. Where an express allegation is made that the order of detention was issued in a mechanical fashion without keeping present to its mind the question whether it was necessary to make such an order when an ordinary criminal prosecution could well serve the purpose, the detaining authority must satisfy the Court that the question too was borne in mind before the order of detention was made. If the detaining authority fails to satisfy the Court that the detaining authority so bore the question in mind the Court would be justified in drawing the inference that there was no application of the mind by the detaining authority to the vital question whether it was necessary to preventively detain the detenu."

21. The rule laid down is that a prosecution or the absence of A it is not an absolute bar to an order of preventive detention; the authority may prosecute the offender for an isolated act or acts of an offence for violation of any criminal law, but if it is satisfied that the offender has a tendency to go on violating such

laws, then there will be no bar for the State to detain him under a Preventive Detention Act in order to disable him to repeat such offences. What is required is that the detaining authority is to satisfy the Court that it had in mind the question whether prosecution of the offender was possible and sufficient in the circumstances of the case. In some cases of prosecution it may not be possible to bring home the culprit to book as in case of a professional bully, a murderer or a dacoit, as witnesses do not come forward to depose against him out of fear, or in case of international smuggling, it may not be possible to collect all necessary evidence without unreasonable delay and expenditure to prove the guilt of the offender beyond reasonable doubt.”

iii) The learned Government Pleader places reliance on the decision in **Joydeb Gorai v. State of West Bengal**^[25], rendered by a larger bench of the Hon’ble Supreme Court, wherein it was held that confirmation of order of detention within three months from the date of the arrest is valid, following the decisions earlier rendered in **Deb Sadhan Roy v. State of West Bengal**^[26], **Ujjal Mandal v. State of West Bengal**^[27].

iv) In the context of effect of passing order

of detention while the detenu was in judicial custody, the learned Government Pleader places reliance on the decision rendered by the Constitution Bench of the Hon'ble Supreme Court in **Rameshwar Shaw v. District Magistrate, Burdwan and another**^[28]. The Hon'ble Supreme Court while observing that the question as to order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case, dealt with illustratively in paragraph No.12 thus:

“12. As an abstract proposition of law, there may not be any doubt that s. 3(1)(a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail. Take for instance, a case where a person has been sentenced to rigorous imprisonment for ten years. It cannot be seriously suggested that soon after the sentence of imprisonment is pronouncement on the person, the detaining authority can make an order directing the detention of the said person after he is released from jail at the end of the

period of the sentence imposed on him. In dealing with this question, again he considers of proximity of time will not be irrelevant. On the other hand, if a person who is undergoing imprisonment, for a very short period, say for a month or two or so, and it is known that he would be soon released from jail, it may be possible for the authority to consider the antecedent history of the said person and decide whether the detention of the said person would be necessary after he is released from jail, and if the authority is bona fide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely to be released. The antecedent history and the past conduct on which the order of detention would be based would, in such a case, be proximate in point of time and would have a rational connection with the conclusion drawn by the authority that the detention of the person after his release is necessary. It may not be easy to discover such rational connection between the antecedent history of the person who has been sentenced to ten years' rigorous imprisonment and the view that his detention should be ordered after his is released after running the whole of his sentence. Therefore, we are satisfied that the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in

the circumstances of each case.”

v) In **Collector & District Magistrate, West Godavari District, Eluru, A.P. and others v. Sangala Kondamma** [\[29\]](#) relied on by the learned Government Pleader, the Hon’ble Supreme Court in the context of plea of the detenu that the order is based on stale ground held that if the grounds form a chain of incidents which are proximate to each other and last of the incidents is proximate to the date of proposed detention, held even if the first few incidents are not proximate to the date of detention, detention order cannot be set aside on ground of being stale.

vi) In **Vijay Kumar v. Union of India and others** [\[30\]](#) relied on by the learned Government Pleader in the context of validity of detention order, the Hon’ble Supreme Court while observing that if the detaining authority is aware that the detenu is already in jail under the compelling reasons for detention are apparent from the grounds of detention, the order does not vitiate held in paragraph No.15 thus:

“15. On a conspectus of the above decisions, we are of the view that when a detenu is already under detention for an offence, whether bailable or non-bailable, the detaining authority will take into

his consideration the fact of detention of the detenu and, as laid down in Sashi Aggarwal's case (supra), there must be compelling reasons to justify his preventive detention in spite of the fact that he is already under detention on a charge of a criminal offence. There must be material for such compelling reasons and the material or compelling reasons must appear from the grounds of detention that will be communicated to the detenu. In other words, two facts must appear from the grounds of detention, namely,

- 1) awareness of the detaining authority of the fact that the detenu is already in detention and
- 2) there must be compelling reasons justifying such detention, despite the fact that the detenu is already under detention."

7. We have perused the order of detention, grounds of detention and the other material on record.

On subjective satisfaction in passing order of detention and making confirmation order:

8. We have referred to the decision in **D.M. Nagaraja's Case** (Supra 19), in which, the principles laid down by the Constitution Bench of the Hon'ble Supreme Court in **Haradhan Saha's Case** (Supra 20) were extracted. The five-principles laid down in **Haradhan Saha's Case**

would answer the grounds raised by the petitioners in all these writ petitions. They being; 1) that recourse to preventive detention laws is not bar when detenu is liable to be tried in a criminal Court; 2) arresting a person by the police and enlarging him on bail and initiating action to prosecute him under the Code of Criminal Procedure is not a bar in passing order of detention; 3) passing detention order while the detenu is in jail custody for a fair length of time; 4) pendency of prosecution will not violate the order of detention; and 5) passing of an order of detention is only a precautionary measure and based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.

i) On examination of the order of detention and grounds of detention and confirmation order, we find that the detenu was involved in ten crimes but four of the crimes were rested on by the detaining authority stating that the detenu has been indulging in illegal activities of procuring gullible girls and women from other parts of the State, dragging the innocent major and minor women into prostitution and living on the earnings of prostitution, thereby highly endangering to the family system, harmful to the inhabitants of the

locality, creating embarrassing situation to the families and also said activities leading to social, contact wide spread contagious and sexually transmitted diseases like HIV, Syphilis, Gonorrhea etc., thus, endangering public health at large which activities are prejudicial to the maintenance of public order and public health at large.

ii) We, therefore, find that the subjective satisfaction recorded by the detaining authority does not suffer from want of application of mind, when kept in view, the impact of the activities of detenu in all the crimes endangering human life. Thus, the activities of the detenu and the satisfaction recorded by the authorities squarely fall within the four corners of the law laid down by the Hon'ble Supreme Court in **Kanuji S. Zala v. State of Gujarat and others**^[31], wherein it was held that the detaining authority when specifically mentioned that the activities of the detenu was likely to cause harm to the public health, by itself is sufficient to amount to affecting adversely the public order as defined in the Act.

ON NON-SUPPLY OF BAIL ORDERS AND BAIL PETITIONS

9. The main argument of the learned counsel for the petitioner is that the bail orders,

on which reliance was placed by respondents in passing the order of detention, were neither placed before him nor copies there-of, were supplied to the detenu and, thus, vitiates orders of detention.

i) We have already referred to in the above the decisions relied on by the learned counsel in **M. Ahamedkutty's Case** (Supra 7) and other decisions in **Kamal Kishore Saini's Case** (Supra 8),

V. Muragesh's Case (Supra 9), **Durgam Subramanyam's Case** (Supra 10) and **Rushikesh Tanaji Bhoite's Case** (Supra 11), in the context of non-examination of the orders of bail by the detaining authority in the order of detention, and the decisions in **Ramachandra's Case** (Supra 12), **Smt. Icchu Devi Choraria's Case** (Supra 13), **Shri Lallubhai Jogibhai Patel's Case** (Supra 14), **Mehrunissa's Case** (Supra 15), **Smt. Shalini Soni's Case** (Supra 16) and **Rushikesh Tanaji Bhoite's Case** (Supra 11) dealing with the effect of failure of authority to place bail orders before the detaining authority for examination and non-supply of bail orders to the detenu by the detaining authority.

ii) As an answer to the above contentions raised by the counsel for the petitioner, the learned Government Pleader relied on a judgment

rendered by the Hon'ble Division Bench of this Court in **Muppidi Swapna v. The State of Telangana**^[32], submitting that all these aspects have been elaborately dealt with in the light of the relevant principles laid down by the Hon'ble Supreme Court in the decisions referred to by the Hon'ble Division Bench of this Court. We would like to extract what has been stated by the Hon'ble Division Bench of this Court in paragraph Nos.9 and 10 thus:

“9. We, however, notice a line of cases where the Supreme Court declined to interfere with the orders of detention on the ground of nonsupply of the documents which were referred to but not relied upon for the purpose of passing detention orders.

In Radhakrishnan Prabhakaran v. State of Tamil Nadu [(2009) 9 SC 170 the Supreme Court drew a distinction between the documents 'relied upon' and the documents 'referred to' in the order. In paragraph 8 of the report, it was observed: “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." This view was reiterated by the Supreme Court in J. Abdul Hakeem (11 supra).

A constitution Bench of the Supreme Court in Abdullah Kadher Batcha (10 supra), has reiterated the same view with the following observations.

"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 the non-supply was prejudicial to the detenu. Merely because copies of some documents have (sic not) 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 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."

In the context of the present case, reference to the above precedents will suffice and this Court does not propose to burden this judgment by

multiplying references to the judgments taking similar view.

Keeping in view the above ratio, it has to be seen whether the bail orders, copies of which were not supplied to the detenu, were relied upon in the detention order. In the impugned detention order, respondent No.2 referred to the above mentioned seven criminal cases and observed that in all those cases the detenu was arrested and released on bail, as per the extant provisions under which the bails were granted, and that the department is unable to prevent the detenu from further indulging in unlawful activities affecting public health and public order. In the grounds of detention, the facts of each of the seven criminal cases were recorded and the opinion of the Chemical Examiner, Regional Prohibition and Excise Laboratory, Warangal, and the letter of the Professor of Medicine, MGM Hospital, Warangal were relied upon and it was observed that as the detenu was engaged in the sale of ID liquor, and his activities affect or are likely to affect adversely in maintenance of public order because they cause gave or widespread danger to the life and public health. Respondent No.2 further observed as under:

"It is, therefore, established that the cases booked against you under Prohibition and Excise laws failed to curb your illegal activities, which are found to be dangerous to public health

and also prejudicial to the maintenance of public order. You are, therefore, a "Bootlegger" as defined under section 2(b) of Andhra Pradesh Prevention of Dangerous Activities of Bootlegger, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

It is imperative to prevent you from acting in any manner prejudicial to maintenance of Public order. I feel that recourse to normal law would involve considerable time and may not be effective deterrent in preventing you from indulging in further activities prejudicial to maintenance of public order in and around Narsampet of Warangal District under Prohibition and Excise Station, Narsampet limits of Warangal District.

On careful consideration of material placed before me, I am satisfied that you are likely to repeatedly indulge in illegal storage and sale of illicitly distilled liquor in and around of Narsampet of Warangal District which is injurious to public health. The launching of prosecution of cases against you in the above mentioned cases is normal course under Prohibition Laws failed to have any desired impact on your clandestine, bootlegging activities since prosecution proceedings take sufficiently along period of time."

A careful reading and understanding of the above detention order and the grounds thereof would show that respondent No.2 has laid emphasis on the fact that mere registration of the

criminal cases and his arrest in connection therewith is proving ineffective, as after being released on bail the detenu was repeating his illegal activities and thereby the ordinary laws are unable to curb his activities which are causing grave and widespread danger to life and public health. In our opinion, respondent No.2 merely referred to the bail orders and relied upon the fact of repetition of the illegal activities by the detenu after his release in every case. Thus, this is not a case where respondent No.2 has relied upon the bail orders for detaining the detenu.

10. The learned counsel for the detenu argued with lot of emphasis that some of the bail orders are conditional and therefore the nature of the conditions was very much relevant for respondent No.2 to consider whether they were sufficient to prevent the detenu from fleeing from justice and that non-consideration of the conditional bail orders has vitiated the detention order. We are afraid, we cannot accept this submission because irrespective of whether the bail orders contained conditions or not, respondent No.2 has arrived at the subjective satisfaction that in spite of his arrest in connection with the criminal cases, the detenu is repeating his activities after being released on bail. This necessarily means that the detaining authority was not only aware of the fact that the detenu was released on bail in

all the cases, but also the fact that the ordinary laws set in motion have proved inefficacious. Even the learned counsel for the detenu has not placed before the Court the bail orders which purportedly contained conditions. In any event, the facts of the case, reveal that irrespective of the alleged conditions of bail, the detenu continued his alleged illegal activities which is manifest from the fact that as many as seven criminal cases were registered against him in succession, clearly showing that the alleged conditions of bail did not deter the detenu from repeating his alleged illegal activities.”

iii) We have already adverted to the activities of the detenu and the impact of the said activities while expressing our disinclination to interfere with the subjective satisfaction recorded by the detaining authority in the above. We are of the considered view, that when the detaining authority was referring to in the order of detention that despite arrest of the detenus in connection of the criminal cases, he has been repeating or continuing the said activities on being released on bail is sufficient enough to cull out that the detaining authority was not only aware of the fact that the detenu was released on bail, but also the fact that the ordinary laws set in motion have become ineffective.

iv) We are, therefore, of the considered

view, that non-placement of bail orders and bail petitions before the detaining authority and their non-supply of bail orders and the bail petitions to the detenu cannot be construed fatal, as they cannot constitute vital documents in reaching subjective satisfaction by the detaining authority in passing orders of detention. Therefore, with due respect to the submissions of the learned counsel on these aspects and the decisions relied on by him, we are of the view, that they would not render any assistance.

EFFECT OF PASSING OF ORDER OF DETENTION WHEN DETENU WAS IN JUDICIAL CUSTODY:

10. The learned counsel places reliance on the decisions in

N. Meera Rani's Case (Supra 1), **Dharmendra Suganchand Chelawat's Case** (Supra 2), **Kamarunnisa's Case** (Supra 3), **Paul Manickam's Case** (Supra 4), **Rekha's Case** (Supra 5) and the decision of the Hon'ble Division Bench of this Court in **V. Uma Maheshwari's Case** (Supra 6) touching the instant ground. We have already referred to the decision of the Hon'ble Supreme Court in **Vijaya Kumar's Case** (Supra 30) in the above, while referring to the submissions made by the learned Government Pleader. The proposition being, it would suffice if

the detaining authority is aware that the detenu is already in Jail and if there are compelling reasons to justify the preventive detention of the detenu in spite of the fact that detenu is already under detention on a charge of criminal offence, and also the two essentials that must appear from the grounds of detention. The order of detention and the grounds of detention would satisfy both the requirements as we have even adverted to in the above that subjective satisfaction recorded by the detaining authority does not suffer from non-application of mind. Therefore, we find no merit in the said submission.

ON DELAY IN DISPOSAL OF REPRESENTATION

11. We have already referred to the decisions relied on by the learned counsel in **Bunga Samson v. The State of Andhra Pradesh** [\[33\]](#) rendered by the Single Judge of this Court and **Vasnthu Sumalatha's Case** (Supra 17) rendered by the Hon'ble Division Bench of this Court. In **Rajammal v. State of Tamil Nadu and another** [\[34\]](#), the consequence of delay in disposal of representation is explained by the Hon'ble Supreme Court in paragraph No.10 thus:

“10. Mr. V.R. Reddy, learned senior

counsel for the State of Tamil Nadu referred to a decision of this Court in Mrs. U. Vijayalakshmi v. [State of Tamil Nadu and Anr.](#)[1995 SCC (Cri) 176 to contend that it could not be said that there was any delay in considering the representation from 9.2.1998 to 14.2.1998. In that case also the detention was under Section [3\(1\)](#) of the Act. The detenu made representation against the detention which was received by the State Government which conveyed the rejection of the representation on 23.6.1992. The detenu received the rejection order on 26.6.1992. It was submitted that there was an inordinate long delay in dealing with the representation and that the detenu was entitled to have the detention order quashed. This Court noticed that in the counter affidavit filed by the Deputy Secretary to the State Government the manner in which the representation was dealt with after its receipt on 18.5.1992 had been stated in detail. The Court then observed:

"We have perused the stages through which the file containing the representation was dealt with promptly and there was no indifference lethargy or negligence in dealing with the same. The file was not unnecessarily held up at any level but moved from level to level promptly. We are, therefore, satisfied that the explanation tendered by the Deputy Secretary in this behalf is acceptable and does not betray any lack of sense or urgency in dealing with the representation. We,

therefore, do not see any merit in the first contention."

In the present case, however, there is no explanation forthcoming as to why the representation could not be dealt with by the Minister concerned from 9.2.1998 to 14.2.1998."

i) Concerning the duty of State Government to consider the representation made by the detenu in the context of legality of detention in the matter of **Durga Show and others**^[35], the Hon'ble Supreme Court held that the petitioners were entitled to receive a consideration of their representation by the State Government as expeditiously as possible, which the Government failed to do so and, consequently, their continuous detention is illegal. To the same effect was the decision in **Rashid Kapadia v. Medha Gadgil and others**^[36], rendered in the context of provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The decisions relied on by the learned counsel for the petitioner, in our view, would not render any assistance, to hold that the said delay would vitiate the order of detention.

12. The submission of the learned counsel for the petitioner is that approval of the detention

order was not obtained within twelve days and, therefore, vitiates the order of detention. The material on record would show that the order of detention was passed on 23-11-2015 by the Commissioner of Police, Cyberabad Commissionerate, Hyderabad, and the same was approved by respondent No.1 on 03-12-2015. We do not find any merit in the said submission as the order of detention was passed within twelve days but not beyond it even reckoning the day on which the detention order was passed.

13. So far as the ground raised by the petitioner that there was enormous delay in passing the order of detention as proposals were made in the month of June, 2015 itself for issuing detention order is concerned, we would like to observe that certainly, that cannot constitute a ground to invalidate the order of detention when there is no positive material brought on record to substantiate that such proposal was mooted out, more so, when any prejudice that alleged to have occasioned to the detenu is not projected. Therefore, we find no merit in the said submission.

14. So far as the ground relating to live-link is concerned, we would like to observe that order

of detention was passed on 23-11-2015, and the latest crime registered against the detenu was in the month of June, 2015 and even arrested on 23-11-2015 on P.T. warrant as he was already in judicial remand. The interregnum was not more than five months between the two and, therefore, we are of the view that there is no merit in the said submission, though, first two crimes relate to the year 2014.

15. The learned counsel has been mainly harping upon the ground that the detenu was not conversant with the English language and that the translations of documents relied on by the detaining authority in passing order of detention were not supplied to the detenu and the mere fact that the detenu has signed in English would not lead to inference that the detenu is conversant with English and the Constitutional safeguard engrafted in Article 22 (5) said to have been satisfied.

i) The learned counsel places reliance on the decisions in **Hadibandhu Das v. District Magistrate, Cuttack and another**^[37], **Mohd. Zakir v. Delhi Administration and others**^[38], **Powanammal v. State of Tamil**

Nadu and another^[39], and the decision of the Hon'ble Division Bench of this court in **V. Muthuvelu v. State of A.P. and others**^[40], in support of his submission that non-supply of documents relied on by the detaining authority in passing the order of detention in the language known to the detenu vitiates orders of detention and confirmation order.

ii) The learned Government Pleader, on the other hand, places reliance on the decisions in **L.M.S. Ummu Saleema v. Shri B.B. Gujaral and another**^[41], **J. Abdul Hakeem v. State of Tamil Nadu and others**^[42], **Bidya Deb Barma ETC v. District Magistrate, Tripura, Agartala**^[43].

16. In **Hadibandhu Das's Case** (Supra 37), the Hon'ble Supreme Court explained the meaning of the word "communication" and the term "communicate the grounds" stating that the detaining authority is duty bound to serve the order and grounds in the language known to the detenu to show the sufficient compliance of constitutional requirement, as laid down in Article 22(5) of the Constitution of India.

i) In **Mohd. Zakir's Case** (Supra 38), the Hon'ble Supreme Court in the context of supply of documents and material relied upon in grounds of detention after lapse of one month, held that the detenu was deprived of his constitutional right to make effective and expeditious representation further holding that continued detention of detenu rendered void. The detention of the detenu therein was under the provisions of COFEPOSA Act, 1974.

ii) In **V. Muthuvelu's Case** (Supra 40), to which one of us (Justice A. Shankar Narayana) is a party, this Court placed reliance on the decisions in **A.C. Razia v. Government of Kerala and others** [\[44\]](#) and **Powanammal's Case** (Supra 39) and arrived at the conclusion that the detenu was deprived of his right to make an effective representation, since the documents on the basis of which order of detention was passed, were not supplied to him in his known language that being Tamil language.

iii) The decision in **Powanammal's Case** (Supra 39) was followed in **V. Muthuvelu's Case** (Supra 40) and other decisions referred to in the above. Therefore, we are of the view that there is no need to refer to it again.

iv) As an answer to the submission of the learned counsel for the petitioner and the authorities relied on by him, learned Government Pleader for Home would place reliance on the decision rendered by a Larger Bench of the Hon'ble Supreme Court in **L.M.S. Ummu Saleema's Case** (Supra 41) wherein the Hon'ble Supreme Court, while answering the contentions raised by the learned counsel for the detenu therein, held that a reading of the entire counter affidavit makes it clear that the opinion of the detaining authority, prosecution or no prosecution, the only effective way of preventing the detenu from engaging himself in objectionable activities was to detain him. We would like to extract the expression of Hon'ble Supreme Court in paragraph Nos.2, 5 and 9 thus:

"2. Shri Ram Jethmalani, learned counsel for the detenu urged that material documents upon which reliance was placed in the order of detention were not supplied to the detenu along with the grounds of detention and the detenu was thereby prevented from making an effective representation. He was thus denied the Fundamental Right afforded to him under Art.22(5) of the Constitution. The two documents which according to Mr.

Jethmalani were not supplied to the detenu were (1) record of investigation revealing the trunk telephone calls booked from Telephone No. 315 at Kila Karai to telephone No. 27115 at Madras on 15.7.80, 18.7.80, 24.7.80, 26.7.80, 27.7.80, 29.7.80, 6.8.80, and 7.8.80; and (2) record of investigation relating to the petrol which was put into Jeep No. TMC 1850 owned by Shri Shamsuddin, brother of the detenu.

5. Shri Jethmalani's submission was that the detaining authority was under an obligation to supply along with the grounds, copies of all documents to which reference was made in the grounds irrespective of whether such documents were or were not relied upon in making the order of detention. He submitted that the very fact that the documents were mentioned in the grounds established that the documents were relied upon in making the order of detention. We are unable to agree with the submission of Shri Jethmalani. True, it was observed in some cases that copies of documents to which reference was made in the grounds must be supplied to the detenu as part of the grounds (vide *Smt. Shalini Soni v. Union of India & Ors.* But these observations must be read in the context in which they were made. In *Shalini Soni's* case, for example, the observations were made immediately after stating that "grounds" in Art. 22 (5) did not mean

mere factual inferences but meant factual inferences plus factual material which led to such factual inferences. In *Icchu Devi Choraria v. Union of India* the Court observed :
"It is difficult to see how the detenu can possibly make an effective representation unless he is also furnished copies of the documents, statements and other materials relied upon in the grounds of detention."

The stress was upon the words "relied upon". In *Khudiram Das v. The State of West Bengal* the Constitutional requirement of Art. 22(5) was stated as insistence that basic facts and particulars which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the order of detention must be communicated to the detenu so that the detenu may have an opportunity of making an effective representation against the order of detention. It is, therefore, clear that every failure to furnish copy of a document to which reference is made in the grounds of detention 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 the Fundamental Rights guaranteed by Art. 22 (5). In our view it is unnecessary to furnish copies of documents to which casual

or passing reference may be made in the course of narration of facts and which are not relied upon by the detaining authority in making the order of detention. In the case before us we are satisfied that such were the two documents, copies of which were not furnished to the detenu. We are satisfied that the documents cannot be said to be documents which were relied upon by the detaining authority in making the order of detention. Therefore, the detenu could not properly complain that he was prevented from making an effective representation. There was no violation of the right guaranteed by Art. 22 of the Constitution.

9. Shri Jethmalani then submitted that the detaining authority had failed to consider the question whether a prosecution under the ordinary criminal law would not suffice to prevent the detenu from indulging in the alleged activities and whether preventive detention was necessary in the circumstances of the case. Reliance was placed upon the observations made by this Court in *Kanchantal Maneklal Chokshi v. The State of Gujarat & Ors.* In the counter affidavit filed by the detaining authority, Shri B.B. Gujaral, it has been stated:

"Having regard to the nature of the activities in which the detenu was engaged and after having applied my mind very carefully to all the facts and circumstances of the case and the material placed before me, I

arrived at the subjective satisfaction that it was necessary to detain Shri Jahaubar Moulana for preventing him from engaging in transporting smuggled goods. The adjudication of the case under the Customs Act and prosecution of the detenu are entirely on a different footing. I say that the detention order was passed by me with due care and after careful consideration of all the materials placed before me".

The deponent may not have stated in express words that when he made the order of detention he also considered the question whether a prosecution under the ordinary criminal law would not meet the situation and would not be sufficient to prevent Jahaubar Moulana from engaging himself in the objectionable activities. But a reading of the entire counter affidavit makes it clear that in the opinion of the detaining authority, prosecution or no prosecution, the only effective way of preventing Jahaubar Moulana from engaging himself in objectionable activities was to detain him."

v) In **J. Abdul Hakeem's Case** (Supra 42), relied on by the learned Government Pleader for Home, the Hon'ble Supreme Court while restating 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 was necessary for supply to him,
held in paragraph No.8 thus:

"The principle of supply of the material documents to the detenu was considered by this Court in the matter of Radhakrishnan Prabhakaran Vs. State of Tamil Nadu and others (2000) 9 S.C.C. 170. In Para 8, this Court has said:

"We 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"

From the aforesaid authorities it is clear that the detenu has a right to be supplied with the material documents on which the reliance is placed by the detaining authority for passing the detention order but the detention order will not be vitiated, if the document although referred to in the order is not supplied which is not relied upon by the detaining authority for forming of its opinion or was made basis for passing the order of detention. Crux of the matter lies in whether the detenue's right to make a representation against the order of detention, is hampered by non-supply of the particular document."

vi) Learned Government Pleader for Home also places reliance on the decision of the Hon'ble Supreme Court in **Bidya Deb Barma ETC's Case** (Supra 43), the Constitutional Bench of Hon'ble Supreme Court, in the same context, while holding that the objection raised by the detenu therein that he was not supplied with the copies of order of detention and the grounds of detention in Bengali and Tripuri, which languages are known to him, but supplied them in English and the said objection was raised for the first time in the rejoinder, held in paragraph No.21 thus:

"The petitioner in this case has complained that the order of detention and the grounds supplied to him were in English and he knows only Bengali and Tripuri. He refers to *Harikisan v. The State of Maharashtra & Others* ([1962] 2 Supp. S.C.R. 918). In that case the detenu had" asked for a Hindi translation and had been denied that facility.

We find that this objection was taken here but no request was made at any earlier time. The original petition did not contain any such objection. It was raised for the first time in the rejoinder. The petitioner does not seem to have suffered at all. He has filed the petition in English and questioned the implications of the language of the order and the grounds. Of course, he

had the assistance of the other detenus who know English. If there had been the slightest feeling that he was handicapped, we would have seriously considered the matter but in his case it appears that this point was presented not to start with but after everything was over. We cannot entertain such a belated complaint. The petition will be dismissed."

vii) From what has been contended by the learned Government Pleader and the legal principles laid down by the Hon'ble Apex Court in the decisions, **L.M.S. Ummu Saleema's Case** (Supra 41), **J. Abdul Hakeem's Case** (Supra 42), **Bidya Deb Barma ETC's Case** (Supra 43), have been that every failure to furnish copy of a document to which reference is made in the grounds of detention, is not an infringement of Article 22 (5), fatal to the order of detention, but, the failure to furnish copies of such documents as were relied upon by the detaining authority, making difficult for the detenu to make an effective representation, amounts to a violation of the Fundamental Rights guaranteed under Article 22 (5) of the Constitution of India.

17. Turning to the fact-situation in the instant case, the detenu has got agitated the said

ground of non-supply of documents in Telugu language specifically, in the instant affidavit itself, as one of the grounds which were referred to in the above while narrating the grounds raised by the petitioner. While making an attempt to controvert that allegation, respondent No.2 got mentioned that the gist of the offences committed by the detenu are translated in Telugu language and served on him and, thus, no prejudice caused to the detenu. We would like to extract paragraph No.9 of the counter which refers the said reply for better appreciation of the instant issue. It is stated thus:

“9. In reply to para 5, ground No. (m and n) of the affidavit, the contention of the petitioner that the detaining authority failed to furnish the copies of documents in the language known to the detenu i.e. Telugu and that the detenu is conversant only with Telugu language and for this reason only the detenu was served the grounds of detention and order of detention in Telugu and whereas the other papers on which the detaining authority relied upon are served in English, which is not conversant with the detenu is not correct and untenable. In this regard it is submitted that the detenu was read over and explained the contents of grounds of detention and detention order and having understood the

same, he acknowledged the same. The detenu acknowledged the documents and other papers by signing his name in English only. Hence, the allegation that he is not conversant with English and that he knows only Telugu is false and baseless. Hence, the same is denied. Further, the gist of the offences committed by the detenue are translated in Telugu language and served on him; hence, no prejudice is caused to the detenu. Hence, the allegations are false and baseless and the same are denied."

18. The learned Government Pleader for Home also canvassed the same during the course of arguments. Though, it is not in dispute that the detenu has signed in English, but when the detenu specifically got mentioned in the affidavit that he only knows Telugu, that he was not furnished documents on the basis of which order of detention was passed, were not supplied to him in the known language i.e., Telugu, the detaining authority is bound to place some material on record to show that the detenu is well conversant with English language or at least, that the detenu was explained by the Superintendent of Jail the purport of order of detention, grounds of detention and the documents basing on which, order of detention was passed in Telugu and a

certificate to that effect endorsed by the detenu himself ought to have presented for examination of this Court. In the absence of the same, it is difficult to construe merely basing on the presumption, that since detenu signed in English was capable of understanding the documents mentioned in English, when admittedly, translations in Telugu of the documents were not supplied to him. Therefore, it cannot be said that no prejudice had been caused to the detenu, as it amounts to deprivation of his right to make effective representation in consonance with the Constitutional safeguard engrafted in Article 22 (5), in view of the judgment of this Court in **V. Muthuvelu's Case** (Supra 40), and the decision of the Hon'ble Supreme Court in **Powanammal's Case** (Supra 39). Hence, we are of the considered view that on this ground alone the orders of detention passed by respondent No.2, approval and confirmation made by respondent No.1 are liable to be set aside.

19. For the aforesaid reasons, the Writ Petition is allowed by quashing the order of detention, dated 23.11.2015, passed by respondent No.2 in proceeding No.55/PD/CCRB/CUB/2015, directing the respondents to release the detenu

forthwith by setting him at liberty. However, we make it clear that such order of release shall be given effect to if custody of the detenu is not required in connection with any other case registered against him. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in the writ petition, stand closed.

CHANDRAIAH, J

G.

A. SHANKAR
NARAYANA, J

April 29, 2016.
Mgr

[\[1\]](#) (1989) 4 SCC 418
[\[2\]](#) (1990) 1 SCC 746
[\[3\]](#) (1991) 1 SCC 128
[\[4\]](#) (2003) 8 SCC 342
[\[5\]](#) (2011) 5 SCC 244
[\[6\]](#) W.P. No.33858 of 2015, dated 30-12-2015
[\[7\]](#) (1990) 2 SCC 1
[\[8\]](#) (1988) 1 SCC 287
[\[9\]](#) 2013 CrLL J. 585
[\[10\]](#) 2013 (4) ALT 243 (D.B.)
[\[11\]](#) (2012) 2 SCC 72
[\[12\]](#) (1980) 2 SC 270
[\[13\]](#) (1980) 4 SCC 531
[\[14\]](#) (1981) 2 SCC 427

- [\[15\]](#) (1981) 2 SCC 709
- [\[16\]](#) (1980 4 SCC 544
- [\[17\]](#) 2015 Law Suit (Hyd) 691
- [\[18\]](#) (2012) 13 SCC 585
- [\[19\]](#) (2011) 10 SCC 215
- [\[20\]](#) (1975) 3 SCC 198
- [\[21\]](#) (2012) 2 SCC 389
- [\[22\]](#) (2012) 2 SCC 176
- [\[23\]](#) (1981) 4 SCC 647
- [\[24\]](#) (1979) 4 SCC 14
- [\[25\]](#) (1972) 2 SCC 417
- [\[26\]](#) (1972) 1 SCC 308
- [\[27\]](#) (1972) 1 SCC 456
- [\[28\]](#) AIR 1964 SC 334
- [\[29\]](#) (2005) 3 SCC 666
- [\[30\]](#) (1988) 2 SCC 57
- [\[31\]](#) (1999) 4 SCC 514
- [\[32\]](#) W.P. No.30688 of 2015, dated 30-03-2016
- [\[33\]](#) W.P. No.2306 of 2014, dated 07-04-2014
- [\[34\]](#) . (1999) 1 SCC 417
- [\[35\]](#) 1970 (3) SCC 696
- [\[36\]](#) . (2012) 11 SCC 745
- [\[37\]](#) AIR 1969 SC 43
- [\[38\]](#) (1982) 3 SCC 216
- [\[39\]](#) (1999) 2 SCC 413
- [\[40\]](#) 2015 (6) ALT 499 (D.B.)
- [\[41\]](#) (1981) 3 SCC 317
- [\[42\]](#) (2005) 7 SCC 70
- [\[43\]](#) (1969) 1 SCR 562
- [\[44\]](#) 2003(2) ALT (Crl.) 129 (SC)