

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1774 OF 2022**

Agisilaos Demetriades s/o	]	
Shri Kyriacos Demetriades	]	
A South African National, Age 31 years,	]	
residing at House No.286, Ashwem	]	
Near Sea View Resort and Rococco	]	
Resort, Mandarm, Goa 403527	]	Petitioner

Vs.

1. The Union of India	]	
Through the Secretary to the	]	
Department of Revenue	]	
Ministry of Finance,	]	
New Delhi 110 001.	]	
2. Ravi Pratap Singh,	]	
Age 55 years,	]	
The Joint Secretary, (PITNDPS)	]	
Government of India, Ministry of	]	
Finance, Department of Revenue,	]	
(PITNDPS Unit), Room No.26,	]	
RFA Barracks Church Road,	]	
Hutments, New Delhi 110 001.	]	
3. The Directorate of Narcotics Control	]	
Bureau (NCB) Mumbai, Zonal Unit,	]	
Ballard Estate, Mumbai.	]	
4. The State of Maharashtra, through the	]	
Superintendent of the Central Prison	]	
Arthur Road, Mumbai.	]	Respondents

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Mr. Mihir Desai, Senior Advocate i/b Mr. Kushal Mor a/w Mr. Kunal Bilaney, for Petitioner.

Mr. Shreeram Shirsat a/w Mr. D.P. Singh, Mr. Amardeep Singh Sra, for Respondents No.1 and 3.

Ms. S.D. Shinde, APP, for Respondent No.4- State.

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**

DATE : 15th SEPTEMBER, 2022.

JUDGMENT: [Per Prithviraj K. Chavan, J.]

1. Rule.
2. Rule is made returnable forthwith.
3. With the consent of the learned Counsel appearing for the parties, petition is taken up for hearing and final disposal.
4. Mr. Shirsat, learned Counsel waives service of notice on behalf of Respondents No.1 to 3 and Ms. Shinde, learned A.P.P waives service of notice on behalf of respondent No.4 -State.

5. The petitioner, a South African national, has impugned an order of detention issued by the Detaining Authority i.e Respondent No.2 -Shri Ravi Pratap Singh, Joint Secretary (PITNDPS) Government of India, Ministry of Finance, Department of Revenue (PITNDPS Unit) bearing F.No.U-11011/18/2021 (PITNDPS) dated 21.09.2021, against him under the provisions of the Prevention of Illicit Traffic in Narcotic and Psychotropic Substances, Act, 1988 (hereinafter for the sake of brevity referred to as "PITNDPS Act") by invoking writ jurisdiction of this Court under Article 226 of the Constitution of India.

6. Facts germane for disposal of the petition can be summarized as follows.

7. On or about 16th and 17th October, 2020, Office of the Narcotic Controls Bureau, MZU, Mumbai had effected search in Suite No.771, Della Resort, Kunegaon, Lonavala occupied by the petitioner/detenu and found 0.8 grams of small round shaped black coloured sticky substance purported to be *Hashis*/

Charas. On 17th October, 2020, residential premises of the petitioner was searched from where 15 tablets of Alprax 0.5 (Alprazolam Tablet) were recovered. Statement of the petitioner came to be recorded on the same day in both C.R's namely C.R. No.16 of 2020 and C.R. No.24 of 2020 registered by the Narcotic Control Bureau-respondent No.3-Sponsoring Authority.

8. Statements of the petitioner again came to be recorded *in* C.R. No.24 of 2020 on 5th November, 2020 and 6th November, 2020. The petitioner came to be arrested on 18th October, 2020 by the Narcotic Control Bureau, Mumbai in C.R. No.16 of 2020.

9. Subsequently, Special Court for NDPS, Greater Mumbai granted bail to the petitioner on 6th November, 2020 i.e in C.R. No.16 of 2020. An application was moved by the Respondent No.3 - Sponsoring Authority before the Special Court for NDPS for taking custody of the petitioner in C.R.No.24 of 2020. It came to be allowed on 3rd November, 2020. The

petitioner was shown under arrest on 5th November, 2020 in C.R. No.24 of 2020. He was admitted to bail in the said Crime i.e C.R. No.24 of 2020 on 15th December, 2020 by the Special NDPS Court, Greater Mumbai. Subsequently, the impugned order of detention was passed on 21st September, 2021.

10. The Detaining Authority - respondent No.2 recorded it's satisfaction primarily on grounds No.2,3 and 4 which are extracted below;

"2. After going through the facts and circumstance in cases mentioned above, it is clearly established that Mr. Agisilaos Demetriades i.e you are actively involved in trafficking of various narcotics and psychotropic substances on multiple occasions and that you are a repeated/habitual offender of illegal dealing of Narcotic Drugs and Psychotropic substances. You i.e Mr. Agisilaos Demetriadas is an active member of an organized syndicate engaged in trafficking of Narcotics Drugs and Psychotropic substance.

3. In view of facts, mentioned above, I have no hesitation in arriving at the conclusion that you, Agisilaos Demetriadas, through your above acts engaged yourself in prejudicial activities of illicit trafficking of Narcotics drugs & Psychotropic Substance.....I have no hesitation in arriving at the conclusion that there is ample opportunity for Mr. Agisilaos Demetriadas i.e you to repeat the above session prejudicial acts. Hence, I am satisfied that in

the meantime you i.e Mr. Agisilaos Demetriadas should be immobilized & there is a need to prevent you i.e Mr. Agisilaos Demetriadas from engaging in such illicit traffic of Narcotic drugs & Psychotropic Substance in future by detention u/s. 3 (1) of the prevention of illicit Traffic in Narcotics drugs & Psychotropic Substance (PITNDPS) Act, 1988 and

4.I am, therefore, satisfied that there is full justification to detain you i.e Mr. Agisilaos Demetriadas under section 3 (1) of the Prevention of Illicit Traffic in Narcotics drugs & Psychotropic Substance Act, 1988, with a view to preventing you i.e Agisilaos Demetriadas from engaging in above illicit traffic of narcotics drugs & psychotropic substances specified under schedule to the NDPS Act, 1985".

11. Although, as many as 13 grounds have been raised challenging the impugned order of detention by the petitioner, we have restricted and focused our attention to one ground raised by the petitioner which is, ground (xi) of the petition i.e the petitioner being a foreign national had no knowledge of Hindi, and as such, could not read, write or understand Hindi; that the grounds of detention i.e the documents relied upon were in Hindi viz. statement at pages 488-489 (wrongly mentioned as pages 170-171) and an audio transcript at Page 740-741 and that translation of the same was not provided with in a language understood by the petitioner, resulting in the

petitioner being handicapped from making an effective, meaningful and complete representation.

12. Before advertng to the aforesaid ground of non communication to the detenu, the grounds of detention for want of his knowledge of Hindi language, a brief reference will have to be made *qua* other grounds of challenge as well, as urged by the learned Senior Counsel, which is essential to have conspectus of the issues involved in this petition.

13. Learned Senior Counsel took us through the record and proceedings inviting our attention to the various procedural lapses as well as non compliance by the respondents by emphasizing upon the fact, that the respondents have failed to adhere to the safeguards under the Constitution of India, especially when liberty of a person is curtailed under the preventive detention law. He would submit that the respondents have failed in ensuring that the protection and guarantee afforded under Article 22 (5) of the Constitution of India is complied with and that the procedure adopted by it, was just and

reasonable. Learned Senior Counsel has put forth the following grounds of challenge;

(a) Delay in issuance of the order of detention which, according to the learned Senior Counsel, came to be issued after a lapse of 11 months, is inordinate and inexcusable;

(b) Live link has been snapped and credible chains, if any, had been broken and, therefore, the detaining authority ought to have refrained from issuing an order of detention;

(c) Non recording as to whether ordinary law was inadequate;

(d) Non consideration of vital documents by the respondents viz. retraction of his statement by the petitioner made under section 67 of the NDPS Act;

(e) Non furnishing copy of such retracted statement to the petitioner and

(f) Delay in service of detention order.

14. On the other hand, learned Counsel for the respondent Nos.1 to 3 has strenuously urged to dismiss the petition, as according to him, the petition is devoid of merits, in view of the fact, that the petitioner had engaged himself in prejudicial activities of illicit traffic in Narcotic Drugs and Psychotropic substances, which poses a serious threat to the health and welfare not only of the citizens of the country, but every citizen of the world. The learned Counsel would argue that the offences committed by the petitioner are so interlinked and continuous in character that it affects the security and health of the nation. The Detention Authority had followed lawful procedure and has rightly issued an order under PITNDPS Act, 1988 based on material evidence and after arriving at a subjective satisfaction, regarding propensity and potentiality of the petitioner to engage further in such activities, namely illicit trafficking of narcotic drugs.

15. As regards non communication of the grounds of detention i.e relied upon documents, which were in Hindi language, learned Counsel for the respondents submits that the

petitioner had been duly represented by an Advocate who had translated the said Hindi documents to the petitioner in the language, which he understood. He would argue that the detenu did not sign several pages of the *Panchanama* on 22nd April, 2022.

16. Learned Counsel thereafter, invited our attention to a representation dated 2nd May, 2022 made before the Chairman, PITNDPS Advisory Board by the petitioner through his Advocate, by contending that the detenu was duly represented through his Advocate and, therefore, there was no breach or violation of the condition and non communication of grounds of detention to the petitioner.

17. In an order of preventive detention, the test is not of prejudice but of strict compliance of statutory provisions. The law on the point of preventive detention is no more *res intergra*. It has been held by a catena of decisions that preventive detention orders ought to be issued only for matters of apprehending breach of public order and not apprehending mere

breach of law and order. It is equally important to ensure that all necessary safeguards under the Constitution are complied with fully and strictly. It is a settled principle of law that preventive detention shall satisfy two fold test viz. protection and guarantee afforded in Article 22 (5) of the Constitution and that the procedure is just and reasonable. This is because liberty of a person is a highly precious right which needs to be protected, unless it becomes absolutely essential to detain a person in order to prevent him from indulging in anti-national activities.

18. Keeping in mind the aforesaid well-known principles, we have meticulously gone through the relevant material placed on record by the respondents No.1 to 3, more particularly, the documents in question.

19. A *panchnama* dated 22nd April, 2022 drawn by the Intelligence Officer of respondent No.3 who had been to the Bombay Central Prison, Arthur Road, Bombay to serve upon the detenu an order of detention along with the documents had approached the Jailor, Grade - II. Relevant part of the said

Panchanama is extracted below;

"Detention order is explained to Mr. Agisilaos Demetriades in his understanding language. Mr. Agisilaos Demetriades received the documents which mentioned ground on which detention order F.No.U 11000/18/2021-PITNDPS Dated 21.09.2021 has been issued total eight (08) pages and order dated 21.09.2021 (1page) under his acknowledgment by Mr. Agisilaos Demetriades. Officer given two set of relied upon documents to (Part I 1-460 and Part II 461 to 849) Mr. Agisilaos Demetriades. However, he doesn't agree to put on sign on following pages of relied upon documents (146 to 151, 170, 171, 197 to 199, 215, 330 to 345, 347 to 410, 412 to 460, 461 to 526, 639 to 640, 643 to 647, 710 to 711, 752 to 757). Then by Sh. Vijaysingh Shinde, I.O, pancha and accused put our dated signature over the panchanama. The conversation between by Sh. Vijaysinh Shinde, I.O and Agisilaos Demetriades was in English Language)".

20. A bare look at the recitals of the *Panchanama* reveals that the Intelligence officer of Narcotic Control Bureau while drawing this *Panchanama* in the presence of a single *panch* Shri Jagdish Arjun Dhumane appears to have stated that the detention order is explained to the detenu in his understanding language *dehors* any further explanation as to in which language

it was made and whether the detenu, in fact, understood what had been stated to him. The *panchanama* further reveals that the detenu refused to sign on the pages mentioned hereinabove. Conspicuously, the detenu had endorsed beneath the *panchanama* that "*I am being forced to sign this document on the 22/04/22*". This itself falsifies the argument of learned Counsel for the respondent Nos. 1 to 3 that the detenu was duly made to understand the contents of all the documents. Had it been so, there was no reason for the detenu to endorse as above. The aforesaid documents nowhere clarify as to in which particular language the detenu was made to understand the contents thereof. This speaks volumes. Be that as it may. Endorsement made by the detenu is significant in light of the attending circumstances.

21. It seems that in order to rectify the aforesaid wrong or irregularity, one more *panchanama* was drawn on the very next date i.e on 23rd April, 2022 by the same Authority in the presence of same *panch* witness. *Panchanama* dated 23rd April, 2022 reveals that all the documents were handed over to the

detenu and the detenu informed the later that he had received all the documents and had understood the contents thereof. This is something, no sane man will believe for, one of the vital documents was in Hindi language. This document is in the form of a statement of one of the accused namely Sandeep Suresh Gupta which has been relied upon by the prosecution. Sandeep Gupta was arrested in connection with NCB Crime No.16/2020 who was found in possession of 500 grams of *Ganja*. He is alleged to have stated in his statement recorded under section 67 of the NDPS Act, 1985 that he had supplied *Ganja* to the detenu on two occasions at Bandra area. This statement essentially is in Hindi language. There is absolutely nothing on record to indicate that this particular document/statement had been translated and explained to the detenu in the language which he understood. Upon being asked as to whether there is any shred of evidence to indicate that the detenu was, in fact, made to understand the contents of the document in Hindi either by the Authority or atleast by his lawyer as argued by the learned Counsel for the respondent Nos. 1 to 3, he could not point out one. No contemporaneous record has been produced

to show that such an exercise had been carried out.

22. This being one of the grounds of detention, Detaining Authority ought to have sworn an affidavit that he had actually furnished translated version of the statement which is in Hindi or had explained to the detenu in the language which he understood. Merely stating about the same in the *panchanama* would tantamount to *ipse dixitism* of the Detaining Authority.

23. The service of the ground of detention on the detenu, as already stated hereinabove, is a very precious constitutional right. Non supply of translated version of the grounds of detention would indeed tantamount to not serving the grounds of detention to the detenu and would thus, vitiate the detention.

24. A useful reliance has been placed by the learned Senior Counsel on a decision of the Supreme Court in case of **Raziya Umar Bakshi (Smt) Vs. Union of India and others**,¹. It would be apposite to extract the observations of the Supreme Court made in paragraphs 3 and 5 which are extracted below;

¹ 1980 SCC (Cri) 846

"3. This allegation seems to have been denied by the respondents in para 14 of the affidavit of Mr. P. M. Shah, on behalf of the detaining authority, where he stated that the grounds were explained to the detenu in the language known to him. It was averred in para 5 that one Mr. A. K. Sharma, Police Inspector, C.I.D. (Crime Branch), Ahmedabad had explained to the detenu the order of detention and the grounds communicated to him on January 30, 1980. This affidavit, in my opinion, is wholly inadmissible in evidence. If it was a fact that Mr. Sharma had personally explained the grounds to the detenu then the respondents should have filed an affidavit of Mr. Sharma himself to show that he had actually explained the contents of the grounds to the detenu by translating the same in the language which he understood. No such affidavit is forthcoming. No Contemporaneous record has been produced to show that Mr. Sharma had actually explained or translated the grounds to the detenu. The service of the ground of detention on the detenu is a very precious constitutional right and where the grounds are couched in a language which is not known to the detenu, unless the contents of the grounds are fully explained and translated to the detenu, it will tantamount to not serving the grounds of detention to the detenu and would thus vitiate the detention ex-facie.

5. In this view of the matter, the detention becomes invalid on this ground alone. I would like to observe that in cases where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detenu, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in

the language which he understands. A bare denial at the stage when habeas corpus petition is filed in the court by the detaining authority that these formalities were observed would be of no consequence particularly when it is not supported by any document or by any affidavit of the person who had done the job of explaining or translation. We have pointed out in several cases that courts frown on detention without trial and insist on the strict compliance of the constitutional safeguards enshrined in Article 22 (5) to the letter of the law, because a non-compliance of these safeguards would itself be sufficient to vitiate the order of detention. Despite our repeated observations, unfortunately, however the detaining authority continues to pass orders of detention in a casual or cavalier fashion with the result that the courts are compelled to release the detenus. We hope an trust that in future the detaining authorities should fully apply their mind so as to result in a strict compliance of the constitutional safeguards contained in the Constitution more particularly because the liberty of the subject is. in peril".

In this case, the detention of the detenu was held invalid though it has been contended that the concerned Police Inspector Mr. A.K. Sharma, Police Inspector, C.I.D (Crime Branch) Ahmedabad has explained the detenu the order of detention and the grounds communicated to him. It is observed by the Supreme Court that such affidavit was wholly inadmissible in evidence. It has been specifically observed that if Police Inspector Sharma personally explained the grounds to the

detenu then the respondents should have filed an affidavit of Mr. Sharma himself to show that he had actually explained the contents of the grounds to the detenu by translating the same in the language which he understood. As such, even in the case at hand, no such exercise appears to have been made by the respondents to tender an affidavit of Mr. Vijaysinh Shinde, I.O, Intelligence Officer/NCB-MZU. Ratio decidendi is, therefore, squarely applicable to the case in hand.

25. It is trite law that "*communication*" of the grounds is not equivalent to serving grounds upon the detenu who was not conversant with Hindi language. It cannot be said to be a sufficient compliance of clause (5) of Article 22 of the Constitution of India, in as much as the detenu was prevented from making an effective representation against the order of detention. This is what has been precisely laid down by the Supreme Court in a well known judgment of **Harkisan Vs. State of Maharashtra**² and others. The detenu, in that case, was unable to understand English language and, therefore, he had asked for

² AIR 1962 SC 911

Hindi version of the same so that he may be able to follow and understand the charges levelled against him and take necessary steps for his release from jail. The affidavit of the concerned Police Inspector in response to the said contention of the detenu was that the order of detention as well as grounds of detention were translated by him orally in Hindi and explained to the detenu in the presence of District Magistrate, Nagpur City. It has been observed by the Supreme Court that it was not sufficient compliance in consonance with the requirements of the Constitution as laid down in clause 5 of Article 22. The Supreme Court while referring to its earlier judgment in case of **State of Bombay Vs. Atmaram Shridhar Vaidya**,³ observed that clause - 5 of Article 22 of the Constitution requires that the grounds of his detention should be made available to the detenu as soon as may be, and that the earliest opportunity of making a representation against the order should also be afforded to him. It is further observed that in order that the detenu should be in a position to make his representation against the order, he should have knowledge of grounds of his detention, which are in nature

³ (1951) SCR, 167

of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detenu sufficient knowledge of all the grounds on which the Order of Detention is based. The Supreme Court had succinctly distinguished between oral translation or explanation given by the Authority serving those grounds on the detenu *vis a vis* "*communicating*" the grounds. The Supreme Court observed that the "*communication*" in this context, must mean bringing home to the detenu effective knowledge of the facts and circumstance on which the order of detention is based.

26. As such, the principles laid down hereinabove, in cases of **Raziya Umar Bakshi** (supra) and **Harikisan** (supra) are aptly applicable to the present set of facts.

27. We are afraid, a case law pressed into service by the learned Counsel for the respondent Nos. 1 to 3 in the case of **Amar alias Amarsingh Gulabsingh Rathod Vs. State of Maharashtra and**

another,⁴ would not be of any assistance to the prosecution, for, in the said case in paragraph 16, the Division Bench of this Court has observed thus;

"16. The Detaining Authority has met these objections by contending that the grounds of detention and relevant documents were served on the petitioner on 27-11-2002 and the Police Inspector (Detention Cell) Crime Branch, Nagpur had explained to the petitioner each and every document in Hindi and as the record shows the petitioner has acknowledged and so to say certified in his own hand that the contents of the documents have been explained to him. It is further a matter of record that the petitioner has made representation to the State Government as well as Advisory Board. The petitioner was heard before the order was confirmed by the State Government on the recommendation by the Advisory Board. Therefore, there is no substance in the contention of the petitioner that his right of representation has been hampered on the ground that the copies of translated documents were not supplied to him. In the background of the fact that the petitioner was explained the documents in the language which he knew and understood, by the Police Officer there is substantial compliance of the requirements and as such there is no room for petitioner to make grievance about the same. It is further eloquent that representation has been made by the petitioner through his counsel. It is a matter of record that even representation to the Detaining Authority was submitted by the petitioner through his counsel. If that is so, then the grievance of the petitioner that the documents were not explained to him in his language does not survive".

4 2003 ALL MR (Cri) 1671

28. In view of the law laid down in **Raziya Umar Bakshi Vs. Union of India and others and Harikisan Vs. State of Maharashtra and others** (supra), the same will have precedence over the judgment of this Court in case of **Amar Alias Amarsingh Gulabsigh Rathod** (supra).

29. Corollary of the discussion made hereinabove is that, the petitioner succeeds. Consequently, following order is passed;

(i) The order of detention bearing No. F-No.U-11011/18/2021 (PITNDPS) dated 21.09.2021 issued against the petitioner under the provisions of PITNDPS Act, passed by Shri Ravi Pratap Singh, the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue (PITNDPS Unit) is quashed and set aside.

(ii) The detenu be released forthwith, if not required in any other offences.

(iii) Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

(iv) All parties to act on authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.] [REVATI MOHITE DERE, J.]