

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

AND

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

WRIT PETITION No.32562 OF 2015

—

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

One Mohammed Sadath Ahmed @ Sadath, son of Chunnu Miya, resident of Medak District, is the detenu in the instant case. The petitioner-Mohammed Nazir is the brother of the detenu. He sought a writ of habeas corpus to declare the order of detention, in proceedings No.16/PD/CCRB/CYB/2015, dated 11.08.2015, passed by respondent No.2 - Commissioner of Police, Cyberabad Commissionerate, Cyberabad, Hyderabad, and also to declare the order of confirmation made by respondent No.1 - State of Telangana, Home Department, Hyderabad, in G.O.Rt.No.2654 dated 29.09.2015, General Administration (Law & Order) Department, continuing the detention of the detenu for a period of 12 months from 12.08.2015, as illegal, arbitrary and contrary to law and violative of Article 21 of the Constitution of India; and consequently, to direct the respondents to produce the detenu before the Court and set him free from detention forthwith.

2. Respondent No.2, basing on the material relating to nine crimes, which are Cr.No.1068 of 2013 under Sections 341, 323, 506 IPC, Cr.No.939 of 2014 under Sections 354(d), 504, 506, 384 r/w 34 IPC, Cr.No.1064 of 2014 under Sections 341, 323, 504, 506 r/w 34 IPC, Cr.No.1068 of 2014 under Sections 384, 506, 120(B) r/w 34 IPC, Cr.No.1072 of 2014 under Sections 468, 467, 420, 506, 120(B) IPC of Jeedimetla Police Station, Cr.No.572 of 2014 under Section 384 IPC, Cr.No.573 of 2014 under Section 384 IPC of Dundigal Police Station, Cr.No.747 of 2015 under Sections 384, 506 r/w 34 IPC of Jeedimetla Police Station and Cr.No.427 of 2015 under Sections 447, 427, 384, 506 r/w 34 IPC of Dundigal Police Station, arrived at the opinion that the detenu indulged in the acts of goondaism by committing offences of extortion, forgery, impersonation, cheating, criminal intimidation, outraging the modesty of woman, intentionally provoking breach of peace, wrongful restraint, causing hurt and criminal conspiracy, thereby, causing panic and a feeling of insecurity among the innocent general public living in the localities of Qutubullapur, Jeedimetla, Shapoornagar and Dundigal, and also from the fact that the detenu

declared himself as the Chairman of International Human Rights Organization and opened an office in his house and indulged in illegal activities, such as, extortion of money, land settlements and matrimonial disputes by charging huge amount of money and, thereby terrorizing innocent general public, got prepared visiting cards declaring himself as Chairman, started publishing a magazine under the name and style of "Human Rights Voice", gave wide publicity to the organization, collected huge amount from the innocent general public by maintaining a gang of unsocial elements and, thus, his activities have been creating a feeling of insecurity in the minds of the people and adversely affecting the maintenance of public order and have spread disorder in the society and, therefore, terming him as a "Goonda", as defined in Section 2(g) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Decoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act'), arrived at subjective satisfaction as despite he was arrested and remanded to judicial custody and, later, released on bail, again, indulged in committing the offences in Crime No.747 of 2015 of Jeedimetla Police Station and he was arrested

on 07.08.2015 and remanded to judicial custody and also feeling that it was imperative to prevent him from acting in any manner prejudicial to maintenance of public order and that recourse to normal law may not be effective deterrent in preventing him from indulging in further activities, which are prejudicial to maintenance of public order and tranquility, passed the order of detention on 11.08.2015. The same was approved by respondent No.1 on 21.08.2015 within 12 days as required under Section 3(3) of the Act in G.O.Rt.No.2305, General Administration (Law & Order) Department. and further confirmed by respondent No.1 in its order in G.O.Rt.No.2654, General Administration (Law & Order) Department, dated 29.09.2015, basing on the opinion tendered by the Advisory Board for a period of 12 months from the date of his detention.

3. As could be gathered from the averments made in the affidavit, the petitioner agitates that the cases registered against the detenu were petty offences and triable by Magistrate and all cases are pending trial and no conviction is recorded in any of the cases and mere figuring of as an accused in the alleged cases cannot be a ground to treat him as a 'Goonda' and

the detenu does not come under the definition of 'Goonda' as defined under Section 2(g) of the Act.

4. Second, that without there being any material whatsoever, the opinion expressed by the detaining authority that the detenu would indulge in the same activities after release on bail is baseless and cannot be sustained.

5. Third, that the detenu was arrested on 07.08.2015 and he was in judicial custody and, therefore, there was no reason whatsoever for passing the order of detention on 11.08.2015 and it necessarily implies that with a mala fide intention to curtail his right of getting bail and to continue his detention in jail, the order of detention is passed reflecting abuse of process of law and violative of Article 21 of the Constitution of India.

6. Fourth, that the order of detention passed by respondent No.2 is in clear violation of Section 3(3) of the Act as within 12 days from the date of the said order, the detaining authority was required to report the fact to the Government together with the grounds on which the order has been made and also on the ground that no period of detention is mentioned therein.

7. Fifth, that the detenu does not know reading and writing English and Telugu languages, but subscribes his signature in English, though, the grounds of detention and the detention order were served on his brother in English and the same was translated in Urdu, but copies of documents relied on by the detaining authority were not furnished in Urdu language, and as such, the brother of the detenu was deprived of his valuable right to make meaningful and effective representation on the orders of detention, which vitiates the detention order. It is stated that even the order dated 29.09.2015 was served in English but not in Urdu language.

8. Sixth, that there was no live link from one offence to other offence and the detenu was falsely implicated as an accused from 18.12.2013 to 18.07.2015 and the detaining authority basing on the stale and irrelevant grounds, passed the detention order.

9. Seventh, that without there being any material, the detaining authority came to the conclusion that the normal law for the alleged repeated breach of law did not have a deterrent effect on the detenu.

10. Eighth, that while he was in judicial remand, the order of detention was passed and the detaining authority has not placed on record the applications filed by the detenu for his release in Crime Nos.747 and 427 of 2015 nor any bail orders granted in his favour in respect of other crimes by the sponsoring authority and the detaining authority without any basis, came to a conclusion that the detenu is likely to indulge in similar offences and incidentally, it is also stated that the copies of the bail orders, bail applications were not served on the detenu to enable him to make effective representation vitiating the order of detention.

11. Last ground is that, though, the detaining authority recorded a finding that the detenu printed visiting cards appearing himself as the Chairman of International Human Rights Organization, but none of them were furnished to the detenu nor they were placed in the record and even the incidental facts narrated by the detaining authority are without any basis and, therefore, according to the petitioner, the order of detention is liable to be set aside.

12. An elaborate counter is filed by respondent No.2. In the first instance, details

mentioned in the order and the grounds of detention were narrated. Thereafter, the subjective satisfaction reached by the detaining authority in passing the order of detention is mentioned in terming the detenu as a 'Goonda' in terms of Section 2(g) of the Act. Concerning the alleged contravention of Section 3(3) of the Act, respondent No.2 places reliance on the decision of the Hon'ble Supreme Court (3-Judge Bench) in **T. Devaki v. Government of Tamil Nadu and others**^[1] ruling that since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, and held that the order of detention is not rendered invalid or illegal and in the absence of such specification and that the provisions of Section 3(2) of the Act relate to delegation of powers of the Government having satisfied to the authorities mentioned therein.

13. Respondent No.2 also referred to the decision of the Hon'ble Supreme Court in **Subrahmanian v. State of Tamil Nadu**^[2] as to the restraint on the Courts to interfere with the subjective satisfaction of the detaining authority except in exceptional and extremely limited grounds and according to respondent No.2, such

grounds do not exist in favour of the detenu and, therefore, sought to dismiss the petition.

14. Subsequently, the petitioner filed W.P.M.P. No.54107 of 2015 on 22.12.2015 seeking amendment of prayer by adding the prayer "after 2nd respondent" in the writ petition, thus:

"...and also to declare G.O.Rt.No.2654 dated 29.09.2015 General Administration (Law & Order) Department, passed by the 1st respondent continuing the detention of the detenu for a period of 12 months from 12.08.2015 as illegal, arbitrary and pass such other order or orders may deem fit and proper in the circumstances of the case... ."

15. Heard Sri A. Prabhakar Rao, learned counsel for the petitioner, and the learned Government Pleader for Home appearing for the respondents.

16. Though, number of grounds have been agitated in the affidavit filed by the petitioner, learned counsel for the petitioner, during the course of arguments urged two main grounds; the first relates to non-supply of translated copies of documents filed in support of the grounds of detention in the language known to the detenu and he places reliance on the decision of the Hon'ble Supreme Court in **Powanammal v. State of**

Tamil Nadu and another^[3] and the decision of a Division Bench of this Court in **V. Muthuvelu v. State of A.P. and others**^[4] to which one of us (Justice A. Shankar Narayana) is a party.

17. Second ground is, that the detaining authority without any material on record, such as, bail applications filed on behalf of the detenu reached to a conclusion that there is a likelihood of detenu being released on bail and indulged in similar activities and, therefore, reflects non-application of mind in recording subjective satisfaction and places reliance on the decisions of the Hon'ble Supreme Court in **Amritlal and others v. Union Government, through Secretary, Ministry of Finance and others**^[5] and **Rekha v. State of Tamil Nadu, through Secretary to Government and another**^[6].

18. Initially, we would like to advert to the second ground raised by the petitioner keeping in view, the principles laid down by the Hon'ble Supreme Court in the decisions relied on by both sides.

19. In **N. Meera Rani v. Government**

of Tamil Nadu and another^[7], the Hon'ble Supreme Court summarized and reiterated the settled principles laid down in the earlier decisions in the context of passing of detention order while the detenu was in judicial custody holding as not an illegality and the decision of detaining authority was depending on facts of particular case in paragraph Nos.22 and 23 thus:

"22. We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not, needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us, to be the correct legal position.

23. Applying the above settled principle to the facts of the present case we have no

doubt that the detention order, in the present case, must be quashed for this reason alone. The detention order read with 920its annexure indicates the detaining authority's awareness of the fact of detenu's jail custody at the time of the making of the detention order. However, there is no indication therein that the detaining authority considered it likely that the detenu could be released on bail. In fact, the contents of the order, particularly, the above quoted para 18 show the satisfaction of the detaining authority that there was ample material to prove the detenu's complicity in the Bank dacoity including sharing of the booty in spite of absence of his name in the F.I.R. as one of the dacoits. On these facts, the order of detention passed in the present case on 7.9.1988 and its confirmation by the State Government on 25.10.1988 is clearly invalid since the same was made when the detenu was already in jail custody for the offence of bank dacoity with no prospect of his release. It does not satisfy the test indicated by the Constitution Bench in Rameshwar Shaw's case (supra). We hold the detention order to be invalid for this reason alone and express no opinion on merits about the grounds of detention."

20. In **Rekha's** case (supra 6), the Hon'ble Supreme Court, while referring to an exception to the rule held that in case bail application is pending while the detenu was in custody, the possibility of release of that person cannot be ruled out, and, in case, no bail application is pending, there is no likelihood of the

person in custody and released on bail rendering the detention illegal, the exception being where a co-accused, whose case stands on the same footing, has been granted bail, the detaining authority can reasonably conclude that there is a likelihood of the detenu being released on bail.

21. In **Binod Singh v. District Magistrate, Dhanbad, Bihar and others**^[8], the Hon'ble Supreme Court held that when the detenu is already in jail at the time of service of the order, the detenu's release or prospect of his imminent release not considered and continued detention illegal on the ground of non-application of mind to relevant factors even if detention otherwise found to be justified.

22. Learned counsel for the petitioner would submit that since the detenu was in judicial custody on the date when the order was passed, the conclusion reached by the detaining authority that there is a likelihood of detenu being released on bail and indulging in criminal activities reflects non-application of mind in violating the order of detention and, therefore, on these grounds, sought to set aside the orders of detention.

23. On the other hand, learned Government Pleader for Home, would place

reliance on the decision of the Hon'ble Supreme Court in **State of Tamil Nadu through Secretary to Government, Public (Law and Order-F) and another v. Nabila and another**^[9] referring to the object of law of preventive detention and the principle to be followed in assessing whether the detention order is valid or not in the context of passing an order of detention while the detenu is in judicial custody, and held in paragraph Nos.11, 12, 13 and 15 thus:

"11. As noticed above, the order of detention in the Habeas Corpus Petition was challenged before the High Court mainly on the ground that the detenu is involved in a solitary case and has not filed any application for bail. But the order of detention was passed without recording any subjective satisfaction as to the real imminent possibility of the detenu being enlarged on bail as would indulge in such activities which have prejudicial to the security of the State. The High court while allowing the habeas corpus petition and quashing the order of detention observed as under:-

"A perusal of paragraph No.11 of the grounds of detention would disclose that the detenu is in remand in connection with the solitary grounds case and admittedly he has not filed any bail application. The sponsoring authority has failed to place any material before the detaining authority to show that either the detenu himself or his relatives are

taking steps to file application for bail in the solitary ground case and in the absence of such vital and cogent materials, the subjective satisfaction arrived at by the detaining authority that there is a real or imminent possibility of the detenu being enlarged on bail and if he is released on bail, he would indulge in such activities which would be prejudicial to the security of the state, is vitiated and therefore on this sole ground the impugned order of detention is liable to be quashed."

12. Indisputably, the object of law of preventive detention is not punitive, but only preventive. In case of preventive detention no offence is to be proved nor is any charge formulated. The justification of such detention is suspicion and reasonability and there is no criminal conviction which can only be warranted by legal evidence. However, the detaining authority must keep in mind while passing the order of detention the civil and constitutional right granted to every citizen by Article 21 of the Constitution of India inasmuch as no person shall be deprived of life and liberty except in accordance with the procedure established by law. The laws of Preventive Detention are to be strictly construed and the procedure provided must be meticulously complied with.

13. In the instant case, as noticed above, the High Court quashed the order of detention mainly on the ground that the detenu was in remand in connection with the solitary ground case when there was no material before the detaining authority to show that either the detenu himself or his relatives are taking steps to file application for bail in the solitary ground case. In our

opinion, the view taken by the High Court while passing the impugned order cannot be sustained in law. This point was considered by this Court in the case of Union of India & Anr. vs. Chhaya Ghosal & Anr., (2004) 10 SCC 97, and observed:-

"23. So far as the finding of the High Court that there was only one incident is really a conclusion based on erroneous premises. It is not the number of acts which determine the question as to whether detention is warranted. It is the impact of the act, the factual position as highlighted goes to show that the financial consequences were enormous and ran into crores of rupees, as alleged by the detaining authority. The High Court seems to have been swayed away that there was only one incident and none after release on bail. The approach was not certainly correct and the judgment on that score also is vulnerable. At the cost of repetition it may be said that it is not the number of acts which is material, it is the impact and effect of the act which is determinative. The High Court's conclusions in this regard are therefore not sustainable."

15. Mr. Gowthaman, learned counsel appearing for the respondent vehemently argued that on the date of passing the detention order no bail was sought for by the detenu hence the detaining authority while passing the impugned order must be satisfied that the detenu was likely to be released on bail. Learned counsel submitted that there is no material or evidence in this regard. In our view, the detention order cannot be set aside merely on this ground. The Constitution Bench of this Court in Hardhan Saha vs. State of West Bengal & Others, (1975) 3 SCC

198, while considering the constitutional validity of maintenance of Internal Security Act 1971, as being ultra vires and violates Article 19 and 21 of the Constitution of India, observed:-

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

33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.

34. The recent decisions of this Court on this subject are many. The decisions in *Borjahan Gorey v. State of W.B.*, *Ashim Kumar Ray v. State of W.B.*; *Abdul Aziz v.*

District Magistrate, Burdwan and Debu Mahato v. State of W.B. correctly lay down the principles to be followed as to whether a detention order is valid or not. The decision in Biram Chand v. State of U.P., (1974) 4 SCC 573, which is a Division Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. The principles which can be broadly stated are these. 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 jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of

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

24. In the light of the above decisions relied on by both sides and when examined the activities of the detenu in the instant case, we are of the view that the subjective satisfaction recorded by the detaining authority cannot be termed as without application of mind in passing the detention order. Further, the very fact that the detenu was arrested earlier in certain other crimes and again, indulged in committing similar crimes and the gravity of the offences alleged to have committed by the detenu under the garb of Chairman of International Human Rights Organization and resorting to extortion and criminal intimidation and other relevant details, certainly, we are of the view that the decisions relied on by the learned counsel for the petitioner would not render any assistance to hold that the order of detention suffers from the vice of illegality.

25. On the first ground that, though, the order and detention order were served on the detenu by translating it in Urdu language, but the

documents filed in support of the grounds of detention in the language known to the detenu were not supplied and, thereby, to make an effective representation by the brother of detenu was deprived in the sense that the constitutional safeguard engrafted in Article 22(5) was not adhered to by the detaining authority and, thereby, the order of detention vitiates.

26. In the said context, the decisions, relied on by the learned counsel for petitioner, were already referred to in the above. In **Smt. Icchu Devi Choraria v. Union of India and others**^[10], the Hon'ble Supreme Court, in the context of detention order passed under Section 3(3) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short 'COFEPOSA Act'), held that the detaining authority shall keep ready all copies of documents, statements and other materials relied upon or referred to in the grounds of detention and supply the same to the detenu on demand within the time stipulated in Section 3(3) of the COFEPOSA Act in order to enable the detenu to make an effective representation against his detention, and, in case of non-compliance thereof, a writ can be issued for releasing the detenu.

27. In **Hadibandhu Das v. District Magistrate, Cuttack and another**^[11], 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.

28. In **Mohd. Zakir v. Delhi Administration and others**^[12], 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.

29. In **V. Muthuvelu's** case (supra 4) reliance was placed on the decisions in **A.C. Razia v. Government of Kerala and others**^[13] and

Powanammal's case (supra 3) 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.

30. The decision in **Powanammal's** case (supra 3) was followed in **V. Muthuvelu's** case (supra 4) and other decisions referred to in the above. Therefore, we are of the view that there is no need to refer to it again.

31. 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 **Ms. L.M.S. Ummu Saleema v. Shri B.B. Gujaral and another** [\[14\]](#) 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."

32. In **J. Abdul Hakeem v. State of T.N. and others**^[15], 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."

33. Learned Government Pleader for Home also places reliance on the decision of the Hon'ble Supreme Court in **Bidya Deb Barma ETC v. District Magistrate, Tripura, Agartala** ^[16], 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."

34. 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, **Msr.L.M.S. Ummu Saleema's Case** (Supra 14), **J. Abdul Hakeem's Case** (Supra 15), **Bidya Deb Barma ETC's Case** (Supra 16), 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.

35. Turning to the fact-situation in the instant case, what all we find from the record made available by the respondents is, the Urdu translations of order of detention and grounds of detention alone were supplied to the detenu, but so far as the documents which were relied in passing the order of detention that led to confirming the order of detention by respondent No.1, Urdu translated copies thereof, which language and script the detenu knows, were not supplied. Further, we have gone through the material on record. We find that the petitioner has taken a definite stand that he is only conversant in Urdu language and translated copies of documents, on the basis of which the order of detention was passed, were not supplied to him, disabling him in making a representation amounting to violation of constitutional safeguard engrafted in Article 22(5) of the Constitution of

India. Even a thorough scanning of the counter filed by respondent No.2 would not show that respondent No.2 met the said ground. No-where in the counter, respondent No.2 denied non-supply of Urdu translations of documents mentioned in the grounds of detention constituting basis for passing the order of detention, nor any material is placed to show that the detenu is well conversant with English language. The mere circumstance that he acted as a Chairman to the so-called Human Rights Organization does not give rise to an irresistible inference that he is well conversant with English language and supply of detention order, grounds of detention and the documents relied on in English language would suffice to satisfy the constitutional safeguard. On the other hand, even there is no endorsement or certificate of the Superintendent of Jail authorities that the purport of the documents was explained to the detenu in Urdu language, and no evidence to that effect has been placed before the Court to arrive at the view that the detenu has taken this ground only with a view to get over the orders of detention. In such an event, certainly, the law laid down by the Hon'ble Supreme Court in **Powanammal's** case (supra 3) and the decision in **V. Muthuvelu's** case (supra 4) relied on by the

learned counsel for the petitioner would drive us to the conclusion that on the said ground, orders of detention passed by the respondents would vitiate.

36. Thus, we are of the opinion that there is merit in the first ground and in our view, prejudice had occasioned to the detenu disabling him in making an effective representation on account of non-supply of Urdu translations of the documents relied on by the detaining authority in passing the order of detention. This ground alone is sufficient to set aside the order of detention.

37. Accordingly, this Writ Petition is allowed by quashing the order of detention, dated 11.08.2015, which was confirmed by G.O.Rt.No.2654, General Administration (Law & Order) Department, dated 29.09.2015, 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.

38. As a sequel thereto, miscellaneous petitions, if any pending in this petition, shall stand closed.

G.

CHANDRAIAH, J

A. SHANKAR NARAYANA, J

29th April, 2016

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- [\[1\]](#) (1990) 2 SCC 456
 - [\[2\]](#) (2012) 4 SCC 699
 - [\[3\]](#) (1999) 2 SCC 413
 - [\[4\]](#) 2015(6) ALT 499 (D.B.)
 - [\[5\]](#) (2001) 1 SCC 341
 - [\[6\]](#) (2011) 5 SCC 244
 - [\[7\]](#) (1989) 4 SCC 418
 - [\[8\]](#) (1986) 4 SCC 416
 - [\[9\]](#) (2015) 12 SCC 127
 - [\[10\]](#) (1980) 4 SCC 531
 - [\[11\]](#) AIR 1969 SC 43
 - [\[12\]](#) (1982) 3 SCC 216
 - [\[13\]](#) 2003(2) ALT (Crl.) 129 (SC)
 - [\[14\]](#) (1981) 3 SCC 317
 - [\[15\]](#) (2005) 7 SCC 70
 - [\[16\]](#) (1969) 1 SCR 562 = AIR 1969 SC 323 = 1969 Cri. L.J. 525