

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

-
W.P.No.41997 of 2015

Between:

Angoth Renuka @ Rena

.... Petitioner

Vs.

1) The State of Telangana through its Principal Secretary, Prohibition and
Excise Department, Hyderabad & Anr.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 31.03.2016

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

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| 1. Whether Reporters of Local newspapers may
be allowed to see the Judgments? | - |
| 2. Whether the copies of judgment may be marked
to Law Reports/Journals | Yes |
| 3. Whether Their Ladyship/Lordship wish to see the
fair copy of the Judgment? | Yes |

JUSTICE RAMESH RANGANA1

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

AND
*** THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

WRIT PETITION No.41997 of 2015

% Dated 31-03-2016

-
Between:

Angoth Renuka @ Rena

.... Petitioner

Vs.

\$ 1) The State of Telangana through its Principal Secretary, Prohibition and Excise Department, Hyderabad & Anr.

.... Respondents

-
! Counsel for the petitioner: Sri B.Vijayasen Reddy

^ Counsel for respondents : The Advocate-General (TG)
Government Pleader for Home (TG)

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> HEAD NOTE:

? Citations:

1. (1990) 2 SCC 1
2. (1988) 1 SCC 287
3. 2013 (4) ALT 243 (DB) = 2013 (2) ALD (Cri.) 554 (A.P)
4. (2015) 2 ALD (Cri) 483 (AP)
5. (1986) 4 SCC 771
6. 2016 (1) ALT 738 (D.B)
7. (1987) 2 SCC 241
8. 1991 Supp (2) SCC 274
9. 2013 Cri.L.J. 585 = 2013(1) ALT 176 (D.B)
10. (2012) 2 SCC 72 = 2012(2) ALT (Cri) 14 (SC)
11. AIR 1984 SC 1334
12. (Judgment in W.P. No.10018 of 2012, dated 29.06.2012) (APHC) (DB)
13. 2011 (3) ALT (Cri.) 219 (SC) = 2011 (4) SCJ 637
14. 2013 (3) ALT (Cri.) 303 (D.B.) (A.P)
15. (2006) 3 SCC 321 = 2006 (4) SCJ 278
16. (1992) 1 SCC 1
17. (2006) 7 SCC 337
18. (1981) 2 SCC 427 = AIR 1981 SC 728
19. (1980) 4 SCC 531
20. (1975) 2 SCC 81
21. (1981) 1 SCC 419
22. (1980) 4 SCC 544
23. (1982) 3 SCC 216
24. (1980) 2 SCC 270
25. AIR 1981 SC 746
26. (1980) 4 SCC 525
27. (1980) 4 SCC 499
28. (1981) 2 SCC 436
29. (1981) Supp SCC 53(1)
30. (1981) 2 SCC 709
31. (1975) 3 SCC 722
32. 1954 SCR 418
33. AIR 1966 SC 740
34. (1969) 1 SCC 10
35. (1974) 4 SCC 573
36. (1979) 4 SCC 370
37. 1943 FCR 49

- 38. AIR 1951 SC 174
- 39. (1974) 3 SCC 600
- 40. ILR 1972 AP 1025

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

-
Writ Petition No.41997 of 2015
-

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

A Writ of habeas corpus is sought by the wife of the detenu-Sri Angoth Shankar to declare the order of detention dated 19.10.2015, passed by the Collector and District Magistrate, Medak, under Section 3(1) read with Section 2(a) & (b) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, "Act 1 of 1986") as being arbitrary and illegal.

In the order of detention dated 19.10.2015, the detaining authority has stated that the detenu was repeatedly involved in the activities of possession and sale of illicitly distilled liquor in contravention of the Andhra Pradesh Prohibition Act, 1995; he was indulging in lawless activities prejudicial to the maintenance of public order, and which is dangerous to life and public health; he was satisfied, from the material placed before him in Crime COR No.540/2014-15 dated 05.01.2015, Crime COR No.250/2015-16 dated 20.08.2015, and Crime C.O.R.No.272/2015-16 dated 03.09.2015 of the Prohibition and Excise Station, Medak that the detenu was a "bootlegger" as defined in Section 2(b) of Act 1 of 1986; recourse to normal legal procedure would involve more time, and not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities; with a view to prevent the detenu from acting in a manner prejudicial to public order and health, the provisions of Act 1 of 1986 was required to be invoked to detain the detenu who was on bail; and he should be lodged at Central Prison, Cherlapally, Ranga Reddy District from the date of service of the order of detention.

In the grounds of detention, the detaining authority observed that the Government had banned sale of arrack in the State from 01.10.1993 through G.O.Ms.No.402 dated 24.04.1993 which prohibited import, transport, manufacture, collection, possession, sale or purchase of arrack without any

license or permit; the Government had banned issue of any licence for possession or sale of arrack in the State in the larger interests of public health and welfare; sale of arrack was an offence; the material placed before him revealed that the detenu had been indulging in clandestine movement and sale of illicitly distilled liquor at his residence, and other places, in contravention of the A.P. Prohibition Act, 1995; he was as a bootlegger as defined under Section 2(a) & (b) of Act 1 of 1986, and had acted in a manner prejudicial to the maintenance of public order; three cases had been registered against the detenu; the samples of illicitly distilled liquor, drawn from the contraband seized from the detenu, were sent for chemical analysis; the Government Chemical Examiner had opined, in his report dated 27.03.2015, that the samples were of illicitly distilled liquor unfit for human consumption and injurious to health; the detenu was arrested and produced before the Judicial First Class Magistrate, Medak and sent to judicial remand; charge-sheets had been filed before the Judicial First Class Magistrate, Medak and were allotted C.C.Nos.486, 487 and 488 of 2015; the Civil Assistant Surgeon, RMO and Resident Medical Officer of Osmania General Hospital had given his remarks dated 28.02.2014 on the ill-effects of illicitly distilled liquor which causes (1) alcoholic liver diseases; (2) cardiac problems like bradycardia and sudden death cardiomyopathy; (3) mental irritation, stupor, coma, convulsion and renal failure; (4) respiratory depression; and (5) metabolic disorders; he had perused the opinion of the Regional Prohibition and Excise Chemical Examiner, and the letter of the Civil Assistant Surgeon, and had relied upon the order of detention; the detenu was engaged in possession and sale of illicitly distilled liquor and, therefore, his activities affected, or was likely to affect adversely, the maintenance of public order because it caused grave and widespread danger to life and public health; consumption of such illicitly distilled liquor, which was unfit for human consumption, was potentially dangerous to human health; sale of such illicitly distilled liquor would have caused grave danger to public health at large; this adversely affected public order, and came within the meaning of Section 2(a) of Act of 1 of 1986; it was imperative to prevent the detenu from acting in any manner prejudicial to the maintenance of public order; recourse to normal law would involve considerable time, and may not be an effective deterrent in preventing the

detenu from indulging in further activities prejudicial to the maintenance of public order in and around Ramanthapur Thanda, Veldurthi Mandal, Medak District Excise Station, Medak; and, hence, he was satisfied that there was a need to detain the detenu under the provisions of Act 1 of 1986.

In ground (f) of the affidavit, filed in support of the Writ Petition, the petitioner stated that the material submitted, along with the order of detention, did not give details of all the relevant documents, including the bail orders pursuant to which the detenu was released; and the detaining authority did not look into the bail orders to find out for how many days the detenu was in judicial custody. In reply to ground (f) it is stated by the detaining authority, in the counter-affidavit filed by him, that the petitioner was arrested in the said crimes, and he was released on bail; and he (i.e., the detaining authority) did not look into the bail orders.

Sri B.Vijaysen Reddy, Learned Counsel for the petitioner, would submit that the three crimes registered against the detenu were in January, August and September 2015; the panch witnesses were the same in two of the cases, though the incidents were committed at different places; the contraband seized from the detenu was only 10 litres of illicitly distilled liquor in the first two cases, and 20 litres in the third case; the detaining authority erred in holding that such cases take a long time for disposal; excise cases are normally disposed of in three months as Special Excise Magistrate Courts have been constituted; the detaining authority had no information before him to show that disposal of cases would be delayed; the satisfaction of the detaining authority that the cases would get delayed, recourse to normal law would involve considerable time, and may not be an effective deterrent in preventing the detenu from indulging in further activities prejudicial to the maintenance of public order, is not based on the material placed before him, and suffers from non-application of mind; while passing the order and grounds of detention, the detaining authority failed to consider the bail orders; he also failed to furnish copies of the bail orders to the detenu; failure of the detaining authority to refer to the contents of the bail orders, in the order and grounds of detention, vitiated the detention order; these orders suffer from non-application of mind; and failure to furnish copies of the bail orders to the detenu affected his right to make an effective

representation against his detention.

On the other hand, the Learned Government Pleader for Home would submit that judicial notice can be taken of the fact that Courts take a long time to dispose of cases; the fact that the detenu was granted bail has only be referred to, and the order of bail was not relied upon, in the present case; it is only where reliance is placed on the bail orders can it be said that failure to refer to its contents vitiates the order of detention; failure to supply copies of such bail orders does not affect the detenu's right to submit an effective representation; the satisfaction of the detaining authority, on the need to detain the detenu under Section 3 of Act 1 of 1986, is subjective; this Court would not sit in appeal over the subjective satisfaction of the detaining authority; and in the light of the specific finding, of the Chemical Examiner, that the sample of illicitly distilled liquor was found unfit for human consumption, the order of detention does not necessitate interference

It is incumbent that all vital material are placed before the detaining authority to enable him to arrive at the subjective satisfaction as to the necessity for passing an order of detention. (**M. Ahamedkutty v. Union of India**^[1]; **State of U.P. v. Kamal Kishore Saini**^[2]). If the sponsoring authority has not placed vital material, such as the orders granting bail before the detaining authority, which would have weighed in passing the detention order, it would amount to suppression of relevant material from the detaining authority. (**Durgam Subrahmanyam v. Government of Andhra Pradesh**^[3]). It is imperative for the detaining authority to be apprised of the fact that the 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 hold the detenu in custody. (**Saroj Mehendi v. The Government of Andhra Pradesh**^[4]). If the detaining authority is not made aware, at the time the detention order was made, that the detenu had moved applications for bail, and he was enlarged on bail, it would indicate total absence of application of mind on the part of the detaining authority while passing the order of detention, as one does not know how the detaining authority would have acted if he was made aware of these details. (**Anant Sakharam Raut v. State of**

Maharashtra^[5]; Vasanthu Sumalatha v. State of Andhra Pradesh^[6]).

Non-consideration of the bail order would amount to non-application of mind as non-consideration of relevant and important material is fatal to the detention order. If the detaining authority had considered the order, it may have persuaded him to desist from passing the order of detention. (**M. Ahamedkutty¹; Union of India v. Manoharlal Narang^[7]; Vasanthu Sumalatha⁶**). The bail application and the bail order are vital material for consideration. If they have not been considered, the satisfaction of the detaining authority would itself be impaired and, if they had been considered, they would be documents relied upon by the detaining authority though not specifically mentioned in the annexure to the order of detention, and those ought to have formed part of the documents supplied to the detenu with the grounds of detention. Without them, the grounds themselves cannot be said to have been complete. This amounts to denial of the detenu's right to make an effective representation, and results in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal, and would entitle the detenu to be set at liberty. (**P.U. Abdul Rahiman v. Union of India^[8]; M. Ahamedkutty¹**).

If the bail order, which is a vital material, is not considered, the satisfaction of the detaining authority would be impaired. (**V. Muragesh v. Collector and District Magistrate, Chittoor^[9]; Durgam Subramanyam³; Kamal Kishore Saini²; M. Ahmedkutty¹**). Non-placing and non-consideration of material, as vital as the bail order, vitiates the subjective decision of the detaining authority, and the Court 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. (**Rushikesh Tanaji Bhoite v. State of Maharashtra^[10]**). Failure of the sponsoring authority to place the orders granting bail before the detaining authority is fatal as it is a vital material which would have weighed with the detaining authority at the time of passing the detention order. (**Durgam Subramanyam³**).

When a person is enlarged on bail by a competent criminal court,

great caution should be exercised in scrutinizing 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. (**Vijay Narain Singh v. State of Bihar**^[11]; **Jotha Viswanadh v. Chief Secretary, Govt. of A.P.**^[12]). Where the detenu is released on bail, and is enjoying his freedom under the order of the Court, the order of bail must be placed before the detaining authority, when the order of detention is passed, to enable him to reach a proper satisfaction. (**Rushikesh Tanaji Bhoite**¹⁰). If the detaining authority was unaware of the order of bail, the detention order is rendered invalid as the Court 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 in passing the order of preventive detention. (**Rushikesh Tanaji Bhoite**¹⁰; **Rekha v. State of T.N.**^[13]; **Jotha Viswanadh**¹²). The order and the grounds of detention should reflect the material, on the basis of which the detaining authority arrived at the subjective satisfaction of the need to detain the detenu in preventive custody. As there is no reference therein to the orders passed by Courts granting bail to the detenu, the detention order is vitiated by non-consideration of vital and relevant material. (**Vasanthu Sumalatha**⁶).

In **S. Sathu v. Government of A.P., rep. by its Chief Secretary**^[14], a Division bench of this Court held that the order of detention was vitiated on account of non-application of mind as the detaining authority had not considered the fact that the detenu had applied for bail in four cases, and was granted bail in the said four cases; the sponsoring authority did not place these orders before the detaining authority; and this, being vital material, ought not to have been suppressed by the sponsoring authority.

In **V. Muragesh**⁹ this Court held that it was evident that, from out of the eight forest offences registered against the detenu, he was arrested and released on bail in five cases, while in three cases he was not even arrested; curiously, in the order of detention, the detaining authority had recorded that the detenu was released on bail in all the cases; this showed that the detaining authority had not applied his mind to the facts of the case; the detaining authority did not even bother to refer to the details of the bail

applications moved by the detenu nor to the details of the bail orders nor to the conditions on which bail was granted to the detenu; and he could not have recorded details of the bail applications moved by the detenu, the bail orders granted, and the conditions on which bail was granted, as they were not placed before him.

In **Sunila Jain v. Union of India**^[15], the Supreme Court held that, whether, on the date of the passing of the order of detention, the detenu was free and, if he is, whether he is subjected to certain conditions pursuant to, and in furtherance of, the order of bail is a relevant fact; if pursuant to, or in furtherance of such conditions, he may not be able to flee from justice, that may also be a relevant consideration for the purpose of passing an order of detention but the converse is not true; some such other grounds raised in the application for bail, and forming the basis of passing an order of bail, may also be held to be relevant; it would, however, not be correct to contend that, irrespective of the nature of the application for bail or irrespective of the nature of the restrictions, if any, placed by the court of competent jurisdiction in releasing the detenu on bail, the same must invariably and mandatorily be placed before the detaining authority, and copies thereof supplied to the detenu; there is no rule of universal application that, irrespective of the facts and circumstances of the case, it is imperative to place all applications for bail, as also the orders passed thereupon, before the detaining authority, and copies thereof supplied to the detenu; if a person had been released on bail on the ground that the offence is bailable, it would not be necessary to bring the said fact before the detaining authority; the detaining authority will have to satisfy himself, on the basis of the material placed on record, as to whether an order of preventive detention should be passed against the detenu or not; and the constitutional mandate can be said to be violated, provided: (1) impairment has been caused to the subjective satisfaction to be arrived at by the detaining authority; and (2) if relevant facts had not been considered or the relevant or vital documents have not been placed before the detaining authority.

Unlike in **Sunila Jain**¹⁵ where a copy of bail application, for an offence which was bailable, was not furnished and a copy of the order

granting bail and the order of the remand were furnished to the detenu, in the present case the orders granting bail were neither considered by the detaining authority nor were copies thereof furnished to the detenu. The First Schedule to the Criminal Procedure Code, 1973 relates to classification of offences and thereunder offences, among others, are also classified as bailable or non-bailable. Part-I of the First Schedule relates to offences under the Indian Penal Code and Part-II to offences under other laws. Category – 1 in Part - II relates to offences punishable with death, imprisonment for life, or imprisonment for more than 7 years, and these offences are classified as non-bailable. Similarly offences punishable with imprisonment for three years and upwards, but not more than 7 years, are also classified in category – II in Part II as non-bailable. It is only offences, punishable with imprisonment for less than three years or with fine only, which, under category – III of Part II, are classified as bailable offences.

In the present case, the detenu was charged of having committed offences under Section 7-A read with Section 8(e) of the Andhra Pradesh Prohibition Act, 1995. Section 2(1) of the Andhra Pradesh Prohibition Act, 1995, defines 'arrack' to mean country liquor including arrack brewed, coloured, flavoured or spiced. Section 2(7) defines 'liquor' to include (a) spirits of wine, denatured spirits, methylated spirits, rectified spirits, wine, beer, toddy and every liquid consisting of or containing alcohol; and (b) any other intoxicating substance which the Government may, by notification, declare to be liquor for the purposes of the Act. Section 7-A prohibits the production, manufacture, storage, possession, collection, purchase, sale and transport of arrack. Section 8(e) stipulates that whoever contravenes the provisions of Section 7-A shall, on conviction, be punished with imprisonment for a term which shall not be less than one year, but which may extend upto five years and with fine which shall not be less than ten thousand rupees but which may extend upto one lakh rupees. Section 11-A of the A.P. Prohibition Act, 1995 relates to grant of bail and thereunder, notwithstanding anything contained in the Code of Criminal Procedure, 1973, no Court shall grant any bail, to any person accused of an offence under clause (e) of Section 8, unless the prosecuting officer is given an opportunity to oppose the application and the court shall record reasons

while granting the bail. As the punishment prescribed for contravention of Section 7-A of the A.P. Prohibition Act is upto five years, and is more than the three years stipulated in category – II of Part II, the said offence, in terms of category – II of Part-II of the First Schedule to the Cr.P.C, is a non-bailable offence. Reliance placed by the Learned Government Pleader for Home on **Sunila Jain**¹⁵ is, therefore, misplaced. (**Vasanthu Sumalatha**⁶).

In **Abdul Sathar Ibrahim Manik v. Union of India**^[16], the Supreme Court held that **M.Ahamedkutty**¹ was a case where the detenu was released on bail, and was not in custody; this was a vital circumstance which the authority had to consider, and rely upon, before passing the detention order and, therefore, had to be supplied; if there is a possibility of the detenu being released, and on being so released he is likely to indulge in prejudicial activity, then that would be one such compelling necessity to pass the detention order; the order cannot be quashed on the ground that the proper course for the authority was to oppose the bail, and if bail is granted notwithstanding such opposition the same can be questioned before a higher court; if the detenu has moved for bail then the application and the order thereon refusing bail, even if not placed before the detaining authority, does not amount to suppression of relevant material; the question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody; non-supply of copies of the bail application, or the order refusing bail to the detenu, cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same; When the detaining authority has merely referred to them in the narration of events, and has not relied upon them, failure to supply the bail application, and order refusing bail, will not cause any prejudice to the detenu in making an effective representation; it is only when the detaining authority has not only referred to, but has also relied upon, them in arriving at the necessary satisfaction then failure to supply these documents may in certain cases, depending upon the facts and circumstances, amount to violation of Article 22(5) of the Constitution of India; whether, in a given case, the detaining authority has

casually or passingly referred to these documents, or has also relied upon them, depends upon the facts and the grounds, which aspect can be examined by the Court; in a case where the detenu is released on bail, and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention; and in such a case the bail application, and the order granting bail, should necessarily be placed before the authority, and the copies should also be supplied to the detenu.

In **Vinod K. Chawla v. Union of India**^[17], the Supreme Court held that the law does not require that every document or material, in the possession of the sponsoring authority, must necessarily be placed before the detaining authority and in every case, where any such document or material is not placed by the sponsoring authority before the detaining authority, the formation of opinion and the subjective satisfaction of the detaining authority would get vitiated; placing the application for bail, and the order made thereon, are not always mandatory and such requirement would depend upon the facts of each case; if the detenu has moved for bail then the application and the order thereon refusing bail, even if not placed before the detaining authority, does not amount to suppression of relevant material; and the question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.

Both, in **Abdul Sattar Abraham Manik**¹⁶ and in **Vinod K. Chawla**¹⁷, the Supreme Court held that in cases where an order granting bail is casually referred to and is not relied upon, and in cases where the bail application is moved by a detenu in custody, failure to place copies of the bail order before the detaining authority is not fatal. The Supreme Court, in **Abdul Sattar Abraham Manik**¹⁶, made it clear that in a case where the detenu is released on bail, and is at liberty when the order of detention is passed, it is necessary that the bail application, and the order granting bail, is placed before the authority, and copies thereof are supplied to the detenu. In the present case, the detenu was released on bail, and was at liberty when the order of detention was passed. Failure to place copies of the orders granting bail, before the detaining authority when he passed the order

of detention, is fatal. Reliance placed by the Learned Government Pleader for Home on **Abdul Sathar Ibrahim Manik**¹⁶ and **Vinod K. Chawla**¹⁷ is misplaced.

One of the Constitutional imperatives, embodied in Article 22(5) of the Constitution, is that the authority making the order of detention must, as soon as may be, communicate to the detenu the grounds on which the order of detention has been made; and all the documents and material, relied upon by the detaining authority, in passing the order of detention, must be supplied to the detenu as soon as practicable. (**Lallubhai Jogibhai Patel v. Union of India**^[18]; **Ichhu Devi Choraria v. Union of India**^[19]). All the basic facts and particulars, which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the detention order, must be communicated to the detenu so that the detenu may have an opportunity of making an effective representation against the order of detention. (**M. Ahamedkutty**¹; **Khudiram Das v. State of W.B.**^[20]).

Documents, statements or other material, relied upon in the grounds of detention, must be communicated to the detenu, because they form part of the grounds, and the grounds furnished to the detenu cannot be said to be complete without them. It would not be sufficient, therefore, to communicate to the detenu a bare recital of the grounds of detention. (**Lallubhai Jogibhai Patel**¹⁸; **Ichhu Devi Choraria**¹⁹; **Vasanthu Sumalatha**⁶). If the documents, which formed the basis of the order of detention, are not served on the detenu along with the grounds of detention, there would be no service of the grounds of detention in the eye of law; and that circumstance would vitiate the detention, and would make it void ab initio. (**M. Ahamedkutty**¹; **S. Gurdip Singh v. Union of India**^[21]; **Ichhu Devi Choraria**¹⁹; **Shalini Soni v. Union of India**^[22] and **Vasanthu Sumalatha**⁶). The documents relied on and referred to in the order of detention should be furnished at the earliest so that the detenu can make an effective representation immediately, instead of waiting for the documents to be supplied later. The question of demanding the documents is wholly irrelevant. (**M. Ahamedkutty**¹; **Mohd. Zakir v. Delhi Administration**^[23]; **Vasanthu Sumalatha**⁶).

If there is failure, or even delay, in furnishing those documents it would amount to denial of the right to make an effective representation. (**M. Ahamedkutty**¹; **Ramachandra A. Kamat v. Union of India**^[24]; **Francies Coralie Mullin v. UT of Delhi**^[25]; **Ichhu Devi Choraria**¹⁹; **Pritam Nath Hoon v. Union of India**^[26]; **Tushar Thakker v. Union of India**^[27]; **Lallubhai Jogibhai Patel**¹⁸; **Kirit Kumar Chaman Lal Kundaliya v. Union of India**^[28]; and **Ana Carolina D'Souza v. Union of India**^[29]). The material and documents, which influence the mind of the detaining authority in passing the order of detention, are part of the basic facts and material and should be supplied to the detenu. (**Lallubhai Jogibhai Patel**¹⁸; **Ichhu Devi Choraria**¹⁹).

If the documents, relating to the grant of bail, had been given to the detenu, he could have made an effective representation explaining the circumstances relevant to the grant of bail. The denial of an effective opportunity, by not giving the detenu the relevant documents while he is in custody, would result in failure of justice. (**P.U. Abdul Rahiman**⁸; **M. Ahamedkutty**¹). It is immaterial whether the detenu already knew about the contents of the documents or not. Non-furnishing of the copy of the document is fatal as the detenu, who is in jail, would have no access to his own documents. (**M. Ahamedkutty**¹; **Mehrunisa v. State of Maharashtra**^[30]). It is hardly an answer to the submission made on behalf of the detenu, that copies of material documents referred to in the grounds of detention were not supplied to him and he was thus prevented from making an effective representation, to contend that copies of the documents were not supplied as the detenu was already aware of the contents of the documents. The detenu is entitled to be supplied with copies of all the material documents, instead of having to rely upon his memory in regard to the contents of the documents. Failure of the detaining authority to supply copies of such documents vitiates the detention, and the detenu is entitled to be released (**Mehrunisa**³⁰; **Ichhu Devi Choraria**¹⁹; **Shalini Soni**²²) as it amounts to denial of the detenu's right to make an effective representation,

and is in violation of Article 22(5) of the Constitution of India. It would render the continued detention of the detenu illegal and entitle him to be set at liberty. (**M. Ahamedkutty**¹).

To enable the detenu to exercise his right to make an effective representation against his detention, it is imperative that all relevant material, including copies of the bail orders, are furnished to him. The contention that the detenu was aware of the bail order, even if accepted as true, would not justify failure of the detaining authority to furnish these copies to the detenu when he has no access to these documents when he is in preventive custody. Failure to furnish copies of the orders granting bail to the detenu vitiates the order of detention. (**Vasanthu Sumalatha**⁶). As the detenu has been denied his right to make an effective representation thereby, his continued detention is rendered illegal.

As the order of detention is liable to be set aside on grounds that the orders granting bail to the detenu were not placed before the detaining authority when he passed the order of detention, and copies of the bail orders were not furnished to the detenu along with the grounds of detention which resulted in the denial of his right to make an effective representation, it is unnecessary for us to examine whether the order of detention should also be set aside for the other grounds urged by Sri B.Vijayasen Reddy, Learned Counsel for the petitioner, for it is well settled that even if one of the grounds or reasons, which led to the subjective satisfaction of the detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be rendered invalid. (**Dwarika Prasad Sahu v. State of Bihar**^[31]; **Shibban Lal Saxena v. State of U.P.**^[32]; **Ram Manohar Lohia v. The State of Bihar**^[33]; **Pushkar Mukherjee v. State of W.B.**^[34]; and **Biram Chand v. State of U.P.**^[35]). One irrelevant ground is sufficient to vitiate the order as it is not possible to assess, in what manner and to what extent, that irrelevant ground operated on the mind of the detaining authority, and contributed to his satisfaction that it was necessary to detain the detenu in order to prevent him from acting in any manner prejudicial to the maintenance of public order. (**Mohd. Yousuf Rather v. State of J&K**^[36]; **Keshav Talpade v. King-**

Emperor^[37]; Tarapada De v. State of W.B.^[38]; Shibban Lal Saxena³²;
Pushkar Mukherjee³⁴; Satya Brata Ghose v. Mr Arif Ali, District
Magistrate, Sibasagar, Jorhat^[39]; K. Yadava Reddy v. Commissioner of
Police, Andhra Pradesh^[40]).

The detention order, and the continued detention of the detenu, stand vitiated for the failure of the detaining authority to consider the orders whereby bail was granted to the detenu, and in not furnishing copies thereof to the detenu along with the grounds of detention respectively. The Writ Petition is allowed, the order of detention is set aside, and the detenu shall be set at liberty forthwith provided he is not required to be kept in custody in connection with any other case/cases registered against him. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

Date:31.03.2016.

Note: L.R. copy to be marked.
B/o
CS/MRKR

[1] (1990) 2 SCC 1
[2] (1988) 1 SCC 287
[3] 2013 (4) ALT 243 (DB) = 2013 (2) ALD (Cri.) 554 (A.P)
[4] (2015) 2 ALD (Cri) 483 (AP)
[5] (1986) 4 SCC 771
[6] 2016 (1) ALT 738 (D.B)
[7] (1987) 2 SCC 241
[8] 1991 Supp (2) SCC 274
[9] 2013 CrI.L.J. 585 = 2013(1) ALT 176 (D.B)
[10] (2012) 2 SCC 72 = 2012(2) ALT (Cri) 14 (SC)
[11] AIR 1984 SC 1334
[12] (Judgment in W.P. No.10018 of 2012, dated 29.06.2012) (APHC) (DB)

- [\[13\]](#) 2011 (3) ALT (CrI.) 219 (SC) = 2011 (4) SCJ 637
- [\[14\]](#) 2013 (3) ALT (CrI.) 303 (D.B.) (A.P)
- [\[15\]](#) (2006) 3 SCC 321 = 2006 (4) SCJ 278
- [\[16\]](#) (1992) 1 SCC 1
- [\[17\]](#) (2006) 7 SCC 337
- [\[18\]](#) (1981) 2 SCC 427 = AIR 1981 SC 728
- [\[19\]](#) (1980) 4 SCC 531
- [\[20\]](#) (1975) 2 SCC 81
- [\[21\]](#) (1981) 1 SCC 419
- [\[22\]](#) (1980) 4 SCC 544
- [\[23\]](#) (1982) 3 SCC 216
- [\[24\]](#) (1980) 2 SCC 270
- [\[25\]](#) AIR 1981 SC 746
- [\[26\]](#) (1980) 4 SCC 525
- [\[27\]](#) (1980) 4 SCC 499
- [\[28\]](#) (1981) 2 SCC 436
- [\[29\]](#) (1981) Supp SCC 53(1)
- [\[30\]](#) (1981) 2 SCC 709
- [\[31\]](#) (1975) 3 SCC 722
- [\[32\]](#) 1954 SCR 418
- [\[33\]](#) AIR 1966 SC 740
- [\[34\]](#) (1969) 1 SCC 10
- [\[35\]](#) (1974) 4 SCC 573
- [\[36\]](#) (1979) 4 SCC 370
- [\[37\]](#) 1943 FCR 49
- [\[38\]](#) AIR 1951 SC 174
- [\[39\]](#) (1974) 3 SCC 600
- [\[40\]](#) ILR 1972 AP 1025