

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION Nos.15910 AND 21045 OF 2015

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

These two writ petitions relate to the detenu - Medishetty Narayana Rao, who is said to be working as Foreman of the chit fund company called 'Medishetty Chit Fund Private Limited' with its registered office at Abhyudayanagar, Chinthal Kunta, L.B. Nagar, Ranga Reddy District.

2. Having got aggrieved by the order of detention, dated 16.04.2015, passed by the Commissioner of Police, Hyderabad City, the second respondent herein, the wife of detenu, Smt. Medishetty Krishna Veni, filed both the writ petitions seeking a writ of *Habeas Corpus* to cause prevention of the detenu and to quash the detention order which relief is sought in former writ petition, and the confirmation order in G.O.Rt.No.1711, General Administration (Law and Order) Department, dated 19-06-2015 passed by respondent No.1 in so far as latter writ petition is concerned, whereby the detenu was detained under the provisions of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug

Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act'), effected on 18-04-2015 for a period of (12) months.

3. Initially, on 16-04-2015, respondent No.3 in the former writ petition who is respondent No.2 in the latter writ petition - the Commissioner of Police, Hyderabad City, in exercise of his powers conferred under Sub-Section (2) of Section 3 of the Act, by recording his satisfaction that the detenu out of fourteen (14) crimes though, convicted in three crimes and released from jail, still, continued to indulge in committing the offences of cheating the general public and is a habitual offender attracting the description of definition 'goonda' under Clause (g) of Section 2 of the Act, and that his conviction has not shown any deterrent effect on him and continued to indulge in similar offences of cheating which are detrimental to the public order and required to be prevented by a detention order, passed the impugned order, dated 16-04-2015, which was approved by issuance of G.O.Rt.No.1187, General Administration (Law and Order) Department, dated 25-04-2015, and further confirmed by the order passed by respondent No.1 on 19-06-2015 in G.O.Rt.No.1711, General Administration (Law and Order) Department.

4. The grounds agitated in latter writ petition, in our view, would suffice to adjudicate upon the question involved in both the writ petitions.

i) It is stated that respondent No.2 ought to have issued notice in compliance of principles of natural justice seeking explanation, particularly, when the cases alleged are outside his jurisdiction without blindly relying on the final report on private complaint for recovery of money pending in suit on the file of I Senior Civil Judge, City Civil Court, Hyderabad, and that the crimes shown by the Investigating Officer pertain to violation of Chit fund Act and, by any stretch, can be construed as offences under Chapter XVII of the Indian Penal Code, 1860 (for short 'Penal Code'), and mere mentioning of penal provisions under Section 420 of the Penal Code would not answer the term 'goonda' as defined in the Act, more particularly, when the offences are non-cognizable summons cases and other cognizable cases are not proximate being kept pending without final report contrary to the provisions of Sections 219 and 220 of the Code of Criminal Procedure Code, 1973 (for short 'CrPC').

ii) It is stated that the detaining authority has failed to serve the material, such as G.O.Rt.No.775 along with material to enable the detenu to make out defence as an opportunity, nor did explain in Telugu vernacular to the detenu.

iii) Respondent No.1 omitted to note the infractions in protecting the fundamental rights of the detenu and in

its verve to pass the confirmation of detention orders on time bound basis, did not choose to give breathing time to the detenu to submit his effective representation, who is married and a respectable person in the society.

iv) Thus, according to the detenu, the order of detention, order of approval of the detention order and confirmation of the order of detention suffer from want of subjective satisfaction and, therefore, requests to quash the impugned order.

5. Respondent No.2 in former writ petition - the Commissioner of Police, Hyderabad City, filed counter resisting the requests made by the petitioner.

i) It is stated that the detenu is involved in fourteen (14) cases in the limits of various police stations of Hyderabad and Cyberabad Commissionrates attracting the offences punishable under Chapters XVI, XVII and XXII of the Penal Code and, as such, the activities of detenu fall under and within the meaning of 'goonda' as defined under Clause (g) of Section 2 of the Act, since he has been habitually engaging himself in unlawful acts and indulging in cheating, criminal intimidation etc. and acting in a manner prejudicial to the maintenance of public order.

ii) It is stated that the activities of the detenu created a sense of fear, panic and insecurity in the minds of public

and that out of fourteen (14) crimes, three ended in conviction, three ended in acquittal and two ended in compromise, whereas, the remaining cases pending trial.

iii) It is stated that the detaining authority having satisfied that recourse to ordinary criminal proceedings is not sufficient to deal with his prejudicial activities, passed the impugned detention order to prevent the detenu from further indulging in criminal activities that are prejudicial to the maintenance of public order basing on the material placed before it.

iv) While traversing the allegation that the petitioner and detenu are not wise enough to understand the English language and that their mother tongue is Telugu only, it is stated that at the time of service of detention order and its grounds, the detenu had endorsed that he could read and understand English, besides both of them did make any request to respondent Nos.1 and 3 and the Advisory Board for supply of translated copies in Telugu language.

v) It is stated that the crimes registered against the detenu would show that he has been willfully evading the payment and threatening the successful bidders of the chits when they asked for payment and took the assistance of provisions of Section 6 of the Act to the effect that no detention order shall be invalid or in-operative merely by reason that a person to be detained

thereunder is outside the limits of territorial jurisdiction of the officer making the order though, within the State.

vi) In the same context, it is stated that once the Government approves the detention order under Sub-Section (3) of Section 3 of the Act, the order passed by the District Magistrate or the Commissioner of Police having jurisdiction, the said Authority has become *functus officio* and, therefore, the orders passed in exercise of powers conferred under Sub-Section (2) of Section 3 of the Act is in accordance with well-established law.

vii) It is stated that the detenu was involved in a series of cases and was also convicted in three crimes against which appeals are preferred and pending, and he committed an offence registered by the Station House Officer, Sultan Bazar Police Station, Hyderabad in Crime No.14 of 2014 under Sections 420, 406, 409, 468 read with 34 of the Penal Code by making a voluntary confession, and thereby the detaining authority was compelled to arrive at the view to prevent him from acting in any manner prejudicial to the maintenance of public order.

viii) While answering the contention that he was not provided with Telugu translated copies of documents, it is stated that the detenu has endorsed that he could read and understand English, in his own writing acknowledged the receipt of grounds and order of detention, and at no

point of time, the detenu made a request for supply of translated documents in Telugu, nor complained about the non-supply thereof before the Advisory Board, and the detenu was afforded all reasonable opportunity to make a representation and opportunity of being heard before the Advisory Board, and having availed the same, it is not open for him to contend that he was not given earliest opportunity. On subjective satisfaction, the decision of Hon'ble Supreme Court in **Subrahmanian v. State of Tamilnadu**^[1] has been relied on.

ix) Concerning former writ petition, it is stated that the same becomes infructuous in view of filing latter writ petition challenging the final orders, and sought to dismiss both the writ petitions.

6. A reply affidavit is filed by the petitioner on 04-10-2015, in the former writ petition reiterating the earlier grounds.

i) Turning to subjective satisfaction, while referring to the details of crimes in (1) Crime No.77 of 2013, dated 20-01-2013; (2) Crime No.118 of 2013, dated 04-02-2013; and (3) Crime No.391 of 2013, dated 03-04-2013, it is stated that all the three cases fall within the Cyberabad Commissionerate, but not within the domain of detaining authority. Concerning fourth crime relating to Sultan

Bazar Police Station, Hyderabad, referred to in the above, having narrated the details, it is stated that the detenu was taken on P.T. warrant on 25-07-2014 and came to be released on bail on 13-08-2014 and, in fact, a Civil Suit in O.S. No.102 of 2014 was filed and pending before the learned I Senior Civil Judge, City Civil Court, Hyderabad, now on contest, and the detaining authority has failed to take notice of the same.

ii) Concerning the stand taken by the detaining authority on jurisdictional aspect, referring to Section 6 of the Act, the petitioner states that Section 6 of the Act, contemplates and exempts the order from being vitiated only in the cases of detenu beyond the domain of detaining authority and next the detenu is kept in detention outside the domain though, within the state. But, the said section will not empower the detaining authority to intrude into the jurisdictional power of the other competent detaining authorities in the absence of concurrence.

iii) It is stated that all the allegations constitute Chit Fund Act violations that arose in a single business and no element of cheating right from the inception can be attracted, and the maintenance of law and order is within the competence of police and it is not the case that the Investigating Officer has raised his hands or became helpless with the fourth crime which is based on private

complaint.

iv) The petitioner required the detaining authority to strict proof as to understanding of English by the detenu, while stating that mere endorsement by the detenu would not suffice.

v) It is stated that maximum period of detention has to be read in the light of proviso to Sub-Section (2) of Section 3 of the Act, which empowers extension of detention with three months every time up to 12 months and needs review of the order by the Government at the instance of Board and the Government can exercise the powers of revocation, modification under Sections 13 and 14 of the Act or temporary release under Section 15 of the Act, and apart from the said obligations, the detaining authority, who caused detention, is under obligation to visit detenus at the detention place to have frequent checks about health of the detenus and to report to the Government under Clause 29 of G.O.Ms.No.342, dated 27-06-1986, known as Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers (Regulation of Place and Conditions of Detention) Order, 1986, and the idea behind “such is parental treatment of detaining authority over the detenu as child but not as a police officer vis-à-vis criminals because the reformatory being first and the deterrent is the

next.

vi) It is stated in paragraph No.18 of the reply affidavit that the order of detention is based on irrelevant ground since in paragraph No.17 of the counter affidavit filed by the detaining authority, it is alleged that the detenu has cheated many members of Chit Fund Company, Finance Company and Banking Institution is not within the grounds of detention order and is biased from the charge sheet or private complaint which does not reveal any incriminating material against the detenu except for exorbitant amounts in the guise of mortgage loan, and the allegation that the detenu and his henchmen had been threatening the witnesses is quite imaginary and, therefore, sought to quash the order.

7. Heard Sri M. Praveen Kumar, learned counsel for the petitioner, and the learned Government Pleader for Home appearing for the respondents in both the writ petitions.

8. The learned counsel for the petitioner would submit that four crimes, referred to in the above, the detaining authority in construing them as the basis for passing detention order mainly involve private civil disputes for non-payment of bid amount/paid up installments and loan amounts, and by any stretch, will not fall within the meaning of disruption of public order, and except for police interference as settler of the civil

disputes, these cases would not involve the problem of law and order even, and they are stray, unorganized risks in the normal course of life to meet business needs or business fluctuations, and places reliance on the judgment of the Hon'ble Division Bench of this Court in **Nafeesa Begum v. State of A.P. and others** [W.P. No.28191 of 2015, dated 10.12.2015]^[2] rendered by following the decisions of the Hon'ble Supreme Court in **Commissioner of Police v. C. Anita**^[3]; **Kuso Sah v. State of Bihar**^[4]; **Harpreet Kaur (Mrs) Harvinder Singh Bedi v. State of Maharashtra and another**^[5]; **T.K. Gopal v. State of Karnataka**^[6] and **State of Maharashtra v. Mohd. Yakub**^[7].

i) His submission is that the detenu was granted anticipatory bails and regular bail in the above cases, and he has been complying with the conditions imposed and contesting the cases in accordance with the law and procedure, and it is not the case of the detaining authority that the detenu has violated the conditions and misusing the freedom and, therefore, the detention order vitiates in view of the decision of another Hon'ble Division Bench of this Court in

Smt. G. Neeraja v. State of Telangana [W.P. No.17192 of 2015, dated 07.10.2015]^[8], and the last incident

alleged to have taken place on 13.01.2014, which was a private complaint, whereas the detention order was passed on 16.04.2015 i.e. 15 months after the date of alleged last incident, which is not in close proximity and, therefore, in view of the decision of the Hon'ble Division Bench of this Court in **Neeraja's Case** (Supra 8) rendered by following the decision of the Hon'ble Supreme Court in **Union of India v. Paul Manickam**^[9], the order of detention vitiates.

ii) It is also his submission that since detention order was passed on irrelevant ground, it stands vitiated in view of the decision of the Hon'ble Division Bench of this Court in **Smt. Vasnthu Sumalatha v. State of Andhra Pradesh** (W.P. No.6510 of 2015 and batch, dated 29.09.2015)^[10] and the decisions rendered by the Hon'ble Supreme Court in **Mohd. Yousuf Rather v. State of J&K**^[11], **Keshav Talpade v. King-Emperor**^[12], **Tarapada De v. State of W.B.**^[13], **Shibban Lal Saxena v. State of U.P.**^[14], **Pushkar Mukherjee v. State of West Bengal**^[15], **Satya Brata Ghose v. Mr. Arif Ali, District Magistrate, Sibasagar, Jorhat**^[16], **K. Yadava Reddy v. Commissioner of Police, Andhra Pradesh**^[17] and **Mohammed Fayaz Ali alias Fayaz v. Chief Secretary,**

Government of Andhra Pradesh, Hyderabad^[18] and Thallapuneni Venkateswarlu v. The Collector and District Magistrate, Kadapa^[19], in support of his submission that the violations of Chit Fund Act do not fall within Chapter XVII of the Penal Code for the purpose of 'goonda' as defined in Section 2(g) of the Act on the ground that the order is liable to be vitiated.

iii) His further submission is the allegation that the detenu is

a habitual offender is not supported by any material in examination by the detaining authority and, in that context, placed reliance on the decision of Hon'ble Madras High

Court in **R. Kalavathi v. State of Tamilnadu^[20]** and

submits further that even there is no continuity of thread stringing together to infer 'habit' on the part of the detenu and places reliance on the decisions rendered by the erstwhile High Court of Andhra Pradesh in **Pilli Yeteswari**

v. Govt. of AP^[21], **A. Rukmini v. The Collector and**

District Magistrate, Kurnool^[22], **S. Prasad Reddy v.**

The Collector and District Magistrate, Anantapur^[23]

iv) His further submission touches non-supply of documents in Telugu language placing reliance on the decision rendered by the Hon'ble Division Bench of this Court in **V. Muthuvelu v. State of A.P. & others** [W.P.

No.8022 of 2015, dated 22.09.2015]^[24] following the decision of the Hon'ble Supreme Court in **Powanammal v. State of Tamilnadu & another**^[25] and the decision of the Hon'ble Division Bench of this Court in **Smt. V. Sumalatha's Case** (Supra 10), in which, the decision in **V. Muthuvelu's Case** (Supra 24) is followed.

v) His further submission relates to inordinate delay in disposal of the representation, stating that the representation dated 19-05-2015 made by the detenu was rejected on 07-08-2015, which was more than 50 days; as the representation dated 15-09-2015 was rejected on 03-1-2015 without assigning any reasons, and he places reliance on the decisions of Hon'ble Division Bench of this Court in (i) **Smt. V. Sumalatha's Case** (Supra 10) and the Hon'ble Supreme Court in **Ummu Sabeena v. State of Kerla**^[26] and **Rajammal v. Tamilnadu**^[27].

vii) Concerning the submission that continued detention for twelve (12) months at a stretch without reviews from time to time, vitiates the detention order, he places reliance on the decision of the Hon'ble Supreme Court in **Cherukuri Mani v. Govt. of A.P.**^[28].

viii) Incidentally, it is his submission that 44th amendment to the constitution contemplates serving

judge as chairman of Advisory Committee, but the Advisory Board was presided over by a retired Judge as a Chairman in the instant case when opinion was tendered, placing reliance on the decision of a learned Single Judge of this Court in **Saroj Mehandi v. State of A.P.** (W.P. No.32710 of 2014 and Batch, dated 02.03.2015)^[29].

ix) Last submission made by the learned counsel is that there has been non-compliance of satisfaction under Sub-Section (2) of Section 3 of the Act for delegation of powers contending that G.O.Rt.No.775, dated 10-03-2015, issued is a routine administrative order without assigning any reasons for satisfaction of the Government i.e., without stating any circumstance prevailing or likely to prevail in the state and the necessity for detention, and non-supply of the said G.O. or its generic order also vitiates the detention order.

9. For all the above reasons, the learned counsel sought to quash the impugned order and to grant damages/compensation to the detenu.

10. The learned Government Pleader for Home, on the other hand, would submit that in all four crimes on the basis of which the detention order was passed, the offences punishable under Sections 420 and 506 of the Penal Code read with Chit Fund Act have been clutched, and these offences would fall within the mischief of

Chapters XVII and XXII of the Penal Code, respectively. It is according to him that, the antecedents have been examined and found that earlier there were ten cases and the detaining authority arrived at subjective satisfaction, that the activities of detenu were prejudicial to public order and thereby passed the order treating the detenu as a habitual offender answering the description of 'goonda' as defined under Section 2(g) of the Act.

i) It is his submission that the detenu has passed receipt, which is even filed by the petitioner along with the material, which shows that the detenu has signed in the receipt in English language and suggestive of the fact that the detenu is well conversant with English language, and that the detenu never raised objection that he was not given documents in his kwon language and what is stated in the representation submitted to the Advisory Board by the detenu is very vague and does not specifically show that the detenu ventilated his grievance that he was not supplied the translated copies of documents in Telugu and placed reliance on the decision of the Hon'ble Supreme Court in **Bidya Deb Barma and others v. District Magistrate, Tripura, Agartala**^[30].

ii) His next submission is, that proviso to Sub-Section (2) of Section 3 of the Act only refers to delegation of powers but not in relation to period of detention, while answering the submission of the learned counsel for the

petitioner that the detaining authority or the confirming authority cannot fix a period of 12 months at a stretch, and the said proviso requires review for every three months and he placed reliance on the judgment of the Hon'ble Division Bench of this Court in **Arif Khan v. State of Telangana** (W.P. No.22672 of 2015, dated 28.10.2015)^[31], in which, there has been reference to the judgment of another Hon'ble Division Bench of this Court in **Tahera Mohsin v. State of Telangana** [W.P. No.40066 of 2014, dated 08.10.2015]^[32] referring to the decisions in **Harpreet Kaur's Case** (Supra 5) and **T. Devaki v. Government of Tamilnadu**^[33] were not brought to the notice.

iii) On subjective satisfaction, he has also placed reliance on the decisions of the Hon'ble Supreme Court in **State of Bombay v. Atma Ram Shridhar Vaidya**^[34], **Rameshwar Shaw v. District Magistrate, Burdwan and another**^[35], **Tarapada De's Case** (Supra 13) and **Hardhan Saha v. The State of West Bengal and others**^[36].

iv) His submission in regard to delay in disposal of representations has been, that there is no constitutional mandate that the Advisory Board required to dispose of

representation before passing the confirmation of detention order and places reliance on the decisions of the Hon'ble Supreme Court in **D.M. Nagaraja v. Government of Karnataka and others**^[37], and **K.M. Abdulla Kunni and another v. Union of India and others**^[38].

11. Thus, it is his submission that there is absolutely no legal infirmity in passing the detention order and the order of confirmation of detention order, and no other infractions have been occurring and, therefore, sought to dismiss the writ petitions.

12. On the first submission that the activities of the detenu cannot be construed as prejudicial to the public order and mainly fall within the four corners of violations of Chit Fund Act provisions and the decisions on which reliance was placed on the judgment of the Hon'ble Division Bench of this Court in W.P. No.28191 of 2015, in which the decisions in **C. Anita's Case** (Supra 3), **Kuso Sah's Case** (Supra 4), **Harpreet Kaur's Case** (Supra 5), **T.K. Gopal's Case** (Supra 6) and **Mohd. Yakub's Case** (Supra 7) were followed, learned Government Pleader would submit that the detaining authority on the basis of the material recorded his subjective satisfaction that the detenu has been indulging in cheating general public and that he is a habitual offender and is a 'goonda' as defined

under Section 2(g) of the Act and his continued indulgence of committing the offence of cheating accounted for acting in the manner prejudicial to the public order and that subjective satisfaction arrived at by the authority is outside the purview of scrutiny of the Courts and in that direction has placed reliance on the decisions in **Atma Ram Shridhar Vaidya's Case** (Supra 34), **Rameshwar Shaw's Case** (Supra 35) and **Hardhan Saha's Case** (Supra 36).

13. We would like to place reliance on the decision in **Rameshwar Shaw's Case** (Supra 35) rendered by a Constitutional Bench of the Hon'ble Supreme Court, wherein it was held that it would not be open to the detenu to ask the Court to consider the question as to whether the said satisfaction, the detaining authority can be justified by the application of objective tests, held in paragraph No.6, thus:

"6. It is true that the satisfaction of the detaining authority to which S. 3 (1) (a) refers is his subjective satisfaction, and so is not justiciable. Therefore, it would not be open to the detenu to ask the Court to consider the question as to whether the said satisfaction of the detaining authority can be justified by the application of objective tests. It would not be open, for instance, to the detenu to contend that the grounds supplied to him do not necessarily or

reasonably lead to the conclusion that if he is not detained, he would indulge in prejudicial activities. The reasonableness of the satisfaction of the detaining authority cannot be questioned in a Court of law; the adequacy of the material on which the said satisfaction purports to rest also cannot be examined in a Court of law. That is the effect of the true legal position in regard to the satisfaction contemplated by section 3(1)(a), vide State of Bombay v. Atma Ram Sridhar, 1951 SCR 167 at p. 176 : (AIR 1951 SC 157 at p. 160)."

14. In **Haradhan Saha's Case** (Supra 36), a Constitutional Bench of the Hon'ble Supreme Court stated the principles in earlier decisions rendered by it broadly in paragraph No.34, thus:

The recent decisions of this Court on this subject are many. The decisions in *Borjahan Gorey v. The State of W.B.* [(1972) 2 SCC 550 : 1972 SCC 9Cri 888], *Ashim Kumar Ray v. State of W.B.* [(1973) 4 SCC 76 : 1973 SCC (Cri) 723], *Abdul Azia v. The District Magistrate, Burdwan* [(1973) 1 SCC 301 : 1973 SCC (Cri) 321] and *Debu Mahto v. State of W.B.* [(1974) 4 SCC 135 : 1974 SCC (Cri) 274] 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 : 1974 SCC (Cri) 609
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.

15. We have gone through the order of detention and the grounds of detention and other material placed on record. We are of the view that nothing is made out by the detenu to show that the order of detention passed by respondent No.2 as confirmed by respondent No.1 suffers from vice of any *mala fides*. Therefore, that ground agitated by the learned counsel for the petitioner is without merit.

16. The second ground raised by the learned counsel for the petitioner that detention order was passed on irrelevant ground and stands vitiated, placing reliance on the decision in **Smt. V. Sumalatha's Case** (Supra 10) rendered by a Hon'ble Division Bench of this Court following the decisions of the Hon'ble Supreme Court referred to hereinbefore, again basing on the very same ground that violations of Chit Fund Act do not follow Chapter XVII of IPC to answer the description of 'goonda' as defined in Section 2(g) of the Act 1986.

17. We are unable to accept the said contention for the reason that it is not as though the detaining authority has passed the order of detention solely based on the

violations of Chit Fund Act, but it is clear from the material on record, more particularly, the grounds of detention and the order of detention that the detenu was alleged to have committed the offences punishable under Sections 420 and 506 of IPC which deal with the offences of cheating and criminal intimidation, and, therefore, it cannot be construed that the detaining authority has passed the order of detention on irrelevant grounds as sought to be construed by the learned counsel for the petitioner.

18. Further ground which touches the subjective satisfaction agitated by the learned counsel for the petitioner that the detenu has been complying with the conditions imposed in the bail order in all the four (4) crimes and contesting the cases, and, therefore, it cannot be said that the detenu attempted to misuse the freedom and consequently the order of detention vitiates in view of the decision of another Hon'ble Division Bench of this Court in **Smt. G. Neeraja's Case** (Supra 8). We would like to express that it again touches the subjective satisfaction of the detaining authority in which direction, we have already held in the above that unless some strong grounds are made out in the direction of attributing *mala fides* in passing the order of detention, which is under challenge, cannot be interfered with.

19. The next ground raised by the learned counsel for the petitioner that the detenu cannot be stamped as a

'habitual offender' and no material is placed in support of the same before the detaining authority and the decisions relied on by him referred to in the above, in our view, again touches the subjective satisfaction of the detaining authority and we are not inclined to agree with that submission, merely on the premise that there is absence of continuity of thread stringing together to infer 'habit' on the part of the detenu.

20. The further submission of the learned counsel for the petitioner that there was inordinate delay in disposal of the application made by the detenu, the detaining authority has taken more than fifty (50) days time for disposal of the representation of the detenu, dated 19.05.2015, and the decisions relied on by the learned counsel for the petitioner referred to in the above, we would like to refer to the decision of the Hon'ble Supreme Court in **D.M. Nagaraja's Case** (Supra 37), wherein it was held that competent authority can consider the representation only after the order of confirmation in paragraph No.23 thus:

“23. This Court in *K.M. Abdulla Kunhi v. Union of India* [(1991) 1 SCC 476 : 1991 SCC (Cri) 613 (Constitution Bench)] has clearly held that the authority has no constitutional duty to consider the representation made by the detenu before the order of confirmation of the detention order. There is no

constitutional mandate under clause 95) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. In other words, the competent authority can consider the representation only after the order of confirmation and as such, the contention raised by the appellant as if there was delay in consideration, is baseless and liable to be rejected. As pointed out above, the counsel for the appellant did not raise any objection as regards to the same.”

21. Concerning the submission of the learned counsel for the petitioner that continuous detention for twelve (12) months without reviews from time to time, the decision in **Cheruku Mani’s Case** (Supra 28) rendered by the Hon’ble Supreme Court is relied on by the learned counsel. The learned Government Pleader touching the time limit while submitting that proviso to sub-section (2) of Section 3 of the Act 1986 only refers to delegation of powers, but not in relation to period of detention, placed reliance on the decision of another Hon’ble Division Bench of this Court in **Arif Khan’s Case** (Supra 31). When confronted with the judgment rendered by another Hon’ble Division Bench of this Court in **Tahera Mohsin’s Case** (Supra 32) following the decisions in **Harpreeth Kaur’s Case** (Supra 5) and **T. Devaki’s Case** (Supra 33),

held in paragraph Nos.8, 9 and 10 in **Arif Khan's Case** (Supra 31) thus:

"8. The learned Government Pleader contends that the decision reported in CHERKURI MANI's case was considered by this court in WP.No.40066 of 2014 and WP.No. 5168 of 2015 along with the principles of law laid down by the Apex Court in **HARPREET KAUR [MRS] HARVINDER SINGH BEDI V/s. STATE OF MAHARASHTRA AND ANR [7]**., **T. DEVAKI V/s. GOVERNMENT OF TAMIL NADU AND ORS [8]**. and the power of detaining authority to pass the detention order beyond three months was considered and by following HARPREETH KAUR's case and T. DEVAKI's case the detention passed on CHERUKURI MANI was rejected. According to learned Government Pleader, earlier the three Judge Bench which was in T. Devaki's case and Harpreeth Kaur's case have not been brought to the notice of the Apex Court in Cherukuri Mani's case. Therefore, he contends that there is no illegality in the order of detention and prays for dismissing the writ petition.

9. We have heard the learned counsel for parties and perused the material available on record. The contention of learned counsel for the petitioner is that the order of detention for twelve months at a time is liable to be set aside, having regard to the ratio laid down by the Apex Court in **Cherukuri Mani's** case. On the other hand, learned Government Pleader places reliance upon **Harpreet Kaur (MRS) Harvinder Singh Bedi's** case and **T. Devaki's** case together with two unreported decisions of this Court where similar point was considered and held against the detenu.

10. We have perused the principles laid down in **Harpreet Kaur (MRS) Harvinder Singh Bedi's** case and **T. Devaki's** case and also the view taken by this Court in W.P.No.40066 of 2014 and W.P. No.5168 of 2015. In our considered view, the first contention raised by the petitioner is without merit and is accordingly, rejected.”

Hence, we are of the view, that the said submission is without merit.

22. Even the submission of the learned counsel for the petitioner that non-compliance of procedural requirement of Sub-section (2) of Section 3 of the Act, 1986 for delegation of powers by the order in G.O. Rt. No.775, dated 10.03.2015, as the said order was a routine administration order without assigning any reasons for satisfaction of the Government, we are not in agreement with the learned counsel. We are of the view, that examination of satisfaction or otherwise for delegation of powers is completely outside the purview of this Court and we, therefore, do not find any merit in that submission.

23. Adverting to the submission that non-supply of documents in Telugu on the basis of which the order of detention was passed, learned counsel would submit that it is not as though that such a plea was raised for the first time either in the writ petition affidavit or in the reply affidavit, but a definite plea was taken therefor in the representation submitted to the Advisory Board and the

copy thereof would substantiate it. He placed reliance on the decision of the Hon'ble Division Bench of this Court in **V. Muthuvelu's Case** (Supra 24), to which I am a Member, rendered by following the legal principles laid down in **Powanammal's Case** (Supra 26). The learned Government Pleader for Home *inter alia* contends that the detenu was well acquainted with the English language being

a Foreman of the Chit Fund Company and that, in fact, passed

a receipt in token of acknowledging the receipt of order of detention and the grounds mentioned therein in the said receipt, he, in fact, signed in English language and that he never raised any objection as to not giving documents in his known language (Telugu) and even a request therefor was not made at all, and, therefore, the decisions relied on by the learned counsel for the petitioner would not render any assistance in view of the decision rendered by the Hon'ble Apex Court in **Bidya Deb Barma's Case** (Supra 30).

24. We would like to refer to the instant ground raised by the detenu in the sequential manner. First in point of time, it occurs in the representation made by the petitioner, wife of the detenu, dated 19.05.2015. Paragraph No.10 is relevant for the present purpose, which runs thus:

“10. The detaining authority has failed to serve the material such as GORT 775 at earliest to enable the detenue to make out defence as an opportunity.”

25. In paragraph No.12, it is stated that the detaining authority has failed to serve the material relied on by him in the language adequately versed to the detenu.

26. Next comes, the averments made in the affidavit filed in W.P. No.21045 of 2015. Paragraph Nos.17 and 19 relate to the said issue. Paragraph No.17 runs thus:

“17. It is pertinent to mention here that no material documents such as GO.MS775 GA (Law and order) Dept dt 10-3-2015 nor further material causing bias in the mind of authorities is furnished to the detenue (*Sic. detenu*) or to this petitioner muchless the documents in telugu vernacular, so as to enable the explanation / early representation by and on behalf of detenue (*Sic. detenu*).”

Thus, the detenu raised a specific ground that the documents in Telugu vernacular were not furnished to him so as to enable him in his earliest representation being made by and on behalf of detenu through his wife.

27. In paragraph No.19, while emphasising the procedural requirement, occurring in Sub Article 5 of

Article 22 of the Constitution of India, agitated that earlier opportunity was not afforded to him to make a representation to the jail authorities since the copies relied on by the detaining authority were not furnished nor explained in the language of detenu.

28. In the reply affidavit filed on 04.10.2015, in paragraph No.12, the same aspect was reiterated while explaining that service of the documents were effected on one Ch. Madhu and that there was no necessity for the detenu or for the petitioner to apply for the translated copies, particularly, in the procedure of detention also stating that simply because there is no bar in the laws, the power cannot be abused to deprive the individuals to defend rights in the pending cases, which run thus:

“12. The service is shown to have effected on One Mr. Ch Madhu, the endorsement by the detenue / this petitioner as to understanding of English shall be put to strict proof as doubtful. There should not have been the service on the person other than interested. There is no necessity for the detenue or this petitioner to apply for translated copies particularly in the procedure of detention. Simply because there is no bar in the laws, the power cannot be abused to deprive the individuals to defence rights in the pending cases.

13. In reply to para 13 – the

contentions are already replied in preceding paras for appreciation of prudential procedure and practice in the light of strict provisions of the Act and the Rules/Order if any, in GO MS 342 GA(General.A) Dt 27-6-1986. The alleged crime 14/2014 within the jurisdiction of second respondent is already answered in preceding para and more so, the second respondent has failed to appreciate that the defacto complainant who was deceived by his Manager (A3) for misappropriation etc, has filed the private complaint for huge amounts than legitimate amount with false allegations against the detenue however failed to take note of pending civil suit in the grounds and order. The contention of the power u/s6 of the Act is also answered in para-6 of Reply Affidavit. Sec. 3(1) vests power with the Government, while the Sec.3(2) confers power on the second respondent only after consideration with the Government that too after satisfaction as provided in Sub sec.(1).Sec.8 analogous to Art.22(5) implies "when the detention is resulted in pursuance of order, the grounds have to be furnished at earliest not beyond 5 days" That means when the order and grounds are together given in the same proceedings, both shall be furnished to detenue at earliest possible time to enable early representation. In the instant case, both the order / grounds are taken together,

the second respondent did not cause the service of proceedings (grounds and order) to the detenu or his wife (petitioner herein) before taking into custody from the residence at LB Nagar Limits nor is there any placement of intimation at Local PS or Commissionerate Cyberabad more particularly when there is no denial of arrest of the detenu from the house of detenu. However the proceedings of grounds and arrest is shown to have been served on one Ch Madhu r/o LB Nagar. As such the Sec.8 becomes offended. Sec 9-12 pertains to Advisory Boards constitution, Reference, Procedure, & Action upon Report.”

29. In paragraph No.16, the writ petitioner reiterated that there is no service of detention grounds /orders on the detenu much less to speak of knowledge of English and had it been true, the service could not have been on the person viz., Madhu other than the detenu or his interested person i.e., the petitioner. Thus, right from the date of making representation to the Advisory Board, the consistent stand of the detenu has been that service was effected on a different person by name Madhu and that the translated copies in Telugu of the material documents were not supplied to him and, therefore, for non-observance of the constitutional mandate enunciated in Sub-Article (5) of Article 22, more particularly, in the light of

the principles laid down by the Hon'ble Apex court, the order of detention vitiates.

30. In the counter affidavit, the detaining authority mentions that while serving the detention order and the grounds of detention, the detenu endorsed that he could write and understand English and acknowledged the same and at no point of time neither the detenu nor the petitioner requested respondent Nos.1 and 2 and even represented before the Advisory Board about non-supply of translated copies in Telugu.

31. At this stage itself, we would like to observe that the aforesaid averment mentioned in the counter affidavit by the detaining authority appears to be totally unconvincing. The counter is not specific in relation to the allegation levelled by the detenu that the translated copies in Telugu of the material, on the basis of which the detaining authority arrived at subjective satisfaction were not supplied to him. In fact, though, the detaining authority ought to have specifically controverted that submission, instead of doing so, the detaining authority maintains silence on that particular aspect of the case.

32. So, the question that falls for our consideration is whether non-supply of charge sheets and other documents in all the four (4) crimes would vitiate further detention of the detenu?

33. In **V. Muthuvelu's Case** (Supra 24), while holding that non-supply of material which was relied on for passing detention order is fatal, expressing the view that by not supplying such material, the detenu is deprived of his right to make an effective representation guaranteed under Article 22(5) of the Constitution, observed in paragraph Nos.14 and 15, thus:

14. Though it is stated in the order of detention that the grounds of detention and material are ordered to be supplied in Telugu, English and Tamil languages, it is clear that no material is supplied to the detenu by translating into Tamil. All the crimes registered are in the State of Andhra Pradesh and while referring to such crimes under various Sections, reasons are recorded so as to invoke the provisions of the Act, but such material is not supplied in Tamil language. It is true that from the material placed on record, it is clear that the detenu has signed in English language in token of receiving grounds etc., but merely because he has signed in English, we cannot say that he is well-versed with English language. It is common practice that many those who sign in English are not conversant with the said language. Thus, we are not convinced to accept the plea of the learned Government Pleader that non-supply of material in Tamil language, did not affect the right of detenu to make an effective representation. In **Hadibandhu Das'** case (2 supra), the Hon'ble Supreme Court has held that nonsupply of translation and script in the language which is known to the detenu amounts to denial of right of making effective

representation guaranteed under Article 22(5) of the Constitution. Further, in **A.C.Razia's** case (3 supra), the Hon'ble Supreme Court has held that the grounds of detention together with supporting documents should be made available to the detenu in a language known to him. Paragraph 10 of the said judgment reads as under :

“10. We are concerned here with clause (5) of Article 22. The dual rights under clause (5) are: (i) the right to be informed as soon as may be of the grounds on which the order has been made, that is to say, the grounds on which the subjective satisfaction has been formed by the detaining authority, and (ii) the right to be afforded the earliest opportunity of making a representation against the order of detention. By judicial craftsmanship certain ancillary and concomitant rights have been read into this article so as to effectuate the guarantees/ safeguards envisaged by the Constitution under clause (5) of Article 22. For instance, it has been laid down by this Court that the grounds of detention together with the supporting documents should be made available to the detenu in a language known to the detenu. The duty to apprise the detenu of the right to make representation to one or more authorities who have power to reconsider or revoke the detention has been cast on the detaining authority. So also the duty to consider the representation filed by or on behalf of the detenu with reasonable expedition has been emphasized in more than

one case and where there was inordinate delay in the disposal of representation, the detention was set aside on that very ground.”

To the same effect is the judgment in **Powanammal's** case (4 supra), in which, the Hon'ble Supreme Court has held that the documents which are made basis for passing an order of detention must be furnished in the language understood by the detenu and non-supply of such material would be fatal. In the aforesaid judgment, by further making a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and on document which finds a mere reference in the grounds of detention, the Hon'ble Supreme Court has held that non-supply of copy of document relied upon in the grounds of detention is held to be fatal and it is further held that the detenu need not show that any prejudice is caused to him.

15. The aforesaid judgments will fully support the case of petitioner. In this case, we are of the view that though the instances of several crimes registered against the detenu are made basis for passing an order of detention, the non-supply of material which is relied on for passing such order, is fatal and we are of the view that by not supplying such material, the detenu is deprived of his right to make an effective representation, guaranteed under Article 22(5) of the Constitution.”

34. In **Smt. V. Sumalatha's Case** (Supra 10), while expressing a view that failure to supply the documents in a language known to the detenu resulted in the detenu

being denied the opportunity of making an effective representation and would render his continued detention illegal referred to the decision in **V. Muthuvelu's Case** (Supra 24) and the decisions of the Hon'ble Supreme Court and dealt with thus:

“XI. DOCUMENTS SUPPLIED IN A LANGUAGE UNKNOWN TO THE DETENU:

In W.P. No.13482 of 2015, it is stated that the material, relied upon by the detaining authority, was not supplied to the detenu in the language known to him; the detenu knows Kannada, Urdu and a little bit of English; however, the confessional statement of the co-accused, on the basis of which the detenu was added as the accused, were supplied to the detenu in Telugu; and, thereby, the detenu was deprived of his right to make an effective representation to the concerned authorities. In the counter affidavit, filed by the respondents, it is stated that the grounds of detention, and the material relied upon, were served on the detenu in two languages i.e., English and Telugu; the same were acknowledged by him; on enquiry with the detenu, whether he knew English and Telugu languages, the detenu had stated that he knew English very well and he was able to speak, read and write in English; he had also stated that he could speak Telugu, Kannada and Hindi, but he did not know to read and write in these languages; he had stated that he had studied upto Intermediate in English medium; he had asserted that he had no need for the detention order to be supplied in some other language; and his statement was reduced in writing in the presence of the Jailor and two Deputy Jailers.

It is contended, on behalf of the petitioners, that the detenu in W.P. No.13482 of 2015 has not been supplied documents in a language known to him; he had specifically informed the respondent-authorities that he knew how to speak, read and write in English, but could only speak in Telugu and Kannada; yet the authorities furnished the material, referred to in the grounds of detention, only in Telugu, a language which the detenu could neither read nor write; and furnishing of material in Telugu denied the detenu his right to make an effective representation. On the other hand, the Learned Advocate-General, for the State of Andhra Pradesh, would submit that the claim of the detenu that he should have been furnished material in English is not tenable as he had, on his own accord, waived his right to be furnished copies thereof in English. The written statement of the detenu records that he knows how to speak, read and write in English very well; he could speak Telugu, Kannada and Hindi, but he did not know how to read and write; and he had no need for the detention order in some other language i.e., Kannada, Urdu or Hindi. On a perusal of this written statement, it is evident that the detenu had informed the authorities that he knew how to read and write in English, but he did not know how to read and write in Telugu. As the detention order was supplied in English, the detenu had stated that he had no need for the detention order to be supplied to him in some other language. However several documents, including the confession statements of the co-accused, were furnished to the detenu in Telugu, a language which he neither knew how to read nor to write.

SCC 427 = AIR 1981 SC 728), the grounds of detention were drawn up in English, though the detenu did not know English; and the Police Inspector, who served the grounds of detention on the detenu, filed an affidavit stating that he had fully explained the grounds of detention in Gujarati to the detenu. The Supreme Court held that this was not sufficient compliance with the mandate of Article 22(5) of the Constitution, which required that the grounds of detention must be “communicated” to the detenu; “Communicate” meant that sufficient knowledge, of the basic facts constituting the “grounds”, should be imparted effectively, and fully to the detenu in writing, in a language which he understood; the whole purpose of communicating the “grounds” to the detenu was to enable him to make a purposeful and effective representation; and if the “grounds” were only verbally explained to the detenu, and nothing in writing was left with him in a language which he understood, then that purpose was not served, and the constitutional mandate in Article 22(5) was infringed.

I n **V. Muthuvelu** (Judgment in WP No.8022 of 2015 dated 22.09.2015), a Division bench of this Court held that no material was supplied to the detenu by translating it into Tamil; all the crimes were registered in the State of Andhra Pradesh; while referring to such crimes, under various Sections, reasons were recorded for invoking the provisions of the Act, but such material was not supplied in tamil; from the material placed on record, it was clear that the detenu had signed in English in token of receiving the grounds etc; but merely because he had signed in English, it could not be said that he was well-versed in

English; it is common practice that many of those who sign in English are not conversant with the said language; and the plea, that non-supply of material in tamil did not affect the right of detenu in making an effective representation, was not convincing.

For the detenu to effectively make his representation against the order of detention, he should have knowledge of the grounds of detention, which are in the nature of a charge setting out the kinds of prejudicial acts which the authorities have attribute to him. In cases where the grounds are several, any oral translation or explanation given by the police officer, serving those on the detenu, would not amount to communicating the grounds. Communication, in this context, must mean bringing home to the detenu effective knowledge of the facts and circumstances on which the order of detention is based. (**Harikisan v. State of Maharashtra** – AIR 1962 SC 911 = 1962 Supp (2) SCR 918).

Communication of the grounds of detention in English is not in compliance with the requirements of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him, and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detenu must be given the grounds in a language which he can understand, and in a script which he can read, if he is literate. (**Rushikesh Tanaji Bhoite** – (2012) 2 SCC 72; **Atma Ram Sridhar Vaidya** – AIR 1951 SC 157 = 1951 SCR 167). The amplitude of the safeguard, embodied in Article 22(5),

extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu, but also to supplying their translation in a script or language which is understandable to the detenu. Failure to do so would amount to denial of the right of being communicated the grounds, and of being afforded the opportunity of making a representation against the order. (**Powanammal v. State of T.N.** – (1999) 2 SCC 413; **Hadibandhu Das v. District Magistrate, Cuttack** – AIR 1969 SC 43 ; **A.C. Razia v. Government of Kerala** – (2004) 2 SCC 621).

The distinction between a document which has been relied upon by the detaining authority in the grounds of detention, and a document which finds a mere reference in the grounds of detention, should be maintained. Non-supply of a copy of the document relied upon in the grounds of detention is fatal to the continued detention, and the detenu need not show that prejudice was caused to him as non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. It would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of the document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.

(**Powanammal** - (1999) 2 SCC 413). As noted hereinabove, the documents furnished to the detenu in Telugu included copies of the confessional statements of the co-accused. These statements were relied upon by the detaining authority in making the order of detention. Failure to supply these documents, in a language known to him, resulted in the detenu being denied the opportunity of making an effective representation, and would render his continued detention illegal.

35. It is needless to mention that the documents referred to constitute basis for passing the order of detention and they are not the documents to which reference is merely finding place in the order of detention and the grounds annexed thereto. It is no doubt true, the learned Government pleader placed reliance on the decision in **Bidya Deb Barma's Case** (Supra 30) as to the effect of non-supply of the order of detention and the grounds in Bengali and Tripuri, but only supplied in English language, but the same was in the context of the stage at which it was raised. In the said case, the objection was raised for the first time in the rejoinder and in that view of the matter, the Hon'ble Supreme Court 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. State of Maharashtra* (1962) (2) Supp SCR

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 implication 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.”

36. In the instant case, the representation, dated 19.05.2015, was made by the petitioner and it appears that she got the same prepared and submitted, but not by the detenu. It is no doubt true, the detenu signed in English in the receipt, but mere appending his signature in English would not suffice to hold that he was well acquainted with English language, without there being further proof from the side of the detaining authority to show that he is capable of understanding and comprehending the purport of the documents supplied to him in English. Further, the objection was raised at the

inceptive stage itself in the representation made by him soon after he was served with the order of detention and grounds of detention with regard to which, we have already adverted to in the above. Thereafter, he got raised the same objection in the writ petition affidavit filed by the petitioner and reiterated the same in the reply affidavit emphatically, while answering the averments mentioned in the counter affidavit filed by the detaining authority touching that aspect of the case.

37. In the present context, we opine that it would be apt to refer to the decision in **Hadibandhu Das v. District Magistrate, Cuttack**^[39], rendered by the Constitutional Bench of the Hon'ble Supreme Court, observing in paragraph No.6, thus:

“6. The grounds in support of the order served on the appellant ran into fourteen typed pages and referred to his activities over a period of thirteen years, beside referring to a large number of court proceedings concerning him and other persons who were alleged to be his associates. Mere oral explanation of a complicated order of the nature made against the appellant without supplying him the translation in script and language which he understood would, in our judgment, amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order.....”

38. On the same proposition, the Hon'ble Apex

Court in **A.C. Razia v. Government of Kerala and others**^[40], held in paragraph No.24, thus:

“24. The next and most relevant point to be considered in the present case is whether in the absence of translated copies of the relevant documents referred to in the detention order, there could have been proper and effective consideration by the Central Government. To put it in other words, whether the decision making process under Section 11 of the Act is vitiated by non application of mind by reason of the fact that the translated copies of the documents were not available with the concerned officials of the Government who may be unacquainted with the particular language? In our view, the question whether any or all of the documents which formed the basis of the detention order should be before the Central Government or not, depends on the facts of each case. There can be no hard and fast rule that the appropriate Government called upon to take a decision under Section 11 should necessarily have copies of all the documents relied upon by the detaining authority with the translated version thereof. In the context of the guarantee under Article 22(5), it was laid down that "if the documents which form the basis of the order of detention were not served on the detenu along with the grounds of the detention, in the eye of law, there would be no service of the grounds of detention and that circumstance would vitiate the detention and make it void ab initio (vide observations in *M. Ahmed Kutty Vs. U.O.I.* [(1990) 2 SCC 1] and *Shalini Soni Vs. U.O.I.* [(1980) 4 SCC 544]). It was also clarified in a series of decisions that it is unnecessary to furnish copies of

documents to which casual or passing reference is made and which are not relied upon by the detaining authority (vide LMS Ummu Saleema Vs. B.B. Gujaral [(1981) 3 SCC 317 etc). We are of the view that the proposition laid down by this Court that the copies of translated documents forming the basis of the detention order should be furnished to the detenu in order to give effect to the guarantee enshrined in Article 22(5) cannot be imported while dealing with the question in the context of exercise of power of revocation under Section 11 on the basis of representation or otherwise. The question whether there was due consideration of representation has to be judged by general principles of administrative law. There is no constitutional requirement express or necessarily implied that the authority considering the representation should have before it all the documents referred to in detention order with translated version thereof. But, the availability or non-availability of such documents with the empowered authority under Section 11 will only have bearing on the manner of consideration of representation, which in turn depends on the facts of a particular case. The endeavor of the Court in this regard is only to assess whether there was fair and proper consideration by the Government by applying its mind to the crucial aspects warranting its attention. The necessity or otherwise of having copies of documents should be viewed in that light. The Court has to be satisfied that there was due application of mind to the crucial aspects. The points raised by the detenu in the representation would naturally assume importance, as pointed out by Mathur, J. though the Government ought not to confine itself to the points highlighted in the

representation alone. If, for the purpose of appreciating the points in the representation, the documents are required to be seen, naturally, the Central Government will be failing in its duty if it does not call for the documents with translation. For instance, the detenu may say that a particular statement relied upon in the detention order is something different and it was misread. The document has to be necessarily seen to appreciate that point. That apart, the Government shall have a clear idea of the nature of incriminating material against the detenu. If the detention order does not spell out the details thereof, but only makes a bare reference, here again, the need to peruse the crucial documents or statements so as to judge the validity of detention does arise; otherwise the Central Government will not be fulfilling the supervisory responsibility cast on it in the manner expected of it. However, we hasten to add that there can be no rule similar to the one laid down in the context of detenu's right under the first part of Clause (5) of Article 22.

The question whether there could have been due application of mind and proper consideration of representation by the Government in the absence of crucial documents/translated copies thereof has to be decided on case to case basis. The approach cannot be abstract and unrealistic. No inflexible rule of general application can be laid down. However, we would like to make it clear that if in a given case, the perusal of certain documents becomes necessary, it is no answer to say that the translation involves delay. It is trite to say that where there is reasonable explanation for delay, the detention does not get invalidated."

39. We have already adverted to hereinbefore the

fact situation herein and the vital significance of non-supply of the translation in script and language of the documents, on the basis of which alone, the subjective satisfaction was arrived at in passing the order of detention. Hence, in our view, the orders under challenge on vitiate on that ground alone.

40. Though, we are not in agreement with the learned counsel for the petitioner so far as other grounds are concerned, but, however, we find merit in the submission made by the learned counsel with regard to non-supply of translated copies of material documents in Telugu which language is the known to the detenu, on the basis of which the order of detention was passed, in our considered view, is fit to be declared as illegal.

41. For the aforesaid reasons, W.P. No.21045 of 2015 is allowed by quashing the order of detention, dated 16.04.2015, which was confirmed by G.O. Rt.No.1711, General Administration (Law and Order) Department, dated 19.06.2015, directing the respondents to release the detenu forthwith. 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. Since we allowed W.P. No.21045 of 2015, we are of the view that no orders need be passed in W.P. No.15910 of 2015 and, therefore, the same is, accordingly, disposed of. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in these petitions, stand closed.

G. CHANDRAIAH, J

A. SHANKAR NARAYANA, J

April 13, 2016.

Mgr

NOTE: Dispatch C.C. of the order forthwith. (BO) PV/Mgr.

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- [\[1\]](#) . (2012) 4 SCC 699
 - [\[2\]](#) (W.P. No.28191 of 2015, dated 10.12.2015)
 - [\[3\]](#) (2004) 7 SCC 467
 - [\[4\]](#) (1974) 1 SCC 185
 - [\[5\]](#) 1992 (2) SCC 177
 - [\[6\]](#) (2000) 6 SCC 168
 - [\[7\]](#) (1980) 3 SCC 57
 - [\[8\]](#) (W.P. No.17192 of 2015, dated 07.10.2015)
 - [\[9\]](#) . (2003) 8 SCC 342
 - [\[10\]](#) (W.P. No.6510 of 2015 and batch, dated 29.09.2015)
 - [\[11\]](#) (1979) 4 SCC 370
 - [\[12\]](#) 1943 FCR 49
 - [\[13\]](#) AIR 1951 SC 174
 - [\[14\]](#) 1954 SCR 418
 - [\[15\]](#) (1969) 1 SCC 10
 - [\[16\]](#) (1974) 3 SCC 600
 - [\[17\]](#) ILR 1972 AP 1025
 - [\[18\]](#) ALD (CrI) 2009 (1) 837
 - [\[19\]](#) ALT 2004 (5) 250
 - [\[20\]](#) Laws SC 2006 (7) 110,
 - [\[21\]](#) ALT 1996 (4) 485
 - [\[22\]](#) ALD 1998 (2) 530]
 - [\[23\]](#) 2005 (1) ALD (CrI) 338 (AP)
 - [\[24\]](#) [W.P. No.8022 of 2015, dated 22.09.2015]

- [\[25\]](#) (1999) 2 SCC 413
- [\[26\]](#) (2011) 10 SCC 781
- [\[27\]](#) AIR 1999 SC 684
- [\[28\]](#) AIR 2014 SC 2090
- [\[29\]](#) (W.P. No.32710 of 2014 and Batch, dated 02.03.2015)
- [\[30\]](#) (1969) 1 SCR 562: AIR 1969 SC 323: 1969 Cri LJ 525
- [\[31\]](#) (W.P. No.22672 of 2015, dated 28.10.2015)
- [\[32\]](#) [W.P. No.40066 of 2014, dated 08.10.2015]
- [\[33\]](#) (1990) 2 SCC 456
- [\[34\]](#) AIR 1951 SC 157
- [\[35\]](#) AIR 1964 SC 334(1)
- [\[36\]](#) (1975) 3 SCC 198
- [\[37\]](#) (2011) 10 SCC 215
- [\[38\]](#) AIR 1991 SC 574
- [\[39\]](#) 1969 AIR 43 – 1969 SCR (1) 227
- [\[40\]](#) AIR 2004 SC 2504 – (2004) 2 SCC 621