

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Pronounced On: 22.12.2022

W.P.(CRL) 1252/2022

NEERAJ VARSHNEY

..... Petitioner

Versus

**MINISTRY OF FINANCE DEPARTMENT OF REVENUE AND
ORS.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Tarun Gulati, Senior Advocate with Mr. R.P.Singh,
Mr. Shivam Tyagi, Ms. Priyanka Goel and Mr. Kumar
Sambhav, Advocates.

For the Respondents: Mr. Ravi Prakash, CGSC with Mohd. Shahan Ulla,
Advocate for R-1 & R-2.
Mr. Satish Aggarwala Senior Standing Counsel with Mr.
Gagan Vaswani, Advocate for R-3/DRI.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE AMIT SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J

1. The present writ petition under Article 226 of the Constitution of India, has been instituted on behalf of Neeraj Varshney (hereinafter referred to as 'the detenu'), praying as follows:-

“For the premises set forth above, it is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) issue a writ of certiorari or any other appropriate writ or direction to quash and set aside the detention order bearing No. F. No. PD-12001/08/2022-COFEPOSA dated 01.02.2022 passed by Respondent No.1 in the interest of Justice.
- b) issue a writ of certiorari or any other appropriate writ or direction to quash and set aside the memorandum bearing No. PD-15001/08/2022-COFEPOSA dated 04.04.2022 issued by Respondent No.2 in the interest of Justice.
- c) issue a writ of certiorari or any other appropriate writ or direction to quash and set aside the order bearing No. PD-12001/08/2022-COFEPOSA dated 02.05.2022 passed by Respondent No.2 in the interest of Justice.
- d) issue a writ of habeas corpus or any other appropriate writ or direction to release the petitioner forthwith in the interest of justice.
- e) Also pass any other further order or direction in the facts and circumstances of the present petition.”

FACTS OF THE CASE: -

2. The relevant facts *qua* the detenu, as are necessary for the adjudication of the subject writ petition are briefly encapsulated as follows:-

2.1. The investigation against the detenu emanates from an intelligence received by the Directorate of Revenue Intelligence, Delhi Zonal Unit (hereinafter referred to as "DRI") that a consortium consisting of certain Chinese, Taiwanese, and South Korean nationals, in collaboration with some Indian individuals, are involved in illicit import of foreign origin gold into India via air cargo, by concealing

the foreign origin gold in the transformers of electroplating/re-working machines, etc.

2.2. Subsequently, on 18/19.11.2021, acting on the said intelligence, a consignment imported by one M/s. Healthy Future Leaders Private Limited, at Delhi Cargo Services Centre, Air Cargo Complex, IGI Airport, New Delhi, was subjected to examination by the DRI officers, wherein it was found that it contained several prohibited items i.e. 80.126 kg. of (995 purity 24 Carat) foreign origin gold, in the form of 'E' and 'I' shaped plates, with a market value of Rs.39,31,38,219/-. Accordingly, vide seizure memo dated 19.11.2021, the same was seized under Section 110 of the Customs Act, 1962 (hereinafter referred to as 'the Customs Act').

2.3. It is asseverated by the official respondent, that the intelligence, further revealed, that the above-mentioned syndicate, imported the foreign origin gold into India from Air Cargo Complex, IGI Airport, New Delhi. Thereafter, the same was melted and re-molded into bars at 10/A, A-8, Boga Farm, Asola, SSF Marg, Main Chhatarpur Road, New

Delhi, before being delivered to Li Wen Tsung and Choi Yong, in Gurgaon. Later, it was supplied to numerous customers, including Atul Gupta alias Pintu (*Brother of Detenu*), Neeraj Varshney (*detenu*) and Pramod Singla (*co-detenu*).

- 2.4. That on the basis of information received, search proceedings were initiated on the same day, at the purported premises of the co-detenu's (*Pramod Singla*) i.e., M/s. D.P. Abhushan, Shop No. 4, 3rd Floor, 1167 Kucha Mahajani, Chandni Chowk, Delhi. During the search, 7 pieces of gold, weighing 5.409 kgs of suspected foreign origin with a market value of Rs.2,64,44,680/- were recovered and seized under Section 110 of the Customs Act, vide seizure memo dated 19.11.2021. A Panchnama dated 18.11.2021 was drawn and in total 85.535 kg gold of foreign origin gold worth Rs.41,95,82,899/- was recovered and seized.
- 2.5. On 18/19.11.2021, further search was carried out, at four different premises of the individuals associated with illicit import and export of foreign origin gold, whereupon certain

incriminating evidence in the form of electronic devices were allegedly found and recovered.

2.6. The statement of the co-detenu Pramod Singla under Section 108 of the Customs Act was recorded on 18/19.11.2021 and the statement of the detenu along with Dongyoung Oh, Liang Zhaobing alias Dawang Tstring, Li Wen Tsung and Choi Yong was recorded on 19.11.2021. In his statement under section 108 of the Customs Act, the detenu admitted with respect to his involvement in the illicit purchase, possession, carrying, transporting and in sale/disposal of the foreign origin gold trafficked into India by the abovementioned cartel.

2.7. On 20.11.2021, the detenu was arrested by officers of the DRI and produced before the Court of learned CMM, Patiala House Courts, New Delhi, and was remanded to Judicial Custody until 04.12.2021. The Detenu filed a bail application before the learned CMM Court and vide order dated 21.12.2021, the learned CMM, Patiala House Court, New Delhi granted bail to the detenu.

- 2.8. On 24.12.2021, the DRI caused to file a petition (Crl. M.C. No. 51/2022) before the High Court of Delhi, seeking cancelation of bail, granted to the detenu by learned CMM Court. On 17.05.2022, notice was issued to the sole respondent (*detenu herein*) and vide order dated 13.10.2022, the petition has been re-notified to 07.03.2023.
- 2.9. On the 01.02.2022, the subject impugned detention order was passed by the Detaining Authority (Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau, COFEPOSA Wing). Thereafter on 26.02.2022, the detenu was apprehended by the DRI officials and on the 02.03.2022, the said detention order was statedly served on the detenu, along with the grounds of detention, running into pages 1 to 17, along with the list of documents, cited in the grounds of Detention, running into pages 1 to 748, distributed among Sl. Nos. 1 to 66, along with index running from page Nos.1 to 4.
- 2.10. The detenu submitted a representation dated 25.03.2022 before the Detaining Authority as well as as before Special Secretary-cum-Director General of Central Economic

Intelligence Bureau (CEIB) to revoke the detention order on the grounds set forth therein. Simultaneously, the detenu sought for supply of relevant documents, specifically pages 58 and 59, which were in Chinese, and pages 529, 532, 533, and 534, which were illegible; and therefore, demanding legible copies of all the above, so as to enable him to make an effective representation. The aforesaid, detailed representation was rejected by the Detaining Authority vide memorandum dated 04.04.2022 (copy of which is stated to have been received by the Detenu in Tihar jail).

2.11. Challenging the aforesaid decision, a constitutionally provided representation was filed by the Detenus before the COFEPOSA Advisory Board (hereinafter “Advisory Board”). Thereto, COFEPOSA Advisory Board opined that there existed sufficient grounds for the detention of Neeraj Varshney/the detenu. Accordingly, vide order dated 02.05.2022, the Central Government has considered the opinion/report of the Advisory Board and confirmed the impugned detention order.

3. A perusal of the grounds of detention, impugned in these proceedings reveal that the role assigned therein to the detenu, pursuant to the investigation carried out, is substantially to the effect that:-

- (a) The investigation conducted by the DRI allegedly establishes the detenu's continued propensity and inclination to indulge in the acts of smuggling in a planned manner, to the detriment of the economic security of the country and that unless prevented the detenu will continue to do so. The detenu, in his statements under section 108 of the Customs Act, has assertedly admitted to his involvement in the illegal purchase, possession, carrying, transporting and in sale/disposal of the foreign origin gold.
- (b) Further, considering the nature and gravity of offence, in which the detenu had engaged himself in an organized manner; and upon consideration of such prejudicial activities and the detenu's role therein; all of which reflect the detenu's high potentiality and propensity to indulge in such prejudicial activities in future; it was concluded by the Sponsoring Authority that there is a need to prevent the detenu from smuggling of goods.

ARGUMENTS ON BEHALF OF THE PETITIONER: -

4. Mr. Tarun Gulati, learned Senior Counsel appearing on behalf of the detenu vehemently assails the impugned order of detention whilst submitting that, the non-supply of relied upon documents (hereinafter referred to as the 'RUDs') has jeopardized the only right available to the detenu i.e. the right of making an effective representation.

5. It is submitted in this behalf that vital and duly translated copies of documents, relied upon and referred to in the grounds of detention have admittedly not been served upon the detenu; despite his specific request in this behalf, to the Detaining Authority vide representation dated 25.03.2022; and that the said request was without lawful justification, rejected vide memorandum dated 04.04.2022, by the Detaining Authority. It is submitted that rejection of the said request further curtailed the detenu's constitutionally safeguard and protection enshrined under Article 22(5) of the Constitution of India read with Section 3(3) of the COFEPOSA. The supply of illegible/non-translated copies and specifically pages 58 and 59 (which were in Chinese language), of the subject RUDs, including but not limited to those supplied to the detenu is now beyond question; and

the consequential non-consideration thereof by the Detaining Authority irrefutably vitiates and inevitably renders the impugned detention order as invalid.

6. It is further submitted that clear and legible copies of a number of illegible/dim/blank RUDs i.e pages 529, 532, 533, and 534 referred to and relied upon by the Detaining Authority have also not been supplied to the detenu at all, despite various specific demands made in this behalf by the detenu vide representation(s) dated 15.04.2022 to the COFEPOSA Advisory Board; and wrongly rejected vide order dated 02.05.2022; thereby clearly and unequivocally establishing that the detenu's constitutional right to an effective representation was emasculated owing to the said non-supply/supply of illegible RUDs; as well as the reliance placed thereupon by the Detaining Authority while passing the impugned detention order, vitiating the subjective satisfaction of the latter.

7. It is furthermore reiterated that, not furnishing, or supplying the relevant material or documents despite specific demand, is grossly violative of the fundamental rights of the detenu as enshrined and guaranteed under Articles 14, 21 and 22(5) of the Constitution of India.

8. It was further submitted by Mr. Tarun Gulati, learned Senior Counsel appearing on behalf of the petitioner that another aspect which became strikingly noticeable to the detenu is that the impugned detention orders have been passed in the most hasty and casual manner, by mentioning the disjunctive “or” instead of conjunctive “and” in the detention order. In other words, in the Detention Order, it is averred that “*with a view to prevent him from smuggling of goods, abetting the smuggling of goods and engaging in transporting or concealing or keeping smuggled goods in future*” and “*I am satisfied that there is need to prevent you from smuggling goods*”. In this behalf it is stated that it is no more res integra that where various grounds could be joined by the conjunctive “and” the use of the disjunctive “or” in such a case is impermissible. Subsequently, it is an admitted position that, no specific reason and sub-clause has been invoked at the time of passing the detention order, for the reason that, there was no subjective satisfaction and considered formulation of grounds on the part of the Detaining Authority, which could warrant the passing of the detention order under Section 3(1) of the COFEPOSA.

9. It was further submitted by the learned Senior Counsel for the

detenu that the order of detention has been passed ostensibly to prevent the detenu from smuggling, abetting, engaging in transporting and concealing the smuggled goods in future. Be that as it may, the same is perverse and untenable because the entire case against the petitioner is based on inadmissible material which further vitiates the impugned detention order.

10. It was further submitted that by the learned Senior Counsel appearing on behalf of detenu that, the Detaining Authority has merely acted as a rubber stamp by issuing the Detention Order, based solely upon the specious allegations made by the Sponsoring Authority, relying on the retracted statements of the co-detenus. The learned Senior Counsel furthermore urged that, it is well settled that the allegations against the petitioner are not sustainable only on the foundation of statements of co-detenus without any corroboration. As per the version of the detaining/Sponsoring Authority the only subsisting allegation against the petitioner is that he was involved in the illicit possession, carrying, transporting of the foreign origin gold, smuggled into India by the above-mentioned cartel.

11. It was further submitted by the learned Senior Counsel for the detenu that another aspect which is strikingly noticeable is that

although the detenu was enlarged on bail vide the said order dated 21.12.2021, it is pertinent to note that, during the relevant period, the petitioner is not alleged to have misused the liberty granted to him, by the court of learned CMM and was admittedly not involved into any prejudicial activities.

12. It is further argued that there has been a complete and utter non-application of mind by the Detaining Authority, while passing the impugned detention order, as is further evident that there is no credible evidence or any other material on record to suggest that petitioner was ever involved in the act of smuggling of gold or with any act of abetment of smuggling of gold. ‘Smuggling’ is defined under Section 2 (39) of the Customs Act, which reads as under:-

“2(39). "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113.”

13. Upon a plain reading of the above-mentioned Section, it is quite evident that the allegation of smuggling of goods defined under Section 2 (39) of the Customs Act can be alleged only against a person, who is either the importer or owner of the alleged goods and the provisions of section 111 of the Customs Act which have not been referred to in the impugned detention order, can be attracted only as

against the owner and importer of the smuggled goods.

14. It is therefore submitted that there was a glaring non-application of mind by the Detaining Authority, which entirely and unequivocally vitiates the impugned order of detention.

15. In order to buttress his exhaustive submissions, Mr. Tarun Gulati, learned Senior Counsel appearing on behalf of the detenu, has placed reliance on the following decisions:-

- i. *Zakir Khan v. Union of India & Ors.*, reported as 2022 SCC OnLine Del 1284;
- ii. *Mabelaranah Niranjana Puthran vs. State of Maharashtra*, reported as 2014 (306) E.L.T 466 (Bom.);
- iii. *Pooja Batra Vs UOI*, reported as 2009 (237) ELT 17 SC;
- iv. *Jagannath Mishra vs. State of Orissa*, reported as AIR 1966 SC 1140;
- v. *Sanjay Agarwal vs. UOI*, reported as 2019 (369) E.L.T 279 (Del.);
- vi. *Rajesh Gulati vs. Govt. of NCT of Delhi & Anr.*, reported as 2002 SCC Online SC 805;
- vii. *M. Ahamed kutty v. Union of India*, reported as (1990) 2 SCC 1;
- viii. *State of Manipur and Others vs. Buyamayum Abdul Hana alias Anand and Anr.*, reported as 2022 SCCOnline SC 1455;
- ix. *Mallada K Sri Ram vs State of Telengana & Ors.*, reported as 2022 SCCOnline SC 424;
- x. *Ichhu Devi Chorari vs Union of India*, reported as (1980) 4 SCC 531;
- xi. *Sanjay Agarwal vs Union of India*, reported as 2019(369) ELT 279 Del;
- xii. *Anwar Abdulla vs Union of India*, reported as (1991) SCC Online Kar 470;

ARGUMENTS ON BEHALF OF THE RESPONDENT:-

16. Per Contra, Mr. Ravi Prakash, learned Central Government Standing Counsel appearing on behalf respondents would submit that, impugned detention order dated 01.02.2022 passed by the Competent Authority, under Section 3(1) of the COFEPOSA, is legal and constitutional and the same has been passed by the Competent Authority with due application of mind and after arriving at the requisite subjective satisfaction.

17. It is further argued that, the contention of non-consideration of other documents/material cannot be a ground for vitiating the detention order, as sufficient documents and materials were placed before the Detaining Authority and upon considering the individual role of the detenu, the Detaining Authority satisfied itself as to his continued propensity and inclination to indulge in the act of smuggling in a planned manner to the detriment of the economic security of the country, which necessitated the need to prevent the petitioner from smuggling goods by preventively detaining him.

18. It is also submitted that that the language used in the impugned detention order, as well as in the Ground of Detention, is in consonance with Section 3 (1) of the COFEPOSA and the same are

not based on any inference drawn by the Detaining Authority. The impugned Detention order has been passed, following the due process of law, and after due application of mind and deliberation, after taking into consideration all the facts and circumstances of the present case.

19. It is submitted that, all the evidence relied upon in this case and served on the Detenus were invariably produced before the Detaining Authority for the latter's subjective satisfaction. It is further submitted that any proposal for preventive detention under COFEPOSA, goes through an elaborated procedure of screening and approval from the Screening Committee comprising of senior officers of Customs, DRI and the law department. The Detaining Authority considered the proposal of the Sponsoring Authority along with all the relevant materials placed on record, in order to arrive at the subjective satisfaction and prevent the detenu from continuing with any prejudicial activity in future. The detention order is issued along with the detailed grounds of detention. It is further submitted that, every document/material which was relied upon for the purpose of arriving at the subjective satisfaction, while passing the impugned detention order, has been supplied to the detenus, against proper acknowledgement. It is furthermore submitted that, therefore, the

subjective satisfaction of the Detaining Authority cannot be stated to have been exercised in a hasty and casual manner.

20. It was further submitted by the learned Standing Counsel for the respondent that only copies of the documents on which the impugned detention order is primarily based, are required to be supplied to the detenu and not any and every document. Mere reference of certain instances for the purposes of completion of narration, would not entitle the detenu to be supplied with copies of such documents. It is submitted that all the relevant and vital document/material was placed by the Sponsoring Authority before the Detaining Authority; the perusal of which led to subjective satisfaction of the Detaining Authority in passing the impugned detention order.

21. It was further submitted that the documents at pages 58 and 59 of the RUDs are printouts of the petitioner's WhatsApp communication with co-accused Li Wen Tsung. On 19.11.2021, the aforementioned documents were duly confronted to the petitioner, during the recording of his statement under Section 108 of the Customs Act. The petitioner, in his own handwriting, had endorsed the fact that, the same was his WhatsApp conversation with Li Wen Tsung. Furthermore, the relevant portion of the above stated chat text

was in English. Thus, no prejudice, at all, is caused to the petitioner. It was further submitted by the learned Standing Counsel for the respondent, that page Nos. 529, 532, 533, 534 of the RUDs, are legible and clear and the aforementioned documents were served upon the detenu with proper acknowledgement and within the statutorily prescribed time.

22. It is urged that the Detaining Authority has not relied on illegible documents. It is asserted that the Hon'ble Court must sift and weigh, between vital and essential documents, and not be swayed by the purported illegible documents, which have not influenced the decision making of the Detaining Authority, in any manner. Further, such documents are fully comprehensible and understandable when seen with the statements/panchnamas of which they are made a part of as acknowledged by the Detenus in their own handwriting. This amounts to due communication of the grounds of detention, in terms of the requirements of Article 22(5) of the Constitution of India. Hence, the allegation of malice in issuing the impugned order is fundamentally unfounded, wrong, misconceived and untenable.

23. The learned Standing Counsel appearing on behalf of the respondent also submits that while examining an order of detention,

the court cannot go deep into the merits of the matter and can only form a *prima facie* opinion. It is further submitted that by virtue of the provisions of COFEPOSA, the respondents have vested powers in them to issue detention order against the petitioner. It is further urged that grant of bail or its denial is not a ground for quashing of the detention order, as long as, the said fact is taken note of by the Detaining Authority and subjective satisfaction is arrived at in relation to the propensity of the person to indulge in further prejudicial activities.

24. It was lastly argued by the learned Standing Counsel that the impugned detention order was passed after arriving at the subjective satisfaction by the Detaining Authority, based on material on record, *inter alia*, consisting of the statements of the Petitioner recorded under Section 108 of the Customs Act and that of the co-accused, which is corroborated with the WhatsApp chat of the Petitioner and Li Wen Tsung.

25. In support of his arguments, Mr. Ravi Prakash, learned CGSC appearing on behalf of the respondent has placed reliance on the following decisions: -

- i. *State of Gujarat vs. Adam Kasam Bhaya* reported as (1981) 4 SCC 216;
- ii. *Union of India vs. Arvind Shergill* reported as (2000) 7

- SCC 601;
- iii. *Ashutosh Lahiri vs. State of Delhi* reported as AIR 1953 SC 451;
 - iv. *K.T.M.S. Mohd. Vs. Union of India* reported as (1992) 3 SCC 178;
 - v. *K.L. Pavunny vs. Asstt. Collector (HQ), Central Excise Collectorate* reported as (1997) 3 SCC 721;
 - vi. *Gulam Hussain Shaikh Chogule v. S. Reynolds, Supdt. Of Customs* reported as (2002) 1 SCC 155;
 - vii. *Jagannath Mishra vs. State of Orissa*, reported as AIR 1966 SC 1140;
 - viii. *Sanjay Agarwal vs. UOI*, reported as 2019 (369) E.L.T 279 (Del.);

DISCUSSION:-

26. Having heard learned counsel appearing on behalf of the parties and after due consideration of the rival submissions in the context of the facts and circumstances of the present case, as well as the relevant provisions of law and the decisions relied upon by the parties; and having perused the material on record the following issues arise for the consideration of this Court in the present proceeding:-

- (a) Whether the supply of illegible RUDs vitiates the ‘*subjective satisfaction*’ of the Detaining Authority thereby rendering the impugned detention order invalid?
- (b) Whether the detenu’s constitutionally secured right of making an effective representation has been jeopardized, by the non-supply of relevant documents, in a language which the detenu understands; thereby rendering the order of detention illegal and

bad?

27. We find it apposite at this stage to consider and reiterate the observations made by the Hon'ble Supreme Court in a recent decision in Mallada K. Sri Ram vs. The State of Telangana & Ors., reported as 2022 SCCOnline SC 424, specifically paragraph 15 as is reproduced hereunder: -

"15. A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the maintenance of public order. In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since the detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining

authority. *The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal law."*

28. It is well settled and not in dispute that under the provisions of Section 3 of COFEPOSA, it is only the Detaining Authority, which can ultimately decide to pass or not, a detention order against any person, and that too, after perusing each and every document and material placed before it. It is also not in dispute that the '*subjective satisfaction*' of the Detaining Authority itself is to be arrived at after perusing all the relevant documents and material produced. This is a constitutionally provided condition precedent for passing a valid order of detention. The Hon'ble Supreme Court of India was pleased to delineate precisely qua the '*subjective satisfaction*' of the Detaining Authority in Union of India (UOI) and Ors. v. Dimple Happy Dhakad reported as (2019) 20 SCC 609, which was affirmed by the Hon'ble 3-Judges in that Bench in Union of India (UOI) v. Ankit Ashok Jalan reported as 2020 16 SCC 185, as follows:-

“ 45. Considering the scope of preventive detention and observing that it is aimed to protect the safety and interest of the society, in State of Maharashtra and Ors. v. Bhaurao Punjabrao Gawande (2008) 3 SCC 613, it was held as under:

36. Liberty of an individual has to be subordinated, within reasonable bounds, to the good of the people. The framers of

the Constitution were conscious of the practical need of preventive detention **with a view to striking a just and delicate balance between need and necessity to preserve individual liberty and personal freedom on the one hand and security and safety of the country and interest of the society on the other hand. Security of State, maintenance of public order and services essential to the community, prevention of smuggling and black marketing activities, etc. demand effective safeguards in the larger interests of sustenance of a peaceful democratic way of life.**

37. In **considering and interpreting preventive detention laws, courts ought to show greatest concern and solitude in upholding and safeguarding the fundamental right of liberty of the citizen, however, without forgetting the historical background in which the necessity-an unhappy necessity-was felt by the makers of the Constitution in incorporating provisions of preventive detention in the Constitution itself. While no doubt it is the duty of the court to safeguard against any encroachment on the life and liberty of individuals, at the same time the authorities who have the responsibility to discharge the functions vested in them under the law of the country should not be impeded or interfered with without justification.**

46. **The court must be conscious that the satisfaction of the Detaining Authority is "subjective" in nature and the court cannot substitute its opinion for the subjective satisfaction of the Detaining Authority and interfere with the order of detention. It does not mean that the subjective satisfaction of the Detaining Authority is immune from judicial reviewability. By various decisions, the Supreme Court has carved out areas within**

which the validity of subjective satisfaction can be tested.”

29. On a conspectus of the decisions of the Hon’ble Supreme Court in *Dimple Happy Dhakad (supra)* and *Ankit Ashok Jalan (supra)*, it is axiomatic that, though procedural safeguards are required to be rigorously adhered to and that although the courts must lean in favour of personal liberty of the citizens and remain conscious and zealous in upholding the personal liberties of citizens but in appropriate cases the liberty of an individual has to be subordinated within reasonable bounds to the good of the people. It is observed that an order of detention is clearly and unequivocally a preventive measure devised to afford protection to the society and particularly where the preventive detention is aimed to protect the security and safety of the nation, the Courts must strike a balance between the liberty of an individual and the needs of the society.

30. To the extent, that the issue, as to whether the non-supply of certain RUDs and the supply of illegible RUDs, vitiates the ‘*subjective satisfaction*’ arrived at by the Detaining Authority; and whether the detention order resultantly passed is vitiated on the ground of non-application of mind, is concerned; we have considered the rival submissions, as well as the material placed before us in the present

proceedings. It was observed by this Court from a perusal of the relevant original record that several RUDs; including not only those supplied to the Detenu; but also those on the record with the Detaining Authority, are illegible i.e., not readable.

31. In this regard, recently, the Hon'ble Supreme Court, in *State of Manipur and Others V Buyamayum Abdul Hanan alias Anand and Another* (decided on 19.10.2022) reported as **2022 SCC OnLine SC 1455**, observed that the supply of illegible or blurred copies of the documents relied upon by the Detaining Authority amounts to violation of Article 22(5) of the Constitution. The relevant portion is extracted hereinbelow:-

“16. Article 22(5) of the Constitution confers two rights on the detenu, firstly, the right to be informed of the grounds on which the order of detention has been made and, secondly, to be afforded an earliest opportunity to make a representation against the order of detention.

17. It is well settled that right to make a representation implies that the detenu should have all the information that will enable him to make an effective representation. No doubt, this right is again subject to the right or privilege given by clause (6). At the same time, refusal to supply the documents requested by the detenu or supply of illegible or blurred copies of the documents relied upon by the detaining authority amounts to violation of Article 22(5) of the Constitution. Although it is true that whether an opportunity has been afforded to make an effective representation always

depends on the facts and circumstances of each case.

18. What will be the effect when the detenu is deprived of effective representation or denial of supply of relied upon documents by the detaining authority has been considered by this Court in Ramchandra A. Kamat v. Union of India⁵ as under:

“6. The right to make a representation is a fundamental right. The representation thus made should be considered expeditiously by the government. In order to make an effective representation, the detenu is entitled to obtain information relating to the grounds of detention. When the grounds of detention are served on the detenu, he is entitled to ask for copies of the statements and documents referred to in the grounds of detention to enable him to make an effective representation. When the detenu makes a request for such documents, they should be supplied to him expeditiously. The detaining authority in preparing the grounds would have referred to the statements and documents relied on in the grounds of detention and would be ordinarily available with him — when copies of such documents are asked for by the detenu the detaining authority should be in a position to supply them with reasonable expedition. What is reasonable expedition will depend on the facts of each case.”

xxx xxx xxx

21. Thus, the legal position has been settled by this Court that the right to make representation is a fundamental right of the detenu under Article 22(5) of the Constitution and supply of the illegible copy of documents which has been relied upon by the detaining authority indeed has deprived him in making an effective

representation and denial thereof will hold the order of detention illegal and not in accordance with the procedure contemplated under law.

22. It is the admitted case of the parties that respondent no. 1 has failed to question before the detaining authority that illegible or blurred copies were supplied to him which were relied upon while passing the order of detention, but the right to make representation being a fundamental right under Article 22(5) of the Constitution in order to make effective representation, the detenu is always entitled to be supplied with the legible copies of the documents relied upon by the detaining authority and such information made in the grounds of detention enables him to make an effective representation.

xxx xxx xxx

24. In other words, the right of personal liberty and individual freedom which is probably the most cherished is not, in any manner, arbitrarily to be taken away from him even temporarily without following the procedure prescribed by law and once the detenu was able to satisfy while assailing the order of detention before the High Court in exercise of jurisdiction Article 226 of the Constitution holding that the grounds of detention did not satisfy the rigors of proof as a foundational effect which has enabled him in making effective representation in assailing the order of detention in view of the protection provided under Article 22(5) of the Constitution, the same renders the order of detention illegal and we find no error being committed by the High Court in setting aside the order of preventive detention under the impugned judgment.”

32. Further, in this regard, this Court’s decision in Mohd.

Nashruddin v. Union of India & Ors., reported as 2021 SCC OnLine

Del 4017 observed as follows: -

“49. It is trite to say that a **person detained in pursuance of an order for preventive detention, has a constitutional right to make an effective representation against the same.** The authorities are constitutionally charged with the responsibility to ensure that the grounds of detention, including all relevant documents that are considered whilst forming the subjective satisfaction, are provided to the detenu by the Detaining Authority, so as to enable the detenu to make an effective representation to the Advisory Board, as well as to the Detaining Authority. **Therefore, the non-supply of legible copies of all relevant documents inspite of a request and representation made by the detenu for the supply of the same, renders the order of detention illegal and bad; and vitiates the subjective satisfaction arrived at by the Detaining Authority.**

50. In our considered view, therefore, the supply of the following documents namely, a) Passport, b) Identity Cards of codetenu's, c) WhatsApp chats, d) bill of entry, e) invoice, f) the statement of Mr. Rohit Sharma who is alleged to have defaced the gold bars imported illegally etc. **was critical, in order to enable the detenu to make a comprehensive, holistic and effective representation against the impugned detention order, both before the Advisory Board, as well as before the Detaining Authority.**

51. In the present case, **the denial by the official respondent to supply legible copies of the relevant documents to the detenu, despite his express request to do so, tantamount to denial of his constitutional right, thereby vitiating the detention order, founded on the said relevant material.**

52. In this regard the Hon'ble Supreme Court has, in **Dharmistha Bhagat V State of Karnataka & Ors** reported as **1989 Supp (2) SCC 155** and in particular paragraph 5 thereof, observed that non-

supply of legible copies of vital documents would render the order of detention illegal and bad. The relevant portion has been extracted hereinbelow:

5. The learned counsel appearing on behalf of Respondent 1, Union of India has contended that even though legible copy of panchnama referred to in the list of documents mentioned in the grounds of detention has not been supplied to the detenu yet the fact that five gold biscuits of foreign marking were recovered from the possession of the detenu was sufficient for subjective satisfaction of the detaining authority in making the said order of detention. So the detention order cannot be termed as illegal and bad for non-supply of legible/taped copy of the said document i.e. panchnama dated 12-2-1988. The panchnama dated 12-2-1988 which had been referred to in the list of documents referred to in the grounds of detention and a copy of which had been given to the detenu along with the grounds of detention, **is not at all legible as is evident from the copy served on the detenu. It is also not in dispute that on receiving the documents along with the grounds of detention the detenu had made a representation to Respondent 1 stating that some of the documents including the panchnama which had been supplied to him are illegible and as such a request was made for giving typed copies of those documents to enable the detenu to make an effective representation against the same. The detaining authority on receipt of the said representation sent a reply denying that the copies of those documents were illegible and refusing to supply typed copies of the same. It is clearly provided in sub-article (5) of Article 22 of the Constitution of India that:**

“(5) When any person is detained in pursuance of an order made under

any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.”

Therefore, it is imperative that the detaining authority has to serve the grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention and referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining authority. Therefore, the non-supply of legible copy of this vital document i.e. panchnama dated 12-2-1988 in spite of the request made by the detenu to supply the same renders the order of detention illegal and bad. This Court in *Mehrunissa v. State of Maharashtra* [(1981) 2 SCC 709 : 1981 SCC (Cri) 592 : AIR 1981 SC 1861] has observed that: (SCC p. 710)

“The detenu was entitled to be supplied with copies of all material documents instead of having to rely upon his memory in regard to the contents of the documents. The failure of the detaining authority to supply copies of such documents vitiated the detention, as has been held by this Court in the two cases cited by counsel. The detenu is, therefore, entitled to be released. He is accordingly directed to be released forthwith.”

53. To the similar effect are the observations recorded in the judgment of the Apex Court in *Manjeet Singh Grewal vs. UOI & Ors.* reported as 1990 Supp SCC 59.”

33. Further, in *Union of India vs. Ranu Bhandari*, reported as (2008) 17 SCC 348, the Hon'ble Supreme Court has observed as follows: -

“33. In the instant case, as some of the vital documents which have a direct bearing on the detention order, had not been placed before the detaining authority, there was sufficient ground for the detenu to question such omission. We are also of the view that on account of the non-supply of the documents mentioned hereinbefore, the detenu was prevented from making an effective representation against his detention.

34. In the said circumstances, we do not see any reason to interfere with the judgment and order of the High Court and the appeal is accordingly dismissed.

35. In parting, we may reiterate what we have indicated hereinbefore, that since the personal liberty and individual freedom of a citizen is curtailed by an order of preventive detention, the detaining authorities must apply their minds carefully and exercise great caution in passing such an order upon being fully satisfied from materials which are both for and against the detenu that such an order is required to be passed in the interest of the State and for the public good.”

34. In view of the above extracted decisions, the material placed on record and considering the rival submissions made on behalf of the parties, the first issue is resultantly decided in favor of the detenu and against the respondents. We are of the opinion that, the RUDs supplied to the detenu, as well as, relied upon by the Detaining

Authority in arriving at its '*subjective satisfaction*' were admittedly illegible, therefore, grossly violating the constitutional right of making an effective representation, guaranteed to the detenu under Articles 14, 21 and 22(5) of the Constitution of India.

35. Now coming to the second issue framed hereinabove, it is observed that, during the course of the arguments much emphasis was laid by the counsel for the detenu essentially on Article 22(5), namely the constitutional mandate for communicating the grounds of detention to a detenu in a language which he understands whilst affording him an opportunity of making an effective representation against an order of preventive detention. It is also pertinent to observe that respondent no. 1 and 2, in their counter affidavit dated 18.06.2022 filed before this Court, have averred as follows:

“Para 53: That the contents of Para 28 and 29 are denied except for what is stated as a matter of record. It is submitted that the documents at pages 58 and 59 of the RUDs are printout of WhatsApp chat of the petitioner with co-accused Li Wen Tsung. The said documents had also been confronted to the petitioner during the recording of his statement under Section 108 of the Customs Act, 1962 on 19.11.2021. That the petitioner, in his own handwriting, had endorsed the fact that the same were his WhatsApp chat with Li Wen Tsung. Moreover, the relevant portion of the text of the said chat was in English. The petitioner has written himself the relevant part of the said chat in English. Thus, no prejudice, at all,

caused to the petitioner. As such the plea of the petitioner is baseless, misleading and untenable.

As regards, pages Nos. 529, 532,533,534 of the RUDs, it is submitted that the same are legible and clear. The petitioner had received the said documents against proper acknowledgement. All the Relied upon Documents were served to the petitioner within statutory time. The allegation that the documents at pages No.529, 532,533,534 were not legible is wrong and is denied.

Para 72: With reference to ground No. (zf), save and except what are matters of record, each and every contention is denied. In this regard it is respectfully submitted that documents at pages 58 and 59 arc printout of WhatsApp chat of the petitioner with co-accused Li Wen Tsung. The said documents had also been confronted to the petitioner during the recording of his statement under Section 108 of the Customs Act,1962 on 19.11.2021 The petitioner, in his own handwriting, had endorsed the fact that the same were his WhatsApp chat with Li Wen Tsung. Moreover, the relevant portion of the text was in English. The petitioner has written himself the relevant part of the said chat in English. Thus, no prejudice, at all, caused to the petitioner. As such the plea of the petitioner is baseless, misleading and untenable.

As regards, pages Nos. 529, 532,533,534 of the RUDs, it is submitted that the same are legible and clear. The petitioner had received the said documents against proper acknowledgement. All the Relied upon Documents were served to the petitioner within statutory time. The allegation that the documents at pages No.529, 532, 533,534 were not legible is wrong and is denied.

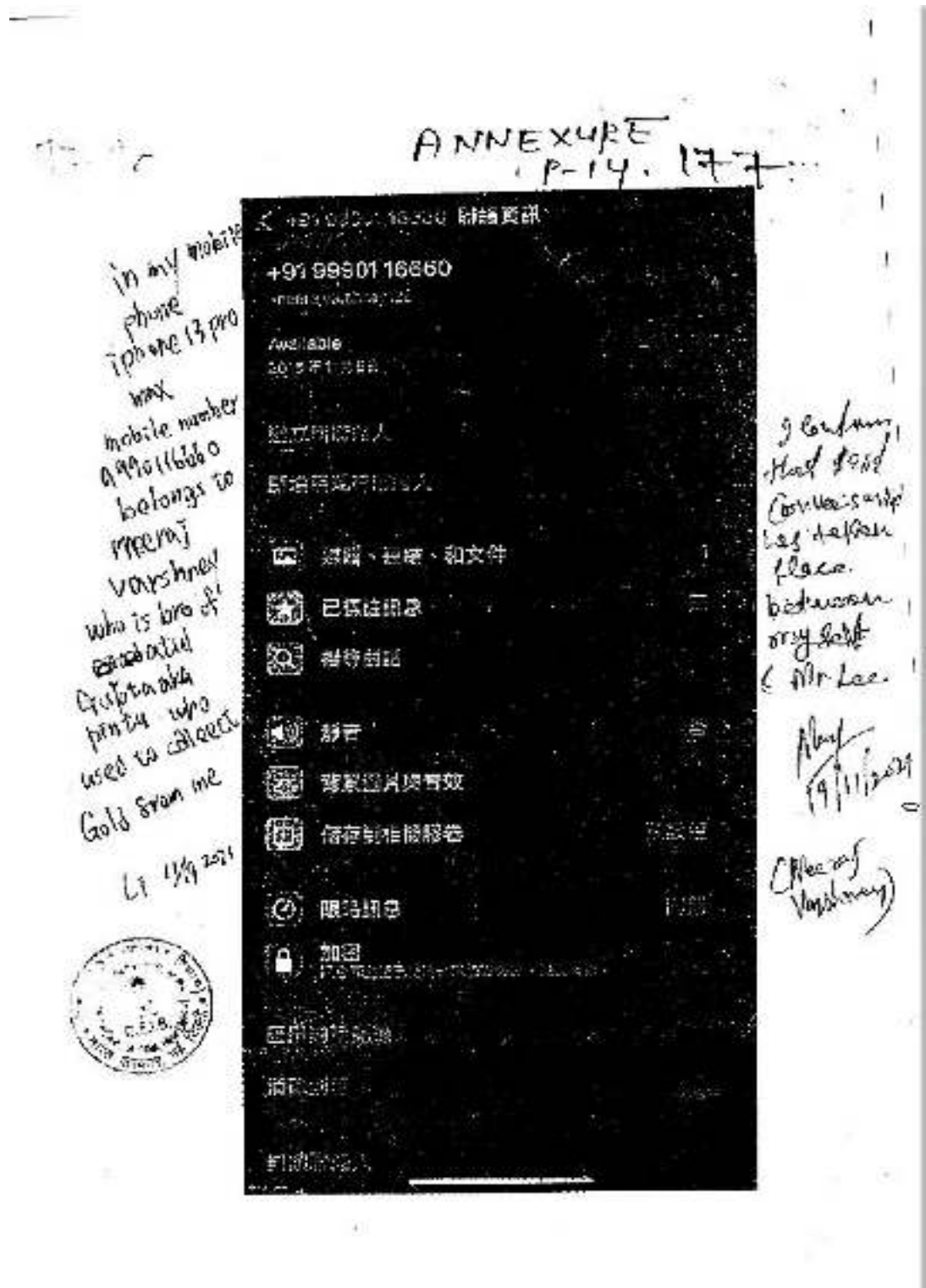
PARA 73: With reference to ground Nos. (zg)

to (zj), save and except what are matters of record, each and every contention is denied. In this regard it is respectfully submitted that all documents relied upon or **referred in the Ground of Detention were supplied to the detenu which were duly acknowledged by him. No prejudice has been caused to the detenu on this ground.** Hence, the contention of detenu and his reliance of case laws referred are not applicable in the present case.”

36. At this outset, it is relevant to point out, that the detenu, vide his representation dated 25.03.2022 before the Detaining Authority and representation dated 15.04.2022 before the Advisory Board, specifically requested for the supply of translated copies of relied upon documents. Relevant portion of the aforementioned representations is extracted below:-

“That after taking my time in scrutinizing the documents and grounds of detention on prima facie basis I have noticed several infirmities which violates my legal as well as Fundamental Rights to make an effective representation. **No translated copy of relied upon documents i.e. page numbers 58 and 59 was supplied as these documents are in Chinese and are not understandable by me in any manner.** Further it is submitted that no legible and readable copy has been provided i.e. page numbers 529,532,533,534 and in this background, **I am not able to file effective representation as provided under Article 22(5) of Constitution of India.** Some papers which were neither relied upon nor supplied to me have become germane in **the present** case. However, on further scrutiny of documents available with me I am forwarding the present representation for your good self kind consideration.”

37. Relevant portion of the subject-RUD, reproduced at page 58 of the original record, is extracted herein below:



38. In view of the aforesaid, it is an admitted position that the relief upon WhatsApp chat of the detenu with Li Wen Tsung reproduced at page 58, of the subject RUDs, is in the ‘**Chinese**’ language; as admittedly retrieved from iPhone 13 Pro Max, of the said Li Wen Tsung, having IMEI No.353652138917310.

39. Further it is relevant to point out, that the manner in which the signatures of the detenu are obtained on the above mentioned document, leaves no manner of doubt that the contents of the aforementioned document were never explained to the detenu in a language that the detenu understands; and simply because he had acknowledged the same with his signatures in English, does not mean that he is proficient in Chinese or could understand the contents of the documents, which are in Chinese.

40. The Hon’ble Supreme Court in **Harikisan vs. State of Maharashtra** reported as AIR 1962 SC 911, has adjudicated upon the present question of law, particularly in paragraph 7. The said paragraph is extracted hereinbelow for the sake of facility: -

“7. ... To a person, who is not conversant with the English language, service of the Order and the grounds of detention in English, with their oral translation or explanation by the police officer serving them does not fulfil the requirements of the law. As has been explained

by this Court in the case of *State of Bombay v. Atma Ram Sridhar Vaidya* clause (5) of Article 22 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. In order that the detenu should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. **In order that the detenu should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature 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. In this case the grounds are several and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, 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."**

41. In *Chaju Ram vs. State of Jammu & Kashmir* reported as 1970

1 SCC 536, in paragraph 9, it is observed and held as under:-

"9. ... The detenu is an illiterate person and it is absolutely necessary that when we are dealing with a detenu who cannot read or understand English language or any language at all that the grounds of detention

should be explained to him as early as possible in the language he understands so that he can avail himself of the statutory right of making a representation. To hand over to him the document written in English and to obtain his thumb-impression on it in token of his having received the same does not comply with the requirements of the law which gives a very valuable right to the detenu to make a representation which right is frustrated by handing over to him the grounds of detention in an alien language. We are therefore compelled to hold in this case that the requirement of explaining the grounds to the detenu in his own language was not complied with.”

42. Auxiliary, in Nainmal Partap Mal Shah vs. Union Of India And Ors. reported as (1980) 4 SCC 427, in paragraph 2, it is observed and held as under:-

“2. Controverting this allegation, the Under-Secretary to the Government of India stated that the grounds were explained to the detenu by the prison authorities. In the affidavit the name of the authority concerned or the designation is not mentioned. Nor is there any affidavit by the person who is stated to have explained the contents of the grounds to the detenu. The Under-Secretary further suggested that as the detenu had signed number of documents in English, it must be presumed that he was fully conversant with English. This is an argument which is based on pure speculation when the detenu has expressly stated that he did not know English. Merely because he may have signed some documents it cannot be presumed, in absence of cogent material, that he had a working knowledge of English...”

43. Further, in Lallubhai Jogibhai Patel vs. Union of India & Ors.,

reported as (1981) 2 SCC 427, in paragraph 20, it is observed and held as under:-

*“20. It is an admitted position that the detenu does not know English. The grounds of detention, which were served on the detenu, have been drawn up in English. It is true that Shri C.L. Antali, Police Inspector, who served the grounds of detention on the detenu, has filed an affidavit stating that he had fully explained the grounds of detention in Gujarati to the detenu. But, that is not a sufficient compliance with the mandate of Article 22 (5) of the Constitution, which requires that the grounds of detention must be “communicated” to the detenu. **“Communicate” is a strong word. It means 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 understands.** The whole purpose of communicating the “ground” to the detenu is to enable him to make a purposeful and effective representation. **If the “grounds” are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22 (5) is infringed.** If any authority is needed on this point, which is so obvious from Article 22(5), reference may be made to the decisions of this Court in *Harikisan v. State of Maharashtra* and *Hadibandhu Das v. District Magistrate*”*

44. Further, in *Kubic Darusz vs Union Of India & Ors.*, reported as (1990) 1 SCC 568, it is observed and held as under:-

*“9. **While it is the settled law that the detention order, the grounds of detention and the documents referred to and relied on are to be***

*communicated to the detenu in a language understood by him so that he could make effective representation against his detention, the question arises as to whether the courts have necessarily to accept what is stated by the detenu or is it permissible for the court to consider the facts and circumstances of the case so as to have a reasonable view as to the detenu's knowledge of the language in which the ground of detention were served, particularly in a case where the detenu is a foreign national. If the detenu's statement is to be accepted as correct under all circumstances **it would be incumbent on the part of the detaining authority in each such case to furnish the grounds of detention in the mother tongue of the detenu** which may involve some delay or difficulty under peculiar circumstances of a case. On the other hand if it is permissible to ascertain whether the statement of the detenu in this regard was correct or not it would involve a subjective determination. **It would, of course, always be safer course in such cases to furnish translations in the detenu's own language.** We are of the view that it would be open for the court to consider the facts and the circumstances of a case to reasonably ascertain whether the detenu is feigning ignorance of the language or he has such working knowledge as to understand the grounds of detention and the contents of the documents furnished.”*

45. Similarly, in **Powanammal vs. State of T.N. & Another**

reported as (1999) 2 SCC 413 the Hon'ble Apex Court observed as

under:-

“9. However, this Court has maintained a 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. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the 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. But 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 nonsupply of 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."

46. In our considered view, keeping in mind the constitutional mandate of Article 22(5) as well as the dictum in the plethora of Supreme Court decisions afore extracted; as also the decision of this Court in **Jasvinder Kaur Vs. Union of India** reported as **2022 SCCOnLine Del 510**; we consider it incumbent to emphasize on the legal necessity of furnishing the grounds of detention to the detenu in a language that the latter understands. More specifically, the Supreme Court has observed that oral explanation or oral translation of the grounds of detention would not amount to communicating the grounds to a detenu because communicating the grounds of detention,

effectively and fully to a detenu implies that the grounds must be furnished to him in a language which the detenu understands; and if that entails translation of the grounds into such language, then that is unquestionably a part of the Constitutional mandate.

47. In this behalf, the contention made on behalf of the official respondents is to the effect that, it is necessary upon the detenu to show that the prejudice was caused to him owing to the supply of illegible/non-translated RUDs; the specific contention being that, the detenu must establish that the failure to supply the RUDs or the supply of illegible/non-translated RUDs had impaired or prejudiced his right. In our opinion, the aforementioned contention raised on behalf on the official respondents is untenable in the light of the Hon'ble Supreme Court's decision in Mrs. Tsering Dolkar vs. Administrator, Union Territory Of Delhi & Others reported as (1987) 2 SCC 69 and in particular paragraph 12, wherein it was observed as under: -

“12. The learned Additional Solicitor General relied upon the feature that the petitioner-wife knew both English and Tibetan languages and an effective representation as a fact had been made. There can be no two opinions that the requirement of law within the provisions of Article 22(5) of the Constitution is that the detenu has to be informed about the grounds of detention in a language which he understands. The fact that the detenus wife knew the language in which the grounds were framed does not

satisfy the legal requirement. Reliance was placed by the learned Additional Solicitor General on a decision of this Court in Prakash Chandra Mehta v. Commissioner and Secretary, Government of Kerala & Ors., [1985] 3 SCR 679 in support of his contention that unless the detenu was able to establish prejudice on account of the fact that the grounds of detention and the documents accompanying the grounds were not in a language known to the detenu the order would not be vitiated. There is no clear indication of the test of prejudice being applied in that case. On the facts relevant before the Court, a conclusion was reached that the detenu was merely reigning ignorance of English and on the footing that he knew English, the matter was disposed of. We must make it clear that the law as laid down by this Court clearly indicates that in the matter of preventive detention, the test is not one of prejudice but one of strict compliance with the provisions of the Act and when there is a failure to comply with those requirements it becomes difficult to sustain the order. (See AIR 1975 SC 1513, [1975] 2 SCR 832 , AIR 1975 SC 245)."

48. Further, in the catena of judgments cited hereinabove, the Hon'ble Supreme Court goes further to say, that it is incumbent upon the Detaining Authority, to supply the documents 'relied upon' in the grounds of detention, translated into a language the detenu understands; and it is not necessary for the detenu to even demonstrate that any prejudice has been caused to him while obtaining translated version of the 'relied-upon' documents.

49. In view of the foregoing discussion, we are constrained to

observe that the second issue is also resultantly decided in favor of the detenu and against the respondent.

50. Also, it is relevant to consider the strong reliance placed upon the statement of the detenu and co-accused, recorded under the provisions of Customs Act, 1962 in the impugned detention order. A plain reading of the said grounds of detention clearly reflects that extensive reliance has been placed upon the aforesaid statements by the Detaining Authority, for arriving at its '*subjective satisfaction*'.

51. In this behalf, it is observed that in the impugned detention order, only a passing reference has been made to the circumstance that the Directorate of Revenue Intelligence had issued rebuttal on 03.01.2022 to the subject retractions of the detenu dated 20.11.2021, i.e., approximately after forty four days. For abundant clarity the relevant portions of the impugned order of detention passed against detenu are reproduced below:

“xlix. A retraction dated 20.11.2021 was filed by Mr Neeraj Varshney i.e. you addressed to Additional Director General, DRI, DZU, New Delhi stating therein that the officers of department forcefully took your statement under threat and coercion. You stated that your statement recorded by officers was not voluntary.

1. The **DRI filed rebuttal dated 03.01.2022** by denying that the accused was subjected to acute mental and physical torture by the officers; that **statement** was voluntarily **tendered before the Senior Intelligence Officer on 19.11.2021** without force, coercion or threat; that after reading and understanding the contents of statement, the same had been duly signed by the accused i.e. Mr Neeraj Varshney i.e. you; that the statement has also been corroborated by the co accused and other material evidences on the basis of which you were arrested under the provisions of the Customs Act, 1962 on 20.11.2021 and produced before the Magistrate.”

52. These above extracted ground highlight the considerable gap of time that elapsed between the retraction of the statements by the detenu and the rebuttal thereof by the DRI. The Detaining Authority would also have been well advised to consider the aspect of admissibility of the statements, which stood retracted; and were only belatedly rebutted by the Sponsoring Authority. Further, we find from the record of the Detaining Authority that strong reliance has been placed upon the statement of not just the detenu but also the statement of Li Wen Tsung, statedly the co-accused. In this behalf, the record reflects that Li Wen Tsung retracted his statement on 17.12.2021. In our view, once the Detaining Authority has relied upon the inculpatory statement of the co-accused, their retractions assumed great relevance

in the factual backdrop of the present case. Consequently, the admissibility of the said statements becomes dubious once there is a retraction, which issue that merited due consideration, that was evidently not afforded to it by the Detaining Authority. In this behalf, reliance is placed on this Court's decision in **Gopal Gupta vs. Union of India & Ors.**, reported as **2021 SCC OnLine Del 3926**.

53. In this behalf, it is also trite to state that the Sponsoring Authority was under a legal obligation to have placed the said retractions before the Detaining Authority for the latter's '*subjective satisfaction*'. In this regard, it would be beneficial first to consider the observations of the Hon'ble Supreme Court in **A Sowkath Ali vs. Union of India & Others**, reported as **(2000) 7 SCC 148** and particularly in paragraph 20 thereof. The said paragraph is extracted hereinbelow for the sake of facility: -

“20. There can be no doubt, it was not necessary, while considering the case of the petitioner detenu, to place all or any of the documents which are relevant and are relied on in the proceedings of a coaccused, but where the sponsoring authority opts out of its own volition to place any document of the other co-detenu, not merely as a narration of fact but reiterating in details the confession made by him, then it cannot be said it would not prejudice the case of the detenu. If this has been done it was incumbent for the sponsoring authority to have placed their retraction also.

As held in Rajappa Neelakantan case [(2000) 7 SCC 144 : (2000) 2 Scale 642] the placement of document of other co-accused may prejudice the case of the petitioner. In the first place the same should not have been placed, but if placed, the confessional statement and the retraction, both constituting a composite relevant fact both should have been placed. If any one of the two documents alone is placed, without the other, it would affect the subjective satisfaction of the detaining authority. What was the necessity of reproducing the details of the confessional statement of another co-accused in the present case? If the sponsoring authority would not have placed this then possibly no legal grievance could have been made by the detenu. But once the sponsoring authority having chosen to place the confessional statement, then it was incumbent on it to place the retraction also made by them. In our considered opinion, its non-placement affects the subjective satisfaction of the detaining authority. This Court has time and again laid down that the sponsoring authority should place all the relevant documents before the detaining authority. It should not withhold any such document based on its own opinion. All documents, which are relevant, which have bearing on the issue, which are likely to affect the mind of the detaining authority should be placed before him. Of course a document which has no link with the issue cannot be construed as relevant.”

54. In a similar vein are the observations of the Hon’ble Supreme Court in **P. Sarvanan vs. State of T.N. and Others**, reported as (2001) 10 SCC 212 and in particular paragraphs 7, 8 and 9 thereof. The said paragraphs as extracted hereinbelow: -

“7. When we went through the grounds of

detention enumerated by the detaining authority we noticed that there is no escape from the conclusion that the subjective satisfaction arrived at by the detaining authority was the cumulative result of all the grounds mentioned therein. It is difficult for us to say that the detaining authority would have come to the subjective satisfaction solely on the strength of the confession attributed to the petitioner dated 7- 11-1999, particularly because it was retracted by him. It is possible to presume that the confession made by the co-accused Sowkath Ali would also have contributed to the final opinion that the confession made by the petitioner on 7-11-1999 can safely be relied on. What would have been the position if the detaining authority was apprised of the fact that Sowkath Ali had retracted his confession, is not for us to make a retrospective judgment at this distance of time.

8. The second contention that non-placement of the retraction made by Sowkath Ali would not have affected the conclusion as the petitioner's confession stood unsullied, cannot be accepted by us. The detaining authority had relied on different materials and it was a cumulative effect from those materials which led him to his subjective satisfaction. What is enumerated in Section 5-A of the COFEPOSA Act cannot, therefore, be applied on the fact situation in this case.

9. In this context, it is to be mentioned that the detention order passed against Sowkath Ali was quashed by this Court when he challenged that detention order under Article 32 of the Constitution (vide A. Sowkath Ali v. Union of India [(2000) 7 SCC 148 : 2000 SCC (Cri) 1304 : (2000) 5 Scale 372].”

55. It is trite to say that when a person is detained in pursuance to an order of preventive detention, the statutory authorities are

constitutionally charged with the responsibility of ensuring that the grounds of detention, including legible/ translated copies of all RUDs and other relevant documents, that are considered whilst forming the '*subjective satisfaction*', are provided to the detenu by the Detaining Authority; so as to enable the detenu to make an effective representation to the Advisory Board, as well as to the Detaining Authority. Therefore, the failure and non-supply of legible/translated copies of all RUDs despite a request and representation made by the detenu for the supply of the same, renders the order of detention illegal and bad in law; and vitiates the '*subjective satisfaction*' arrived at by the Detaining Authority.

56. We, therefore, answer both the issues by observing that, the Detaining Authority gravely erred in relying upon the illegible documents which is equivalent to non-placement of translated-RUDs in a language which the detenu understands; by the act of omitting them from due consideration, which consequently vitiates the '*subjective satisfaction*' arrived at by the Detaining Authority.

57. In view of the foregoing discussion and having accorded our thoughtful consideration to the facts and material on record, the issues struck hereinabove for consideration; have been decided in favour of

the detenu and against the respondents. Resultantly, in our considered view, the impugned detention order stands invalidated.

CONCLUSION:-

58. The present writ petition accordingly succeeds. In the result, the detention order bearing No. PD-12001/08/2022-COFEPOSA, dated 01.02.2022 passed against the detenu is hereby set-aside and quashed. The detenu is directed to be set at liberty forthwith; unless his custody is required in connection with any other case.

59. The Court Master is directed to return the original file, retained for the perusal of this Court, to Mr. Ravi Prakash, learned CGSC forthwith.

60. Copies of this Judgment be provided to the learned counsel appearing on behalf of the parties electronically and be also uploaded on the website of this Court forthwith.

**SIDDHARTH MRIDUL
(JUDGE)**

**AMIT SHARMA
(JUDGE)**

DECEMBER 22, 2022

dn/da/rs