

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.3550 OF 2017

Samad Salim Khan
Age 30 years, residing at Azad Mohalla
Shantinagar, Sangam Nagar
Wadala (East) Mumbai.

.... Petitioner

- Versus -

1. The Commissioner of Police
Mumbai.
2. The State of Maharashtra
(Through Addl. Chief Secretary to
Government of Maharashtra
Home Department, Mantralaya,
Mumbai)
3. The Superintendent
Nashik Road Central Prison
Nashik.
4. The Secretary,
Advisory Board, Mantralaya,
Mumbai.

.... Respondents

Mr. Udaynath N. Tripathi for the Petitioner.

Mrs. M.M. Deshmukh, Addl. Public Prosecutor,
for the Respondent-State.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : NOVEMBER 23, 2017

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. By this petition under Article 226 of the Constitution of India, the petitioner (detenu) challenges an order of preventive detention.

2. The said order, dated 2-5-2017, records that with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order, the Commissioner of Police, Brihan Mumbai is satisfied that it is necessary to make an order directing him to be detained under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous persons, Video Pirates, Sand Smugglers and persons engaged in Black-marketing of Essential Commodities Act, 1981 ("MPDA Act" for short).

3. The powers under Section 3, sub-section (2) of the MPDA Act have been invoked to pass this order.

4. We have to note very few facts for appreciating the grounds of challenge to this detention order.

5. The detention order together with the grounds came to be served and that recites that the petitioner is a violent type of dangerous criminal, having taken to the life of a criminal for the sake of easy money. With a view to have an upper hand in the localities of Azad Mohalla, Shantinagar, Near Gousiya Masjid, Sangam Nagar, Wadala (East), Mumbai and adjoining areas within the jurisdiction of Wadala T.T. Police Station in Brihan Mumbai, the petitioner has formed a gang of like-minded criminals from the above localities. He has unleashed a reign of terror in the above areas and has thereby become a perpetual danger to the life and properties of the people residing and carrying out their daily vocations in these areas.

6. The petitioner and his associates are moving in the

above areas armed with different kinds of weapons like a chopper, knife, sword, iron-rod, sickle, cricket stump, etc., committing offences and are engaged in criminal activities such as causing physical hurt to people, assault, attempt to commit murder, robbery, extortion, trespass and criminal intimidation, etc.. The petitioner and his associates are alleged to have indulged in criminal mischief and intimidation in the above localities. While engaging in such criminal activities, the petitioner has also terrorised people to ensure that the victims of the crime are not assisted in any manner. Thus, the petitioner in order to demonstrate his supremacy in the locality has created a reign of terror. Such activities are prejudicial to the maintenance of public order, peace and tranquility in the above localities in Brihan Mumbai. As far as criminal cases registered against the petitioner, a list of the same is made in para 4(a) of these grounds of detention.

7. From para 4(b), the preventive actions taken against the petitioner are set out.

8. Then, it is alleged that there was a detention order under the same enactment duly served and executed upon the petitioner. The afore-mentioned steps and preventive actions have not resulted in curbing or putting an end to his criminal activities. There are certain incidents which are then narrated from para 5 and which would indicate that the reign of terror continues.

9. It is stated that the petitioner was arrested in connection with offences and details of which are then set out. There was a voluntary statement made and there was a recovery. Then, there was an order of remand to police custody after which a magisterial custody was directed.

10. After all these details are set out, it is stated that the further inquiries revealed that the petitioner has victimised a lot many people residing in the localities and being a dangerous person it is difficult for these persons to complain openly against him or give a statement. Then, there are in-camera statements referred and details of those are set out in the grounds of

detention.

11. After the materials are referred, necessary satisfaction is recorded in paras 6 and 7 of the detention order and paras 8 to 12 thereof read as under:-

“8. I further inform you that pending approval of this detention order under section 3(3) by the State Government; you have a right to make a representation to the Detaining Authority, i.e. the Commissioner of Police, Brihan Mumbai against the order of detention. If you wish to make such a representation, you should address it to the Commissioner of Police, Brihan Mumbai, c/o Deputy Commissioner of Police (Preventive) Crime Branch, 4th Floor The New Office Of The Commissioner Of Police, Mumbai 400001, through the Superintendent of the Jail where you are detained. On approval of the detention order by the State Government under section 3(3), your right of representation to the Detaining authority is automatically extinguished.

9. You are informed that you have a right to make a representation to the State Government against the detention order and that you shall be afforded the earliest opportunity to make such a representation. Should you wish to make such a representation, you should address it to the Addl. Chief Secretary (Home), Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai – 400032 and submit it through the Superintendent of the Jail where you have been detained.

10. You are further informed that the State

Government shall within three weeks from the date of your detention, make a reference to and place the requisite material before the Advisory Board, constituted under section 9 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black – Marketing of Essential Commodities Act, 1981. (Maharashtra Act No. LV of 1981), (Amendment 1996), (Amendment 2009), (Amendment 2015) to enable the Advisory Board to make a report whether, in its opinion there is sufficient cause for your detention. The Advisory Board is required to make a report aforesaid within seven weeks from the date of your detention.

11. *You are further informed that if you wish to make any representation to the Advisory Board against the detention order, you may do so and address it to the Chairman, Advisory Board, constituted under section 9 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates Sand Smugglers and Persons engaged in Black – Marketing of Essential Commodities Act, 1981. (Maharashtra Act No. LV of 1981), (Amendment 1996), (Amendment 2009), (Amendment 2015), c/o Desk Officer, Desk-10, Home Department (Special), Mantralaya, Mumbai – 400032 and submit it through the Superintendent of the jail where you are detained.*

12. *You are also further informed that you shall be heard in person by the Advisory Board in due course, if the Board considers it essential to do so, or if you so desire. If you desire to be heard in person by the Advisory Board, you may intimate your desire to the Advisory Board or to the Government of Maharashtra, through the Superintendent of the jail where you are detained, so that the Advisory Board may be intimated about it and necessary arrangements may be made to*

produce you before the Advisory Board on the date fixed by it for the purpose. You have also right to seek an assistance of any friend during the course of hearing of the Advisory Board as well as you have right to examine the witnesses if you so desire.”

12. Mr. Tripathi, appearing on behalf of the petitioner, would submit that there are three grounds amongst others highlighted by him which would vitiate the order of detention and equally the continued detention in pursuance thereof.

13. As far as the continued detention is concerned, Mr. Tripathi would submit that there should be an intimation to the petitioner that against the order of detention he can represent before the Advisory Board and in terms of the constitutional mandate enshrined in Article 22 of the Constitution of India, but what both the Detaining Authority and the Advisory Board failed to intimate the petitioner was that he possesses and there are rights vested in him *inter alia* to lead evidence in rebuttal before the Advisory Board. The argument is that the Detaining Authority may have generally informed the petitioner about this right but the Advisory Board failed to give

any intimation. A mere intimation of the date of hearing before the Advisory Board would not suffice. The law demands that the petitioner must be informed specifically that on his being brought before the Advisory Board, he would be permitted to lead evidence in rebuttal. Mr. Tripathi would submit that the law demands that if the intimation about the rights and the petitioner being apprised of the same would meet the ends of justice, then, the petitioner not being informed specifically of all this but only the date of hearing before the Board being intimated, does not meet the Constitutional guarantee enshrined in Article 22 thereof. In other words, the petitioner must not only know the date and time of the hearing but his specific right so that he can keep the rebuttal evidence ready. The witnesses to be examined would then be told to remain present on that date and time. This having not been informed, the continued detention is vitiated.

14. However, as far as legality and validity of his detention order itself and his detention in furtherance thereof, the petitioner would contend that there is a compilation of

documents which have been referred and relied upon by the Detaining Authority while recording its subjective satisfaction. In that is a statement and stated to have been made by the petitioner when one of the offences were registered. That statement ought to have been furnished to the petitioner in full. In other words, if that is a relied upon document, in the sense the subjective satisfaction is based on the same, then, a complete copy of that document ought to have been provided to the petitioner and if necessary, by translating it in the language known to the petitioner. The supply of an incomplete copy would not meet the requirement in law. Mr. Tripathi would submit that if the record is perused it would indicate that the statement, copy of which is supplied, does not end on the page of the copy supplied to the petitioner. It goes further and then ends but that portion has not been included in the copy and the petitioner cannot be presumed to have the knowledge of the said three or four sentences which are completely missing from the copy supplied. This would not enable the petitioner to exercise his constitutional right of making an effective

representation. That is not an empty formality as Mr. Tripathi would contend. If the document is specifically relied upon, then, it has to be supplied. Its copy should be full and complete.

15. The third ground of challenge is that the Detaining Authority relies upon another document and that is a charge-sheet. A copy of that charge-sheet is supplied to the petitioner minus the endorsement thereon by the learned Magistrate that he has perused it, applied his mind to it and decided to act in furtherance thereof. Meaning thereby, he has taken cognizance. Mr. Tripathi would submit that repeatedly the authorities are making light of this attack on the detention order by urging that charge-sheets usually have an endorsement of this nature in the form of a rubber stamp affixed across its main page/portion. At best that rubber stamp is missing from the copy of the charge-sheet supplied to the petitioner but that does not result in any prejudice. Mr. Tripathi would submit that such an irresponsible statement made and repeatedly by the Detaining Authority on affidavits frustrates and defeats the constitutional mandate. This is preventive detention. This is to prevent somebody from

indulging in criminal activities in future because he is dangerous to the society. Therefore, this law or branch of it has to be construed strictly. Once the doctrine of substantial compliance does not come into play, then to say that this charge-sheet minus that endorsement being supplied causes no prejudice, is not correct. Apart from that Mr. Tripathi would rely on the amended grounds to submit that English translation of documents having been supplied, or translation of documents in the regional language being supplied does not mean that prejudice is not caused at all. The petitioner, at best, has signed in English but he is not conversant with that language. He has studied upto 2nd standard and, that too, in an Urdu medium school. He may, therefore, sign in English but he does not speak and write in English language. In fact, he may be aware of some sentences and words spoken colloquially in Hindi but having studied in Urdu, the petitioner expects translation of the documents relied upon to be supplied in a language known to him. If that is the demand of the law, then, the detention order stands vitiated.

16. Mr. Tripathi relies upon the following Judgments in

support of his contentions.

- 1) **A.K. Roy v. Union of India and others**, reported in 1982 SCC (Cri.) 152,
- 2) **Harbans Lal v. M.L. Wadhawan and others**, reported in (1987) 1 SCC 151,
- 3) **State of Andhra Pradesh and another v. Balajangam Subbarajamma**, reported in (1989) 1 SCC 193,
- 4) **State of Rajasthan and another v. Shamsher Singh**, reported in 1985 (Supp) SCC 416,
- 5) **Rahul Ambadas Jadhav v. Commissioner of Police & others**, reported in 2015 (4) Bom.C.R. (Cri.) 57, and
- 6) **Moosa Velliat v. The Asstt. Secretary, Government of Maharashtra and others**, reported in 1983 Cri. L.J. (Bom.) 1246.

Thus, the petitioner relies on the grounds (k), (l) and (m) of para 5, appearing on pages 10B and 10C of the paper-book.

17. With the leave of the Court, the additional grounds are introduced by the petitioner on 1-11-2017. It is stated that the petitioner has already set out in ground (c) of the petition his challenge but these further grounds would enable him to

elaborate that the statement of the petitioner was recorded by the sponsoring authority. That is to be found at page 127 of the compilation of documents wherein the detenu has stated that he has studied upto 2nd standard in an Urdu medium school in Bombay. It is therefore clear that the detenu has studied little in Urdu medium and knows Urdu script and well conversant in Urdu language only. The detenu may have signed in English in various documents but from which no conclusion can be drawn that he knows English and Hindi languages. He cannot make an effective representation in the absence of any familiarity with English and Hindi languages. Since the grounds are not supplied to the detenu in Urdu, which is a language known to him, there is non-communication of the grounds of detention and the mandate of Article 22(5) of the Constitution of India is violated. The order of detention is, therefore, illegal and bad in law.

18. We have affidavits filed in reply to this petition.

19. The affidavit of Deputy Secretary, Government of Maharashtra, Department of Home (Special) starts at page 39 of

the paper-book and proceeds to support the order of detention by submitting that the subjective satisfaction is based on definite materials. It is not vague. There is proper application of mind. That the detention is also in accordance with law inasmuch as the petitioner was already informed by the Detaining Authority of his rights including to make a representation before the Advisory Board.

20. This affidavit merely sets out the dates and events and is thus of no use.

21. Then, we have the first affidavit of the Detaining Authority himself. That is from page 48 of the paper-book. Insofar as the subjective satisfaction is concerned, a reference is once again made to the crimes registered, the incidents and the in-camera statements. We are not concerned with that part for we have a challenge of the above nature to the detention order based on which the petitioner continues to be detained. As far as ground 5(c) is concerned, the affidavit, in para 10 page 60, would deny the contents of the petition. There is, according to

the Detaining Authority, compliance with the requirement of law and which enables the petitioner to make an effective representation against the order of detention. The grounds have been duly communicated. The ground that the petitioner is illiterate and never studied in the school, is denied. It is denied that the order of detention was not explained to him in the language known to him.

22. Then there is a specific case that the Arrest Form of C.R. No.26/2017 shows the signature of the petitioner in English as 'SAMAD'. The translated order of detention which is in Hindi, furnished to the petitioner, is signed by him in English as 'SAMAD'. Thus it is wrong and erroneous to urge that the petitioner never studied or attended any school.

23. Then the Arrest Form is once again relied upon with its column Nos.9(25) and 9(34) to show that the petitioner knows Hindi language and the order of detention along with the grounds of detention was served upon him in Hindi. The original order of detention and the grounds are thus served in the

language known to the petitioner. Even the contents of the same were explained to him in Hindi and he did not make any grievance. Thus, there is absolutely no prejudice caused. There is no denial of his right to make a representation..

24. Then, the argument is that there are two in-camera statements and one C.R. (No.26/2017) on which the detention order is based. It is contended that the subjective satisfaction is recorded in accordance with law. The detention order refers to the serious cases and the criminal activities of the petitioner which posed a threat to the maintenance of public order, peace and tranquility.

25. We have then an affidavit of the Secretary, Advisory Board, at page 69 of the paper-book. Now, that deals with ground (m), amended and added to the petition. The affidavit, in para 3, denies that the Advisory Board has not informed or apprised the detenu of his right, which is a constitutional safeguard. It is conceded that the authorities are duty bound to inform the detenu about this right. However, there is a denial of

the statements made in this ground. It is further denied that the order of detention is illegal. It is stated that the order of detention was passed on 2-5-2017. The detenu was detained on 10-5-2017. Thereafter, the case report was sent to the Home Department and it was received by the Advisory Board on 12-5-2017. The precise statement thereafter is that an intimation letter was issued to the detenu through the Superintendent, Thane Central Prison, Thane by the Secretary, Advisory Board on 31-5-2017. The detenu was informed about the date of hearing, fixed on 9-6-2017 and if he wishes to make a representation against his detention, he should make the same to the Advisory Board.

26. Thus, the Advisory Board in this affidavit and running page 71 to 72 says as under:-

“It is submitted that the letter in English language as well as Marathi language was sent by Speed Post through Registry of Home Department to Thane Central Prison, Thane as well as the same intimation letter was e-mailed to Thane Central Prison Thane, on the very same day i.e. 31.05.2017 in order to avoid postal delay. The letter addressed to the detenu on 31.05.2017 and on perusal of the print copy of e-mailed letter taken

by Thane Central Prison and endorsement thereon of detenu, it is clear that it was served upon detenu on 01.06.2017 and contains of the letter explained to the detenu. It is submitted that said endorsement was received by hand delivery to Advisory Board/Spl - 10, Home Department on 01.06.2017.

It is submitted that in the information letter sent to the detenu, it was informed that the hearing will be fixed on 09.06.2017 and if he wishes to make a representation against his detention, he should make the same to the Chairman, Advisory Board.

It is submitted that as notice issued by 31.05.2017, the same is served upon the detenu on 01.06.2017 (i.e. after 01 day of issuing the notice). That means detenu has got sufficient time to make representation to the Advisory Board and Advisory Board would consider the same. Hence, there is no contention in the say of the Petitioner in this para.”

From this the Board would make us believe that if not the official deposing on oath before this Court, at least the Superintendent of Thane Central Prison has apprised the petitioner of his constitutional rights. He has gone much beyond giving an intimation of the date of hearing before the Advisory Board. He has apprised the detenu of his rights, including to lead evidence in rebuttal and based on the communication of the Advisory Board. It is in these circumstances that the petitioner's right to make an effective representation before the

Board has not been denied.

27. Then what we have is an additional affidavit of the Detaining Authority from page 74 of the paper-book. In that the additional grounds are sought to be dealt with. At page 76, the affidavit proceeds to deal with an amended ground and particularly that non-furnishing translation of judicial order amounts to non-communication of grounds of detention. We are not concerned with that aspect of the matter.

28. We are concerned with another specific ground raised in the petition and the elaboration thereof. Insofar as that is concerned, it is urged that the translation of the rubber stamp by the learned Magistrate's Court, namely, "Received Charge sheet on 20/03/17. Cognizance taken U/sec.392, 397, issue summons to the accused." It is stated that this rubber stamp is put on the copy of the Final Report Form under Section 173 of the Cr.P.C. filed in C.R. No.26/2017. It is submitted that copy of the Final Report Form in Marathi as well as its true translation in Hindi was furnished to the detenu. Even in the Hindi

translation, the translation of the rubber stamp of the learned Magistrate was not given. The petitioner's right has not been prejudiced as he is having knowledge of English language and same can be noted from the signature which he has endorsed on the compilation served on him. Thus, these details are not material and do not, in any manner, much less prejudicially, affect his right of making an effective representation. Apart therefrom, this charge-sheet is duly served at the time of trial also upon the detenu. Hence he is aware of all the details and particulars in respect of the same. Then, the amended ground (m) is sought to be denied by urging that the grounds of detention and the order of detention were furnished and explained to the petitioner in the language known to him. Hence, proper opportunity was given to the petitioner to make an effective representation against the order of detention. Hence, there is compliance with law.

29. It is then pointed to us that even the statement allegedly complained to be not supplied in full was supplied and the petitioner being aware of English language, he knows how

to make a representation. Equally, it was contended that the grounds of detention were served upon him in Hindi language. Once the petitioner has obtained all the documents, then, there is no substance in the challenge to the order of detention and it should be rejected.

30. Learned APP Mrs. Deshmukh has, therefore, contended before us that there is no substance in the petition. The grounds of challenge do not merit acceptance. She would submit that in these affidavits the Detaining Authority as also the Advisory Board has pointed out as to how no prejudice is caused to the petitioner. There is compliance with the requirement of law. Mrs. Deshmukh has relied upon a Division Bench Judgment of this Court in the case of **Anthony alias Sandy John Nigero v. S. Ramamurthi, Commissioner of Police for Greater Bombay and others**, reported in 1993 Cri. L.J. 3259 and that is on the point that it is not mandatory to permit assistance of next friend to detenu or adducing evidence in rebuttal by him before the Advisory Board. Hence advance intimation or information to the detenu about this right is not

the requirement of law.

31. With the assistance of Mr. Tripathi and Mrs. Deshmukh, we have perused the petition, the annexures thereto and the affidavits placed on record.

32. In our opinion, the petition must succeed on a short ground. We at once clarify that we will not be required to deal with the rights of the detenu of an effective representation before the Advisory Board and the manner in which he should be apprised about the same. Whether intimation from the Detaining Authority would suffice or whether the Advisory Board must specifically apprise him of his right to lead evidence in rebuttal by keeping witnesses present before the Advisory Board on the date and time of hearing, is an aspect which we keep open for decision in an appropriate case.

33. We, therefore, do not deal with the arguments on this point any further, leave alone the Judgments.

34. In our opinion, Mr. Tripathi is right in relying upon a

Division Bench Judgment of this Court delivered on 6-1-2014 in the case of **Munna Dilawar Khan v. The Commissioner of Police, Mumbai & Others** {Criminal Writ Petition No.3953 of 2013}. This Division Bench Judgment, authored by the Hon'ble Mr. Justice A.S. Oka, dealt with somewhat identical situation.

35. In **Munna Dilawar Khan** (supra), the argument was that the document at page 312 of the compilation contains a part of the charge-sheet. However, that is not a document relied upon, according to the learned APP in that case, nor is it vital. There is only a reference to that charge-sheet in the grounds of detention and the same has not been relied upon. It is then the Division Bench referred to ground (a), para 6 of the petition. In that, the petitioner had specifically contended that there was a judicial order dated 11-12-2012 passed by the learned Metropolitan Magistrate, Kurla, at page 312. The document on page 312 is a stamp of receipt, affixed by the Judicial Clerk of the learned Metropolitan Magistrate's Court regarding acceptance of charge-sheet. The Division Bench in dealing with the argument that it is merely a rubber stamp and cannot be

considered a vital document or a vital part of a document, copy of which was supplied, held thus:-

“10) We have perused page 312, which is a part of the charge-sheet dated 11.12.2012. There is no doubt a rubber stamp affixed thereon. Some details have been filled in by hand. On plain reading thereof, we find that it is an order of the learned Magistrate passed on 11.12.2012 after perusal of the charge sheet. By the said order, a non bailable warrant was ordered to be issued against the Petitioner and his co-associate. Page 312 which contains the said order of the learned Magistrate forms a part of the document relied upon and served to the Petitioner. Here, we must note that the Detaining Authority has not correctly read page 312 as is evident from paragraph 7 of the reply in which it is tried to be contended that the document on page 312 of the compilation of documents bears only a stamp affixed by the Judicial Clerk of the Court of the learned Metropolitan Magistrate recording mere acceptance of the charge-sheet. The said statement made in the reply is factually incorrect. It is not at all a stamp recording acceptance of the charge-sheet. It is a judicial order passed by the learned Magistrate on perusal of the charge sheet. There is also a rubber stamp affixed by the Judicial Clerk on the said page, which certifies that the document is a true copy. On perusal of page 312 of the compilation of documents served to the Petitioner, we agree with the submissions of the learned counsel appearing for the Petitioner that order of the learned Magistrate is not at all legible. We found it impossible to read the entire order.

11) As regards the document on page 871, we find that number of words in the said document are not legible. Learned A.P.P. has produced the file of documents placed before the Detaining Authority. We find that the words which are not legible in the copy supplied to the Petitioner are very much legible in the copy which was

placed before the Detaining Authority.

12) As regards the order on page 312, admittedly a translation thereof has not been furnished to the Petitioner. The said order is in English language. Learned A.P.P. however pointed out that as far as the document at page 871 is concerned, translation in Hindi is a part of the compilation.”

36. In the present case, the petitioner has in the grounds of challenge specifically urged that there is a document at page 243 of the compilation purported to be a Final Report Form in C.R. No.26/2017. That was a document which was placed before the Detaining Authority, considered and relied upon by him for arriving at his subjective satisfaction while passing the impugned order of detention. The petitioner says and submits that there is a judicial order passed by the learned Magistrate in English language on the said document whose translation is not furnished in a language known to the detenu, thereby the detenu is deprived of making an effective representation. The law is well-settled that judicial orders relied upon by the Detaining Authority are most relevant and vital documents and non-furnishing the translation thereof amounts to non-communication of ground of detention and both facets of

Article 22(5) of the Constitution of India are violated.

37. In dealing with ground 5(k) and introduced by an amendment, what the Detaining Authority in the additional affidavit does is to inform this Court that, firstly, the Arrest Form in C.R. No.26/2017, columns 9(25) and 9(34) show that the petitioner knows and speaks Hindi language. At the same time, we are made to believe that because he has signed in the English language and explained, as above, he is conversant with English also. It is then stated that translation of the rubber stamp of the Magistrate's Court, which is put on the copy of the Final Report Form, is not supplied. It is stated that copy of the Final Report Form in Marathi as well as its true translation in Hindi was furnished to the detenu. Thus, the original is in Marathi. The translation is in Hindi. However, the translation of the rubber stamp of the learned Magistrate was not given and that is how the petitioner's right has not been prejudiced as he is having the knowledge of English language and the same can be noted from the signature which he has endorsed on the compilation duly served on him.

38. We are of the opinion that terming a judicial order and made on the Final Report From as only a rubber stamp would expressly run counter to the arguments canvassed before the Division Bench of this Court. It seems that the Detaining Authorities do not deem it fit and proper to supply such endorsements made on charge-sheets. It is apparent that this endorsement is made after the Metropolitan Magistrate has not merely endorsed receipt of the charge-sheet but has applied his mind to the contents thereof to take cognizance of the offences alleged and he has particularly referred to Sections 392 and 387 of the Indian Penal Code (IPC). He, therefore, deemed it fit and proper to issue summons to the accused to answer the charges under these two sections. It is apparent from the whole document that the endorsement is made after the charge-sheet alleges that not only the offences committed are punishable under these two provisions but offences punishable under Sections 323, 504 and 506 (2) r/w Section 34 of the IPC, Sections 37(1)(a) and 135 of the Maharashtra Police Act, 1951 are also committed. When such a charge-sheet is placed before

the Magistrate, on a perusal thereof, he says that he would take cognizance of the offences punishable under Sections 392 and 387 of the IPC and therefore directs summons to be issued to the accused, summoning them to answer the charge. This is indeed a vital document and cannot be termed as a rubber stamp. It is thus a judicial order. It is made after due and proper application of mind to the contents of the charge-sheet. When there is an admission that it is not supplied, in the sense its translation is not supplied to the detenu in the language he speaks or is familiar with, then, to urge that his right of effective representation is not denied nor is it prejudiced, makes mockery of the whole constitutional safeguards. We cannot allow the constitutional safeguards to be brushed aside in this manner. We are dealing with a case of preventive detention. In these circumstances, the reply affidavit with the above stand does not meet the requirement set out in law. That runs contrary to the Division Bench Judgment of this Court. It is stated that even though in the English translation the translation of the rubber stamp was not given, the petitioner's right has not been

prejudiced. The argument that he can sign in English language denotes that he is conversant with it, cannot be accepted. That means he can speak fluently and equally write in English language. We do not think that in the facts and circumstances of this case that can be the inference drawn from these statements in the affidavit, for barring the signature below the compilation of documents nothing else is referred and enough to draw such a conclusion. To then say that because there are two forms and which contain certain columns, in those columns as well the petitioner has signed in a language other than Urdu makes him familiar with that language, English or Hindi, would not suffice. For meeting this ground, we do not think that the Arrest Form, the contents of columns 9(25) and 9(34), in Hindi, and the supply of the grounds of detention in Hindi would be enough to reject the argument of Mr. Tripathi. It is expressly admitted that while serving the copy of the charge-sheet/Final Report Form, which is in Marathi, the translation of the endorsement thereon was not made in English. That is styled as a rubber stamp but the translation thereof even in Hindi has admittedly not been

supplied.

39. It is not the case of the respondents, that this is not a relied upon document. Thus, it is conceded that this was a vital document and relied upon by the Detaining Authority in recording its subjective satisfaction. All the more, therefore, we are of the opinion that there is much substance in the challenge to the detention order on this ground. We have also , in order to satisfy ourselves, carefully perused the detention order and the subjective satisfaction therein culled out from the grounds of the same. In para 5(a)(iii), running page 21, internal page 8 of the detention order, there is a specific reference to this C.R.. There is also a reference to the statements therein. There is a reference to the investigations and particularly the statement of the detenu recorded in connection therewith. All this would indicate that this document is a vital one and extensively relied upon so as to record the subjective satisfaction.

40. Once the above position is conceded, then, we do not think that the respondents can get away from a binding

decision of this Court and the law laid down therein. On this ground, the petition deserves to succeed.

41. We have also noted that the petitioner made a grievance in regard to a document which is at page 127 of the compilation. That is a statement of the petitioner recorded on 19-1-2017. That is in Marathi. However, that statement, copy of which was supplied to the petitioner, ends abruptly, and after page 127 of the compilation of the documents supplied, straightaway page 129 appears. One crucial page (page No.128) is thus missing. The petitioner in this connection has specifically urged in the grounds of challenge raised in this petition that the Detaining Authority has supplied the compilation of documents referred and relied upon. The document at page 127 of the compilation which we have referred above and of which copy is supplied to the detenu, is incomplete. However, at page 143 the translation of the same document is found. The petitioner says and submits that the translation at page 143, apart from not being a true and faithful of the original, the Marathi original statement itself is not completely supplied. Even the copy

thereof supplied is incomplete. It is in these circumstances, the petitioner could not have speculated or guessed about the contents of this original Marathi complete document from the incomplete translation supplied to him in Hindi.

42. In relation to this ground, what we find from the affidavit of the Detaining Authority is a stand that the petitioner has not been prejudiced at all. He has not been prejudiced simply because the petitioner was duly explained the contents of the order of detention, recorded in English, in Hindi. The petitioner was supplied compilation of the documents based on which the subjective satisfaction is recorded. As far as ground 5(l) is concerned, it was denied that the translation in Hindi is not a true and faithful translation of the original document. Then, it is denied that the statement of the detenu in English is incomplete. It is denied that furnishing wrong translation of a vital document, which is relied upon by the Detaining Authority, does not deprive the detenu of his right of making an effective representation. We do not think that the ground of challenge and its contents, as pleaded by the petitioner, are understood by

the deponent of this affidavit or the draftsman. The ground 5(l), as amended, was specific. We have referred to its contents in detail. Once the statement in the compilation of documents at page 127 is recorded in Marathi, that means the original is in Marathi. That itself was incomplete. A complete translation thereof in Hindi does not mean that the original, as furnished, is complete or the contents of the original match with the translation in Hindi, supplied at page 143 of the paper-book. Thus, we find that there is complete non-application of mind to the grounds of challenge raised in the petition. The petitioner is not prejudiced is the assertion but that is not substantiated at all. When the ground of challenge itself is not understood by the Detaining Authority or the respondents, then, they would not be in a position to meet it. This is a glaring example as to how while drafting affidavit in reply and answering the challenge to a detention order, the undue haste on the part of the authorities results in this Court concluding that the petition of such detenu deserves to be accepted and the challenge must succeed. Once we have not been shown any material contrary to this ground of

challenge and it is substantiated if one peruses page 127 of the compilation of documents, then, we find that even on this ground the detention order deserves to be quashed. The petitioner is denied his right of making an effective representation and is seriously prejudiced by the above act of the Detaining Authority.

43. As a result of the above discussion, Rule is made absolute in terms of prayer clause (b). The order of detention, dated 2-5-2017, is quashed and set aside. The detenu be released forthwith, if not required in any other case.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)