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**(1993) 03 MAD CK 0062**

**In the Madras High Court**

**Case No :** Habeas Corpus Petition No's. 1784 and 1953 of 1993

Irudhi @ Irudayanathanl C.S. Jayapal

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

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**Date of Decision :** 25-03-1993

**Acts Referred:**

Constitution of India, 1950 — Article 141, 22(5)

**Citation :** (1994) 2 LW(Cri) 618

**Hon'ble Judges :** Thangamani, J;Arunachalam, J

**Bench :** Division Bench

**Advocate :** C.M. Gunasekaran, for the petitioner in H.C.P. No. 1784/93 and of Mr. R. Shanmugasundaram, for the petitioner in H.C.P. No. 1953/93, for the Appellant; I. Subramaniam Additional Public Prosecutor on behalf of the Respondents, for the Respondent

**Final Decision :** Allowed

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## Judgement

Arunachalam, J.—These two Habeas Corpus Petitions are disposed of together, since the contention urged is identical, though the detenus

and the ground crimes in which they were involved, are totally different.

2. Irudhi alias Irudayanathan, petitioner in H.C.P.No.1784 of 1993 is the detenu himself who has been detained as a goondas under Tamil Nadu

Act 14 of 1982, in pursuance of an order of detention dated 30.3.1993, passed by second respondent Commission of Police, Madras City, with a

view to preventing him from acting in any manner prejudicial to the maintenance of public order.

3. C.S.Jayapal, petitioner in H.C.P. No.1953 of 1993 is also the detenu concerned, who was directed to be detained as a goonda under Tamil

Nadu Act 14 of 1982, in pursuance of an order of detention dated 4.10.1993, passed by second respondent Commissioner of Police, Madras

City, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

4. In both these Habeas Corpus Petitions, though several grounds were urged, which did not prima facie impress us, we felt that those grounds need not have to be discussed in detail, if on the sole ground, which we intend posing and deciding, detenus are liable to succeed. The question to be decided is, whether the detenus are entitled to communication of material on which the Detaining Authority bases his conclusion, if the detenu was either in remand or enjoying liberty, having been released on bail, or would it be sufficient, if the Detaining Authority was aware of remand or bail of the detenu, on some material which he had taken note of while arriving at his subjective satisfaction though not communicated to the detenu, which communication, according to the State, will not be necessary.

5. There are two decisions of the same Division Bench of this Court on this question, taking contradictory views. In the second case, the Division Bench was of the opinion, that its earlier view, that non- placing of remand order or substance of the same before the detaining authority, vitiated the detention order, could not longer be good law, in view of the decision of the Supreme Court in Abdul Sathar Ibrahim Manik Vs. Union of India and others, ) which was not brought to its notice, when it had decided the earlier case. From both these decisions, we are able to comprehend, that the common question of law that had been raised was, whether for arriving at the subjective satisfaction as regards compelling necessity to clamp orders of detention under Tamil Nadu Act 14 of 1982, judicial orders passed on remand applications or at least substance of the same, should have been placed before the detaining authority and the failure to do so would vitiate the detention orders. The important aspect of communication of material to the detenu, on which, the fact conclusion of remand was based, does not appear to have been mainly or strictly considered in either of these two cases, or even by the Supreme Court in Abdul Sathar Ibrahim Manik Vs. Union of India and others, referred to earlier.

6. In the instant Habeas Corpus Petitions, State has conceded, that no material stood supplied to the detenus concerned, about the fact that they were on remand on the dates on which impugned orders were passed, though

the detaining authority has stated in the grounds, that he was aware, that the detenue concerned, were in remand and in spite of it there was compelling necessity to detain them, to prevent them from indulging in future prejudicial activity. It was further stated by the respondents, that though not supplied, detaining authority had material before him in the form of affidavit of the sponsoring authority, which made him aware that the detenus concerned were in custody on the relevant dates, which material had been taken note of to pass the impugned orders. Further, there is no dispute, that such basic material relied upon by the detaining authority, who has stated his awareness that the detenu were in remand at the relevant time, had not been communicated to either of the detenus.

7. Even at the outset, we are impelled to state that expression of awareness of the fact of remand of fact of detenu enjoying liberty or bail is the grounds, coupled with arriving at subjective satisfaction, on the compelling necessity to detain such detenus, to prevent their future acts, would be a different concept altogether, than communication contemplated under law, of basic material to the detenus, to afford them an opportunity to represent against their detentions as guaranteed under Article 22(5) of the Constitution of India.

8. Initially, it will be necessary to refer to the divergent views, expressed by the same Division Bench of this Court, before looking into the law laid down by the Supreme Court in Abdul Sathar Ibrahim Manik Vs. Union of India and others, which has been relied upon by the same Division Bench, in the second case, to hold that its earlier view can no longer be good law.

9. In Ravi and Another v. Govt. of Tamil Nadu and Another(1993 L.W. CrI 67), the Division Bench stated as hereunder:

In this case there was no material before the Detaining Authority to hold that the persons to be detained were on judicial custody. If the statement that the persons to be detained were in judicial custody cannot be sustained for want of materials, the further discussion on the basis that the persons to be detained were on judicial custody will fall to the ground. If these two vital statements are removed from the detention order for reasons stated above, the subjective satisfaction arrived by the Detaining Authority to clamp the order of detention on the persons to be detained being inextricably interconnected with the above statements, will also vanish in

thin air for want of materials. The logical consequence of this will be, the detention order cannot be supported... As per the ratio laid down by the Supreme Court in Kamarunissa and Others Vs. Union of India and another, in cases where the person was in custody, the Detaining Authority is expected to have reason to believe on the basis of reliable materials placed before him that there is a real possibility of the individual to be detained being released on bail, and that on being so released, he would, in all probability, indulge in prejudicial activity. Further the detaining authority must feel that it is essential to detain him to prevent him from so doing.

To satisfy the above test, there must be material. In this case, if the affidavit is not to be taken as a material as per the ratio in W.P.No. 1201/83 then there is no other material for the Detaining Authority to state that the individual to be detained was actually in custody and to apply his mind further, as held by the Supreme Court in the above decision Kamarunissa and Others Vs. Union of India and another, ). Further, if the affidavit is not to be treated as a material, then non-supply of the same is of no consequence. On the other hand, if the affidavit is to be treated as a material, then that material which is the basis for the Detaining Authority to proceed further to find out whether there is compelling necessity to detain the individual notwithstanding the person being already in custody, cannot be considered as a document not relevant... No assistance can be derived by merely contending that the affidavit is only a letter and non- supply of the same will not vitiate the detention, particularly when the remand order or substance of the same had not been placed before the Detaining Authority.

Though the question of communication to the detenu was not strictly considered, the following observations made by the Division Bench, touches in part, on this aspect:

Further, if the affidavit is not to be treated as a material, than non-supply of the same is of no consequence. On the other hand if the affidavit is to be treated as a material, then that material which is the basis for the detaining authority to proceed further to find out whether there is compelling necessity to detain the individual notwithstanding the person being already is custody, cannot be considered as a document not relevant.

10. In the second case, not yet reported, the same Division Bench by its order dated 16.3.1993 in W.P.Nos. 10781 of 1992 etc., batch

(R.Vinayagam & Others v. State of Tamil Nadu) posed the following question for its decision:

This substantial point on which arguments were addressed by learned counsel on both sides is, whether the failure to place before the detaining

authority the remand order and failure to supply a copy of the same to the detenus, vitiates the orders of detention, as, in each of these cases, the

detaining authority has observed that he was aware that the detenu was on remand.

While answering this question, the other Division Bench initially stated as follows:

After going through the various case laws cited by the learned counsel for the detenus including the recent order of ours in W.P.Nos.9240 and

9346 of 1992 (Supra), (1993 L. W.Crl. 67) we find that the learned Additional Public Prosecutor was right in contending that in the light of the

ratio laid down by their Lordship of the Supreme Court in Abdul Sathar Ibrahim Manik Vs. Union of India and others, we have to reconsider our

order in W.P.Nos.9240 and 9346 of 1992. As the judgment of the Supreme Court undoubtedly is binding on us, under Article 141 of the

Constitution of India, it is not necessary for us to refer the issue to be decided by a Full Bench, as we are convinced that the later Supreme Court

Judgment squarely applies to the issue on hand. We find that their Lordships of the Supreme Court have considered the issue, with which we are

immediately concerned, in a detailed manner, and after referring to numerous judgments of the Supreme Court, have set down their conclusions for

guidance.

Thereafter, the Division Bench stated as hereunder:

Before the Supreme Court, the point raised (In the language of their Lordship) was this:

In next and main submission is that the copies of bail application filed by him and the order refusing bail, which are relevant documents were

suppressed and not placed before the detaining authority, nor they were supplied to the detenu and therefore there is non-application of mind and

the petitioner is also denied a reasonable opportunity under Article 22(5) of the Constitution of India.

The above question was answered by the Lordship of the Supreme Court in the elaborate discussion, the relevant portions of which are set out

below:

In support of this plea reliance is placed on the grounds wherein the detaining authority has stated that he was aware that the petitioner was judicial custody and possibility of his release on bail in the near future cannot be ruled out. It is submitted that this statement, itself shows that the detaining authority was not aware that a bail application in fact was made and the same has been rejected and the only inference that can be drawn is that these relevant documents were suppressed and not placed before the detaining authority.

After referring to number of judgment of the Supreme Court, the learned Judges have held as follows;

As already noticed, in all such cases where the detenu was in custody at the time of passing an order of detention what is strictly required is

whether the detaining authority was aware of the fact that the detenu was in custody and if so was there any material to show that there were

compelling reasons to order detention in spite of his being in custody. These aspects assume importance because of the fact that a person who is

already in custody is disabled from indulging in any prejudicial activities and as such the detention order may not normally be necessary. Therefore

the law requires that these two tests have to be satisfied, in the case of such detention of a person in custody.

Their Lordships of the Supreme Court, after referring to some more cases, have held as follows:-

Having regard to the various above-cited decisions on the points often raised we find it appropriate to set down our conclusions as under:

(1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds

that the authority was aware that the detenu was already in custody.

(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the

person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being

released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the

detention order. The order cannot be quashed on the ground that the proper

course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher Court.

(3) If the detenu has moved for bail when the application and the order thereon refusing bail even if not placed before the detaining authority it does

not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as

the detaining authority was aware of the fact that the detenu was in actual custody.

(4) Accordingly the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being

afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them, failure to supply bail

application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining

authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in

certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case

the detaining authority has casually or passingly referred to these documents-or also relied upon them depends upon the facts and the grounds,

which aspect can be examined by the Court.

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to

necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail

should necessarily be placed before the authority and the copies should also be supplied to the detenu.

From the above propositions, it can be held without any fear of contradiction that what is necessary is that it must appear from the Grounds of

detention that the detaining authority was aware that the detenu was already in custody, and it is not necessary that such awareness by the detaining

authority must be only on the basis of a remand order placed before him. It is

also not necessary for the detaining authority to supply the document on the basis of which he became aware of the fact that the detenu was already in custody. The Supreme Court has held that those factors will not affect the detenu's right of being afforded a reasonable opportunity under Article 22(5) of the Constitution, especially when the detaining authority has not relied on the same to arrive at the subjective satisfaction regarding the compelling necessity to clamp the order of detention. The language employed by the detaining authority in the case before the Supreme Court was more or less similar to the language employed in all these cases by the detaining authority in the grounds of detention regarding the awareness of the detenu being in custody. In the circumstances, we do not consider that the non-placing of remand order or the non-supply of the same to the detenus will in any way vitiate the orders of detention. It is not in dispute that in at these cases the sponsoring authority in the affidavit filed before the detaining authority has stated that the concerned detenu was on remand.

11. It is seen from the second decision of the Division Bench, that in those cases decided by it, there was no dispute, that the Sponsoring Authority in the affidavit filed before the Detaining Authority had stated, that the concerned detenus were in remand. It is not known, as a question of fact, if the affidavits of the Sponsoring Authority mentioning the facts of remand, had been supplied to the detenus concerned in those cases. It appears, that in that background, the Division Bench had observed that in the circumstances, they did not consider non-placing of remand order or non-supply of the same to the detenus, would in any way vitiate the orders of detention. We have carefully scrutinised the judgment of the Supreme Court in Abdul Sathar Ibrahim Manik Vs. Union of India and others, , which is the only foundation for the second decision of the Division Bench, and we are unable to find any verdict rendered by the Supreme Court therein, on the question of communication of the basic fact of remand of the detenu, in that case decided by it.

12. We are not extracting the observations of the Supreme Court in Abdul Sathar Ibrahim Manik's case, for they quoted in extenso by the other Division Bench, which we have referred to earlier. We have no hesitation in holding, that awareness of the detaining authority about the fact of

remand need not have to be based, only on the remand order, for such awareness can arise out of a remand warrant or the affidavit of the

Sponsoring Authority or similar such material affirming the basic fact of remand of the detenu concerned, on the day when the impugned order of

detention stood passed. In Abdul Sathar Ibrahim Manik Vs. Union of India and others, ), the main question urged for decision before the Supreme

Court, has been extracted by the Division Bench, which we have quated, earlier, and therefore be no need to repeat the same. The poser therein

was, whether copies of bail application and order refusing bail which were relevant documents were suppressed, by not placing them before the

Detaining Authority, coupled with non-supply of the same to the detenu, leading to an inference of non-application of mind, in addition to denial of

reasonable opportunity to the detenu, under Article 22(5) of the Constitution. In that case, Supreme Court stated, that there will be no need to,

supply bail applications and bail refusal orders, while they stood referred to in the narration of events and not relied -upon whereas if the detenus

stood released on bail and were at liberty at the time of passing of the order of detention, then the detaining authority had to necessarily rely upon

the bail application and the bail order, as that would been vital ground for ordering detention. In such a case, the bail application and the order

granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.

13. From our understanding of the decision of the Supreme Court in Abdul Sathar Ibrahim Manik Vs. Union of India and others, , nowhere the

Supreme Court has stated, that the basic material on which satisfaction was arrived at by the Detaining Authority of the fact of custody, need not

have to be communicated to the detenu. The Supreme Court had been considering in all its decisions, inclusive of Abdul Sathar Ibrahim Manik Vs.

Union of India and others, , the limited question of awareness of remand and compelling necessity to detain, and awareness of fact of liberty of the

detenu and necessity to pass the order, and not about the need or otherwise of communicating basic material on which conclusions were arrived at

by the detaining authority.

14. In Abdul Sathar Ibrahim Manik Vs. Union of India and others, , the Supreme Court has stated that if the detenu was on bail, that was a vital

factor on which material in the shape of bail petition and bail order must not only have been placed before the Detaining Authority, but also must have been supplied to the detenu to facilitate his making an effective representation. While the Supreme Court said so, when a positive order was passed, on the bail application, we have to ponder as to why it had observed, that there will be no need to supply bail petition and bail refusal order, even if they stood casually referred, in the grounds of detention. The answer is not too far to seek, for the Detaining Authority, in such cases, had the basic material which he had become aware, that the detenu concerned was in remand, and the further aspect of bail refusal, was only in reiteration of his earlier awareness, of the detenu already being in remand of custody, Since the basic fact, of person being in remand, was based on relevant material placed before the Detaining Authority, in the opinion of the Supreme Court, further material, mentioned in passing, in the grounds of detention, affirming the same fact, need not have to be supplied to the detenu. Nowhere the Supreme Court has stated, that the material relied upon by the Detaining Authority, who had arrived at his subjective satisfaction, that the detenu concerned was in remand, which need not necessarily be foundation the remand order alone, need not have to be communicated to the detenu. We are of firm opinion, that communication of that basic fact, is altogether a different concept, which cannot be confused with expression in the grounds of awareness and compelling necessity to detain, which altogether form a different concept. In other words, when a preventive order is decided to be clamped, the take-off stage may arise in two contingencies, (1) the individual being in remand and still, in the opinion of the Detaining Authority, there being a compelling necessity to place him in preventive detention, to curb his future prejudicial activity; and (2) the individual being already on bail and, in the opinion of the Detaining Authority, there was necessity to detain him preventively to prevent his indulging in future prejudicial activity. In the first contingency, the basic material is the fact of remand and in the second contingency the basic material is the fact of individual being on bail and enjoying liberty. In the second contingency, in the opinion of the Supreme Court, that basic material which indicated the liberty of the individual, namely, the bail application and the bail order, have to be communicated to the detenu. If that be so, in the other contingency, the basic material of fact of remand,

must necessarily have to be communicated to the detenu. The object is, that the grounds of detention need have to show only the awareness of

those facts, while the material supplied to the detenu must show the basic facts on which such conclusions. Were arrived at. In the grounds of

detention, expression of awareness would be sufficient, of either facet. But, it does not mean, that such awareness exhibited in the grounds alone,

would suffice, without supply of basic material, for they are primary conclusions, which lead to take-off, in clamping of preventive orders. Let us

visualise a case in which a person is arrested in the ground crime on the first of a particular month. Remand is asked for before the Magistrate for

15 days, which, in law, he can authorise. It cannot always be stated that in every case the entire period of remand requisitioned would be ordered

by the Magistrate. Even if 15 days remand is ordered and there after no material is placed before the Detaining Authority to show, that even

subsequently the individual was on remand, more so when the order of detention stands passed after the expiry of initial 15 days" remand, can it be

said that the Detaining Authority had material before him to take-off and pass the impugned order without any basis, if no documents were placed

before him to show that the remand was extended further at least till the date when the impugned order of detention stood passed? It is quite

possible to conceive, that the remand might not have been extended and the individual may have been released either on bail or due to non - asking

for extension of remand. In that event, if there was no material before the Detaining Authority either way, both contingencies would get rolled into

one and certainly at that stage of melting point, the Detaining Authority could not have been aware either about remand or bail, to thereafter decide

on the compelling necessity or necessity, as the case may be.

15. We deem it relevant at this stage to refer to the decision the Supreme Court in Smt. Shalini Soni and Others Vs. Union of India (UOI) and

Others, ) wherein the meaning of ""grounds"" has been stated. It was observed thus:

Grounds" in Art.22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences.

The "grounds" must be self-sufficient and self- explanatory. Therefore copies of documents to which reference is made in the "grounds" must be

supplied to the detenu as part of the "grounds". The failure to communicate the factual material as a part of the "grounds" would amount to non-

communication of grounds on which the order of detention has been made and thus would infringe Art.22(5).

There cannot be a second opinion, that the fact of remand in both these Habeas Corpus petition is based on material placed before the Detaining

Authority, without which material, he would not have been aware of this basic foundation, which can then lead to take-offstage. Such material, on

the law laid down in Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, must have to be communicated to the detenu. To

reiterate, "grounds" mean factual inferences plus factual material, which led to factual inferences. The factual inference of the detenu being in

remand must be based on factual material, be it on the order of remand, remand warrant, or the affidavit of the Sponsoring Authority, or any other

similar document. The detenu will not be justified in asking for remand order alone on this facet, if material was otherwise available, to affirm

factually, that he was in remand at the time when the impugned order was passed. That awareness of the Detaining Authority can be based on any

material, but that basic material will have to be necessarily communicated to the detenu, for this alone, could be correlated, to the basic material in

cases of liberty enjoyed by the individual, being traced to the bail petition and the bail order.

16. The Supreme Court has often stated, that the constitutional imperatives indicated under Article 22 were two-fold, (1) the Detaining Authority

must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detenu the grounds on which the order of detention

has been made; and (2) the Detaining Authority must afford the detenu the earliest opportunity of making a representation against the order of

detention. The communication of grounds of detention is, therefore, also intended to subserve the purpose of enabling the detenu to make an

effective representation. Hence, "grounds" mean all the basic facts and materials which have been taken into account by the Detaining Authority in

making the order of detention and on which, therefore, the order of detention is based. It is the factual constituent of the "grounds", on which the

subjective satisfaction of the authority is based. Therefore, nothing less than all the basic facts and materials which influenced the Detaining

Authority in making the order of detention, must be communicated to the detenu. That is the plain requirement of the first safeguard in Article 22(5).

17. Thus, there cannot be a second opinion, that apart from conclusions of fact, grounds have a factual constituent also. Therefore, communication of essential factual constituents of the grounds, would be the prime need. By their very nature, grounds are conclusions of facts and not a complete detailed recital of all the facts, and hence supply of those basic facts to the detenu, assume considerable importance under Article 22(5) of the Constitution. We are of the firm opinion, that specific conclusions, cannot be on non- communicated material, for then prejudice to the detenu would be writ large.

18. That communication is so important cannot be gainsaid, for in *Kubic Darusz v. Union of India* (1990 S.C.C. (CrI.) 227) Supreme Court stated as follows:

"Communicate" is a strong word. It requires 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, so as to enable him to make purposeful and effective representation.

Though in that case, Supreme Court held, on translation, that the detenu had a working knowledge of English, the meaning that should be attributed to the word "communicate" and the nature of material that should be communicated, form an inseparable part of that judgment.

19. The decision of the Supreme Court in *Smt. Hawabi Sayed Arif Sayed Hanif Vs. L. Hmingliana and others*, ), gives an indication, of the need for communication, of such basic material. Supreme Court stated as hereunder:

This contention relates to the non-placing of the full text of the remand order of Sayed Arif Sayed Hanif before the detaining authority. A similar

continuation was raised before the High Court, but it was rejected. The remand application No.981/90 dated 28.9.90 was made in respect of the

crew members. A copy of this remand application is annexed to the grounds of detention. At the foot of the remand application there is an

endorsement to the effect that all the accused produced before the court were remanded in judicial custody till 11.10.1990. Though the full text of

the remand order was not placed before the detaining authority, the substance of

the same was place. We are in complete agreement with the High Court that the non- placing of the remand order before the detaining authority has in no way affected either the subjective satisfaction of the authority or the detenu's right to make a detailed representation.

It is apparent from the observations of the Supreme Court, that if the substance of remand order was available before the detaining authority and that substance stood communicated to the detenu, non-placing of the remand order before the authority, cannot be hence held to have affected either the subjective satisfaction of the authority or the right of the detenu to make a detailed representation.

20. Now the stage has reached to have a quick look at certain decided cases placed for our scrutiny by counsel on either side. In M.Ahamedkutti

v. Union of India (1990 SCC (CrI) 258), Supreme Court stated that the detenu has a right to have copies of vital documents irrespective of

whether he knows about their contents or not. Again, it was stated therein that if the detenu was already in jail, grounds of detention must show the

detaining authority's awareness of that fact, for otherwise, the order will be vitiated. In that case, Supreme Court stated as follows:

It is also imperative that if the detenu was already in jail the grounds of detention are to show the awareness of that fact on the part of the detaining

authority, otherwise there would be non- application of mind and detention order vitiated thereby. In the present case it appears from the records

that the bail application and the bail order were furnished to the detaining authority on his enquiry and it was stated in the grounds of detention that

the detenu was remanded to judicial custody and he was subsequently released on bail. The bail application contained the grounds for bail

including that he had been falsely implicated as an accused in the case at the instance of persons who were inimically disposed towards him, and

the bail order contained the conditions subject to which the bail was granted. Considering the facts in the instant case the bail application and the

bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been

impaired, and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the

annexure to the order of detention and those ought to have formed part-of the

documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. It must therefore, he held that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case.

The view expressed in this case was taken note of by the Supreme Court in its later decision in *Abdul Sathar Ibrahim Manik Vs. Union of India*

and others, ) and distinguished, on the non-need to supply bail application and bail orders, when bail plea stood refused.

22. In *Vijay Kumar Vs. Union of India (UOI) and Others*, Supreme Court stated as hereunder:

When a detenu is already under detention for an offence, whether bailable or non-bailable, the detaining authority will take into his consideration

the fact of detention of the detenu and, there must be compelling reasons to justify his preventive detention in spite of the fact that he is already

under detention on a charge of a criminal offence. There must be material for such compelling reasons and the material or compelling reasons must

appear from the grounds of detention that will be Communicated to the detenu. In other words, two facts must appear from the grounds of

detention, namely, (1) awareness of the detaining authority of the fact that the detneu is already in detention ;and (2) there must be compelling

reasons justifying such detention, despite the fact that the detenu is already under detent: m. It is not necessary that in the order of detention such

awareness of the detaining authority has to be indicated. It is enough if it appears from the grounds of detention that the detaining authority is aware

of the fact that the detenu is already in detention.

This decision will further affirm, the need to communicate basic material to the detenu, though the awareness of detention and compelling reasons

to detain, need not have to contain every factual material, when mentioned in the grounds of detention, though that basic material on which those

conclusions were based, will have to be communicated to the detenu.

23. In *Merugu Satyanarayana Vs. State of Andhra Pradesh and Others*, while setting aside the orders of detention, Supreme Court stated as

follows:-

Where a preventive order may have to be made against a person already confined to the mind of the detaining authority that keeping in view the fact that the person is already detained a preventive detention order is still necessary. The subjective satisfaction of the detaining authority must comprehend the very fact that the person sought to be detained is already in jail or under detention and yet a preventive detention order is a compelling necessity. If the subjective satisfaction is reached without the awareness of this very relevant fact the detention order is likely to be vitiated. Further, this awareness must find its place either in the detention order or in the affidavit justifying the detention order when challenged. The absence of this awareness would permit an inference that the detaining authority was not even aware of this vital fact and mechanically proceeded to pass the order which would unmistakably indicate that there was non-application of mind to the most relevant fact and any order of such serious consequence, resulting in deprivation of liberty, if mechanically passed without application of mind, is obviously liable to be set aside as invalid.... In the instant case not a word is said that the detaining authority was aware of the fact that the detenu was already in jail and yet it became a compelling necessity to pass the detention order. Therefore, the subjective satisfaction arrived at clearly discloses a non-application of mind to the relevant facts and the order is vitiated.

In that case, while discussing the fact situation Supreme Court stated, that "the awareness must of the fact the person against whom the detention order is being made is already under detention or in jail, in respect of some offence or for some reason. So, it is evident that the fact of detention in jail for a particular offence or for some particular reason, can only be based on foundation material, which will have to be necessarily supplied to the detenu.

24. In Smt. S. Gayathri Vs. Commissioner of Police, Madras and Others, , it was observed as hereunder:-

Yet another submission made on behalf of the detenu was that a copy of the affidavit of Somasundaram, Inspector of Police, Prohibition

Enforcement Wing, which was mentioned in the order of detention as having been perused by the detaining authority was not supplied to the

detenu. This affidavit we find was in the nature of a mere forwarding letter and

not the basis of any of the grounds of detention. There was, therefore, no need to supply the detenu with a copy of the affidavit.

This Court has consistently taken the view, that the affidavit of the sponsoring authority, when it is in the nature of a mere forwarding letter, there will be no need to supply a copy of that affidavit to the detenu. However, if that affidavit alone is the basic material, on which conclusions have been arrived at, in the grounds, then the affidavit of the Sponsoring Authority must have to be supplied, since the said document, in that event, would form the basic material on which conclusions to detain, had been arrived at.

25. Learned Additional Public Prosecutor placed very strong reliance on the decision rendered in Bal Chand Bansal Vs. Union of India (UOI) and

Ors, ) and referred to us the following passage:

Mr.Kuldip Singh, the learned Additional Solicitor General appearing on behalf of the respondents said that there cannot be any manner of doubt

that the detaining authority was fully aware of the fact that the petitioner was already in custody and that he was likely to be released on bail on

13.4.1987. Besides, relying on the counter affidavit, the learned counsel placed before us the original records of the case for our perusal. It

appears that a note specifically mentioning these facts was on the file and immediately thereafter the detaining authority recorded his order. It was

urged on behalf of the petitioner that the respondents were not entitled to rely on the original file for this purpose and that the awareness of the

detaining authority ought to have appeared from the grounds themselves and unless that is shown, the detention order cannot be defended. Even

assuming that the stand taken on behalf of the petitioner is correct, he cannot succeed in the present case. A perusal of the grounds which runs into

many pages clearly indicates that the detaining authority was conscious of the fact that the petitioner was in judicial custody and was apprehensive

that he would be released on bail. In paragraph 24 of the grounds it was stated that the petitioner had been arrested on 3.4.1987 and in paragraph

26, the detaining authority reminded the petitioner that an application for bail moved on his behalf was going to be heard by the Additional Chief

Metropolitan Magistrate on 13.4.1987. In Paragraph 38, the order passed on the bail application of the petitioner's associate Sita Ram Aggarwal

was referred to. Thereafter, the detaining authority had mentioned his satisfaction about the necessity of the detention.

and contended, that the awareness need not be in the grounds of detention, for that could be based on the detention file, or the counter affidavit

preferred before Court, by the detaining authority. Again in that case, Supreme Court was deciding the specific issue of compelling necessity for

passing of the order of detention, when the petitioner was already in judicial custody and if the order passed was for collateral purpose to frustrate

the grant of bail and was punitive in nature. As is clear, from that part of the paragraph of the Judgment of the Supreme Court extracted above, the

detaining authority had stated in the grounds, that the petitioner who had been arrested on 3.4.1987 was in Judicial Custody till 3.4.1987 and that

the application for bail moved on behalf of the petitioner was to be heard on 13.4.1987, while his associate had been enlarged on bail earlier. In

Paragraph 2 of the Judgment, Supreme Court has stated as follows:-

The petitioner was apprehended in a hotel in Calcutta on 2.4.1987 and, on being questioned, made certain statements. He was formally arrested

the next day and was produced before the Additional Chief Metropolitan Magistrate, New Delhi, who remanded him to judicial custody till

13.4.1987. Sita Ram Aggarwal, the aforesaid associate of the petitioner was in the meantime enlarged on interim bail which was extended after

expiry of the initial period, and, according to the case of the respondents, the detaining authority apprehended that the petitioner also was likely to

be released on bail on 13.4.1987. In this background the impugned order of detention was passed and served on him. The application for bail by

the petitioner which had already been filed was actually allowed the same day, i.e., on 13.4.1987.

It is apparent from these factual details that when the impugned order of detention was passed, there was material placed before the Detaining

Authority of the pending bail application of the detenu and the fact of the detenu being in remand. In this case, Supreme Court had not considered

the aspect of communication of that basic material, to the detenu, for the verdicting process related to compelling necessity. To reiterate, the factual

details mentioned in the grounds, obviously must have been communicated to the detenu, and hence there was no ground urged on the question of

communication. This decision cannot help the case of respondents.

26. A plea was made, by learned Additional Public Prosecutor, that in view of the decision of another Division bench of this Court in W.P.No.

10781 of 1992 etc., dated 16.3.1993, we may have to refer these two habeas Corpus Petitions, for decision by a Full Bench of this Court, more

so, when this Court itself had granted leave to appeal to Supreme Court in that case, in which the same Division Bench took a contrary view (Ravi

and another v. Govt. of Tamil Nadu and another 1993 L.W.(Crl.) 67). With anxiety and concern, we scrutinised this submission, but we are

unable to agree. If the Judgment of this Court is found to be, inconsistent with the decision of the Supreme Court, decision of the Supreme Court

has to be necessarily followed. If any authority is required, useful reference can be made to the decision of this Court in Commissioner of Income

Tax, Tamil Nadu Vs. Standard Motor Products of India Ltd., .

27. We have already held, that in Abdul Sathar Ibrahim Manik Vs. Union of India and others, the specific question involved in these two Habeas

Corpus petitions, was not in issue and thereafter the decision of another Division Bench of this Court in W.P.No.10781 of 1992 etc., dated

16.3.1993, stated to be founded on the decision in Abdul Sathar Ibrahim Manik Vs. Union of India and others, cannot stand in the way of our

pronouncing verdicts in these two Habeas Corpus Petitions. There will be no need to refer to a Full Bench. As a matter of fact, we are in

agreement with the view of the same Division Bench taken in the earlier case {Ravi and another v. Government of Tamil Nadu & another 1993

L.W. (Crl.) 67).

28. Our answer to the question posed is, that the basic factual material on which conclusions stood arrived at, about remand of the detenu at the

time when the impugned order was passed, must necessarily be communicated to the detenu, failure of which would be sufficient to vitiate the

order of detention. Of course, those factual constituents need not have to be detailed in the grounds, for exhibition of awareness therein would

suffice.

29. Impugned orders of detention shall stand set aside. The detenus shall be set at liberty forthwith unless their detentions are otherwise required.

These Habeas Corpus Petitions are allowed.