
(2013) 10 BOM CK 0186

In the Bombay High Court

Case No : Criminal Writ Petition No. 78 of 2013

Jalil Shaikh

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2013) 6 ABR 582 : (2014) 1 BomCR(Cri) 119

Hon'ble Judges : Naresh H. Patil, J;F.M. Reis, J

Bench : Division Bench

Advocate : S.G. Desai, Pavithran A.V, for the Appellant; Mahesh Amonkar, Assistant Public Prosecutor and C.A. Ferreira, Asst. Solicitor General, for the Respondent

Final Decision : Allowed

Judgement

Naresh H. Patil, J.—The petitioner prays for a writ of certiorari for setting aside the detention order passed u/s 3(2) of the National Security Act, 1980 ("the Act" for short) by the District Magistrate, South Goa District, Margao. The petitioner also prays for a writ of habeas corpus. The impugned detention order, according to the petitioner, was passed on 4th February, 2013 by the first respondent (hereinafter, referred to as the "Detaining Authority", detaining the petitioner at the Central Jail, Aguada from 11th June, 2013.

2. The petitioner contends that he is a citizen and national of India. This petition is filed by the petitioner's brother Abdul Hamed Shaikh, on his behalf who is his next friend and who looks after him presently. It is contended that the petitioner returned to Goa from Belgaum where he was residing since January, 2013 on account of death in his family. Upon returning to Belgaum, the petitioner was informed by his family members that they had received some message from his friends in Goa stating that Margao Police were looking for him in connection with some case.

3. It is contended that upon returning to Goa on 11th June, 2013, the petitioner

received information that the police was searching him and a warrant was pending against him in connection with some case. The petitioner noticed that a proclamation, a copy of which is annexed to the petition, was issued against him which was pasted on the door of his house. The petitioner went to Margao Police Station, where he was detained by the Margao Police, without serving him the impugned detention order.

4. It is contended by the petitioner that the detention order was not served upon the petitioner so far, but the grounds of detention were served upon him along with some documents, based on which the detention order was passed.

5. On 13th June, 2013, the detenu through his next friend, filed an application before the Detaining Authority to obtain certified copy of the impugned detention order, which is annexed to the petition. On 18th June, 2013, the Detaining Authority provided copy of the order dated 11th June, 2013 to the detenu's next friend. The order dated 11th June, 2013 is the order passed by the Detaining Authority, directing the Superintendent of Central Jail, Aguada for taking custody of the detenu on 11th June, 2013.

6. It is contended that on 19th June, 2013, the petitioner, through his next friend again approached the Detaining Authority and applied second time for serving a copy of the impugned detention order. On 21st June, 2013, the Detaining Authority provided a copy of the detention order (Exhibit P1) to the next friend, without informing him his constitutional and fundamental right to make representation against the impugned detention order. The petitioner submits that non-furnishing of the information is clear violation of the provisions of Section 8 of the Act and the fundamental rights guaranteed by the Constitution of India, more particularly Article 22(5) of the Constitution. Intimation of grounds of detention (Exhibit P-2 colly) refers to three criminal cases. They are as under: (1) Margao Town P.S. Cr. No. 296/03 u/Ss. 341, 323, 506(ii) r/w. 34 I.P.C.; (2) Margao Town P.S. Cr. No. 170/08 u/Ss. 153A, 120B, 465, 468, 471, I.P.C. & Sections 5, 7, 20, r/w. 25 & 27 of Arms Act; and (3) Margao Town P.S. Cr. No. 105/12 u/Ss. 143, 147, 148, 324, 307 r/w 149 I.P.C.

7. It is contended that in respect of Crime No. 29672009, he was acquitted on 29.10.2004. In Crime No. 77/2008, he was acquitted on 24.2.2011 and in Crime No. 170/2008, he was discharged on 23.3.2011. As far as Crime No. 105/2012 is concerned, he was granted bail by the High Court and no charge-sheet has been filed by the Investigating Officer in the said crime till today.

8. It is contended that on 18th June, 2013, the petitioner was served with a copy of notice issued by the Department of Home (General) Secretariat, Porvorim, Goa informing him that the Chairman, Advisory Board, as constituted under the Act, has fixed hearing on 25th June, 2013 at 3.30 p.m. at Altinho, Panaji, Goa.

9. On 25th June, 2013, the petitioner made a representation to the Chairman and Members of the Advisory Board against the impugned detention order and forwarded a copy of the said representation to the Home Secretary, Government

of Goa, and also to the Secretary Home, Ministry of Home Affairs, Government of India and concerned authority,

10. The petitioner, inter alia, raised following substantial grounds to challenge the impugned detention order.

(A) The petitioner was served with the grounds of detention, but was not served with the impugned detention order passed by the District Magistrate;

(B) The petitioner was not informed about his right to make representation to the Advisory Board, State and Central Home Ministries and other concerned Authorities.

(C) The representation made to the State Government is not decided till today, as nothing is received by the petitioner from the State.

(D) The petitioner does not know English language, and the translated documents in languages known to him i.e. Konkani and Hindi, were not served upon the petitioner.

(E) The impugned detention order is void ab initio, as there was no material placed before the Detaining Authority so as to reach a conclusion that the petitioner is required to be detained.

(F) The acts allegedly committed by the petitioner, may have caused problems concerning law and order and not public order.

11. The petition was filed on 22nd July, 2013. On 25th July, 2013, notices were issued to the respondents. The Division Bench (Coram: A.P. Lavande & U.V. Bakre, JJ.) in a reasoned order, granted bail to the petitioner by imposing certain conditions and issued Rule, which was made returnable on 18th September, 2013.

12. Respondent No. 1, Detaining Authority filed affidavit dated 2/8/2013, through Shri Narayan Das Agrawal, District Magistrate (South Goa). The Detaining Authority has supported the impugned order of detention. In paras 8 and 9, the Detaining Authority contended that on 11th June, 2013, the Detaining Authority received a communication from the Police Inspector, Margao Town vide No. PI/Mar/Town/10663/2013 dated 11.2.2013, informing that on 11th June, 2013 the detention order was executed by detaining the petitioner at Margao Police Station. The contents of the order and grounds of detention issued, were read over at Margao Police Station to the petitioner by Shri Sudesh Naik, Police Inspector, Margao Police Station in the languages, "Konkani" as well as in "Hindi", which are known to the petitioner. The acknowledgment of the receipt of grounds of detention, along with annexure, was obtained from the petitioner on the same day. On the next day i.e. 12th June, 2013, by letter dated 12th June, 2013 addressed to the Superintendent, Central Jail, Aguada, the District Magistrate informed the Superintendent that in case the petitioner submits any representation, the same shall be forwarded to the Detaining Authority by Special Messenger.

13. It is contended that the order dated 11th June, 2013 was forwarded to the Government of India, Ministry of Home Affairs, New Delhi on 12th June, 2013 and also approval of Government of Goa was forwarded on 17th June, 2013 as required u/s 3(5) of the Act.

14. Second Affidavit was filed on behalf of Respondent No. 1 on 17th September, 2013. In Para 8 of the said affidavit, the deponent contended that on 11th June, 2013, the detention order was executed by the Detaining Authority at Margao Police Station and detenu was before the Detaining Authority. The Detaining Authority explained to the petitioner contents of the detention order in the languages known to him i.e. Konkani and Hindi.

15. In paragraph 9, the deponent contends that all the documents, along with grounds of detention, were served on the petitioner and were explained to him in Konkani and Hindi languages.

16. Affidavits in reply have been filed on behalf of Respondent Nos. 2 and 3 dated 18th September, 2013 through Shri Neetal Amonkar, Under Secretary (Home), Government of Goa, and Shri Ashish V. Gawai, Under Secretary, Ministry of Home Affairs, Government of India, New Delhi, dated 23rd August, 2013, contending that the representation submitted to the Central Government was considered and rejected by the Central Government. A copy of wireless message was also sent on 2nd August, 2013 by post to the detenu, through the Superintendent, Jail.

17. Mr. S. G Dessai, learned Senior Counsel appearing for the petitioner submitted that the impugned detention order was not served on the petitioner. The petitioner was not afforded appropriate hearing. Relevant material was not placed before the Detaining Authority, instead truncated material was placed. The bail granted to the petitioner in one of the criminal cases was not considered by the Advisory Board. The learned Senior Counsel further submitted that the petitioner was not informed about his vital right to make representation against the detention order, nor the representation made by the petitioner to the State has been decided so far, as nothing is received by the petitioner. It was further submitted that considering the martial placed before the Detaining Authority, this is not a case where the detention order could be sustained on the ground of violation of public order. The learned Senior Counsel, inter alia, referred to the grounds raised in the petition, challenging the detention order and submitted that the detention order is violative of fundamental rights of the petitioner, guaranteed under Article 22(5) of the Constitution of India. There is total non-application of mind on the part of the Detaining Authority. Referring to the report submitted by the Advisory Board, the learned Senior Counsel submitted that the Advisory Board too failed to find out that it was a case where fundamental rights of the petitioner were violated by the respondents.

Mr. Dessai, learned Senior Counsel appearing for the petitioner referred to the following judgments:

- (a) Pankaj Kumar Chakrabarty and Others Vs. The State of West Bengal, ;
- (b) Sk. Sekawat Vs. The State of West Bengal, ;
- (c) Bhola Bhuiya Vs. The State of West Bengal, ;
- (d) Vimalchand Jawantraj Jain Vs. Shri Pradhan and Others, ;
- (e) Surjeet Singh Vs. Union of India (UOI) and Others, ;
- (f) Raj Kishore Prasad Vs. State of Bihar and Others, ;
- (g) Kamlakar Prasad Chaturvedi Vs. State of M.P. and Another, ;
- (h) Sunil Ghate Vs. The State of Maharashtra and others, ;
- (i) Nazir Ahmed Gujar v. State of J&K and another, (2005) 12 SCC 501;
- (j) Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another, ;
- (k) Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others, ;

18. Mr. Mahesh Amonkar, learned Addl. Public Prosecutor appearing for the State submitted that along with the grounds of detention, the petitioner was served with relevant documents which was the material placed before the Detaining Authority. Serving of order of detention on the petitioner is not a mandatory requirement under the provisions of Section 8 of the Act. The detenu never requested that translated copies of the material be furnished to him. The learned APP submitted that on 31st July, 2013, the Central Government rejected the representation of the detenu. Learned APP fairly submitted that from the available record, it would not be possible to make a statement that the detenu was informed that he has a right to make representation to various Authorities, nor the record reveals any document showing that the State had decided the representation made by the petitioner.

The learned APP relied upon the following judgments:

- (a) State of Punjab Vs. Sukhpal Singh, ; and
- (b) Subramanian Vs. State of Tamil Nadu and Another, ;

19. Mr. C.A. Ferreira, Asst. Solicitor General appearing for the Union of India referred to the relevant provisions of the Act, like Sections 2(b), 4 and Section 75 of the Code of Criminal Procedure. While assisting the Court, the learned Asst. Solicitor General submitted that the impugned detention order need not be served on the detenu if communication of the detention order is properly done and that is done through service of grounds of detention in this case. The learned Asst. Solicitor General submits that it is not mandatory under the provisions of the Act to serve the detention order. The learned Asst. Solicitor General would refer to the provisions of Section 5A of the Act and submit that the grounds of detention are severable.

The learned Asst. Solicitor General relied upon the following judgments:

(a) Nutan J. Patel (Ms) Vs. S.V. Prasad and Another, ;

(b) Sophia Gulam Mohd. Bham Vs. State of Maharashtra and Others, ;

(c) State of Maharashtra and Others Vs. Santosh Shankar Acharya, ;

20. We will now refer to the case laws-cited by the learned counsel appearing for the parties.

21. In Pankaj Kumar Chakrabarty and Others Vs. The State of West Bengal, , the Apex Court in the facts of the case, in Para 12 observed as under:

For the reasons aforesaid we are in agreement with the decision in Sk. Abdul Karim and Others Vs. State of West Bengal, . Consequently, the petitioners had a constitutional right and there was on the State Government a corresponding constitutional obligation to consider their representations irrespective of whether they were made before or after their cases were referred to the Advisory Board and that not having been done the order of detention against them cannot be sustained. In this view it is not necessary for us to examine the other objections raised against these orders. The petition is therefore allowed, the orders of detention against petitioners 15 and 36 are set aside and we direct that they should be set at liberty forthwith

22. In Sk. Sekawat (supra), the Apex Court, in the facts of the case observed that the requirement of Article 22(5) of the Constitution that the authority making the order of detention should afford the detenu the earliest opportunity of making a representation against the order of detention would become illusory if there was no corresponding obligation on the State Government to consider the representation of the detenu as early as possible. It is not enough for the State Government to forward the representation to the Advisory Board while seeking its opinion as to whether there is sufficient cause for the detention of the detenu. The State Government must itself consider the representation of the detenu and come to its own conclusion whether it is necessary to detain the detenu.

23. In Vimalchand Jawantraj Jain Vs. Shri Pradhan and Others, , the Apex Court, in the facts of the case, in para (3) observed thus:

3. The petitioner on these facts contended that the order confirming the detention of the petitioner was passed by Respondent 1 without considering the representation of the petitioner and the detention of the petitioner was, therefore, unlawful as being in contravention of Article 22(5) of the Constitution. This contention has in our opinion great force and it must result in invalidation of the detention of the petitioner. It is now settled law that the power to preventively detain a person cannot be exercised except in accordance with the constitutional safeguards provided in clauses (4) and (5) of Article 22 and if any order of detention is made in violation of such safeguards, it would be liable to

be struck down as invalid. It is immaterial whether these constitutional safeguards are incorporated in the law authorising preventive detention, because even if they are not, they would be deemed to be part of the law as a superimposition of the Constitution which is the supreme law of the land and they must be obeyed on pain of invalidation of the order of detention. Respondent 1 was, therefore, bound to observe the constitutional safeguards provided inter alia in clauses (4) and (5) of Article 22 in Detaining the petitioner. We are concerned in this case only with a complaint of violation of the provisions of clause (5) of Article 22 and that clause reads as follows:

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.

This Court explained the true meaning and import of this clause in *Khudiram Das Vs. The State of West Bengal and Others*, :

The constitutional imperatives enacted in this article are twofold: (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. These are the barest minimum safeguards which must be observed before an executive authority can be permitted to preventively detain a person and thereby drown his right of personal liberty in the name of public good and social security. It will, therefore, be seen that one of the basic requirements of clause (5) of Article 22 is that the authority making the order of detention must afford the detenu the earliest opportunity of making a representation against the order of detention. Now this requirement would become illusory unless there is a corresponding obligation on the Detaining authority to consider the representation of the detenu as early as possible. It could never have been the intention of the constitution-makers that the detenu should be given the earliest opportunity of making a representation against the order of detention but the Detaining authority should be free not to consider the representation before confirming the order of detention. That would render the safeguard enacted by the constitution-makers meaningless and futile. There can, therefore, be no doubt that the constitutional imperative enacted in clause (5) of Article 22 requiring the earliest opportunity to be afforded to the detenu to make a representation carries with it by necessary implication a constitutional obligation on the Detaining authority to consider the representation as early as possible before making an order confirming the detention. The Detaining authority must consider the representation of the detenu and come to its own conclusion whether it is necessary to detain him. If the Detaining authority takes the view, on considering the representation of the detenu, that it is not necessary to detain

him, it would be wholly unnecessary for it to place the case of the detenu before the Advisory Board. The requirement of obtaining opinion of the Advisory Board is an additional safeguard over and above the safeguard afforded to the detenu of making a representation against the order of detention. The opinion of the Advisory Board even if given after consideration of the representation is no substitute for the consideration of the representation by the Detaining authority. This Court pointed out in *Khairul Haque v. State of W.B.* W.P. 246 of 1969.:

It is implicit in the language of Article 22 that the appropriate Government, while discharging its duty to consider the representation, cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. There was, therefore, no reason for the Government to wait for considering the petitioner's representation until it had received the report of the Advisory Board, as laid down in *Sk. Abdul Karim v. State of W.B.* the obligation of the appropriate Government under Article 22(5) is to consider the representation made by the detenu as expeditiously as possible. The consideration by the Government of such representation has to be, as aforesaid, independent of any opinion which may be expressed by the Advisory Board.

The fact that Article 22(5) enjoins upon the Detaining authority to afford to the detenu the earliest opportunity to make a representation must implicitly mean that such representation, must, when made, be considered and disposed of as expeditiously as possible, otherwise, it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning.

24. In *Surjeet Singh (supra)*, the Apex Court in the facts of the case, in para 6, observed as under;

6. In the first of these cases an order under the Preventive Detention Act (Central Act 4 of 1950) was under challenge. The grounds of detention had been provided to the detenu in English and a request by him for a translation of the same was turned down. The High Court was of the opinion that so long as English continued to be the official language of the State, the communication of the grounds of detention in that language was enough compliance with the requirements of the Constitution. This opinion did not find favour with Sinha, C.J., who delivered the judgment of this Court and observed:

If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detenu must be given the grounds in a language which he can understand, and in a script which he can read, if he is a literate person.

The Constitution has guaranteed freedom of movement throughout the Territory

of India and has laid down detailed rules as to arrest and detention. It has also, by way of limitations upon the freedom of personal liberty, recognised the right of the State to legislate for preventive detention, subject to certain safeguards in favour of the detained person, as laid down in clauses (4) and (5) of Article 22. One of those safeguards is that the detained person has the right to be communicated the grounds on which the order of detention has been made against him, in order that he may be able to make the representation against the order of detention. In our opinion, in the circumstances of this case, it has not been shown that the appellant had the opportunity, which the law contemplates in his favour, of making an effective representation against his detention. On this ground alone we declare his detention illegal, and set aside the order of the High Court and the order of detention passed against him.

25. In *Kamlakar Prasad Chaturvedi Vs. State of M.P. and Another*, the Apex Court in the facts of the case observed that it could not be postulated what view would have been taken by the Detaining Authority. The Apex Court held that the petitioner's detention was unsustainable in law and accordingly, the order of detention of the petitioner was quashed and the petitioner was directed to be set at liberty forthwith.

26. In *Sunil*, (2000 Cri LJ 3709 (SC)) (supra) the Apex Court, in the facts of the case, in para 25 observed as under:

In view of the clear dictum directly on the point in *Amanulla Khans* case (supra) that, "within the aforesaid period of 12 days, the Detaining Authority has the power of revocation which it can exercise before the State Government ratifies the same : but once the State Government approves the order of detention then on the same set of circumstances the Detaining Authority cannot revoke an order of detention. Though, if subsequent circumstances change, the Detaining Authority may have the power of revocation in view of the provisions of the General Clauses Act", there can be no hesitation to hold that the view taken by the Division Bench of this Court at Bombay in the cases of *Smt. Dagadibai Anand Jadhav Vs. Shri S.C. Malhotra, Commissioner of Police and others*, ; *Shri Chandrakant Vithal Dalvi Vs. Shri R. D. Tyagi and Others*, and *Sunil Kishore Patil*, 1996(3) All MR 426 (all cited supra), cannot be accepted as correct authority on the point under reference.

27. In *Nazir Ahmed Gujar* (supra), the Apex Court in the facts of the case, in paras 4 and 7 observed as under:

...4. A counter-affidavit has been filed by the Public Officer of the Home Department of Jammu and Kashmir Government in which it has been stated that after passing of the order of detention it was sent to the Superintendent, Central Jail, Tihar where the appellant was lodged as prisoner to serve the detention order and the grounds of detention. No affidavit has been filed on behalf of the Tihar Jail Authorities to show that the order of detention was served on the detenu and he was granted opportunity to represent against the same.

7. In our considered opinion, it is not possible to sustain the order of detention because it has neither been served on the detenu nor was he given an opportunity to represent his case from the jail.

28. In *Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another*, , the Apex Court in the facts of the case, in paras 37 & 38 observed as under:

37. As observed in *Abdul Latif Abdul Wahab Sheikh Vs. B.K. Jha and another*, , vide SCC para 5 (SCC p. 27) (P. 728, Para 5 of AIR):

5.The procedural requirements are the only safeguards available to a detenu since the court is not expected to go behind the subjective satisfaction of the Detaining authority. The procedural requirements are, therefore, to be strictly complied with if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard.

As observed by Mr. Justice Douglas of the United States Supreme Court in *Joint Anti-Fascist Refugee Committee v. McGrath*, 95 L Ed 817. (US p. 179)

... It is procedure that spells much of the difference between rule (of) law and rule (of) whim or caprice. Steadfast adherence to strict procedural safeguards [are the main assurances) that there will be equal justice under law.

38. Procedural rights are not based on sentimental concerns for the detenu. The procedural safeguards are not devised to coddle criminals or provide technical loopholes through which dangerous persons escape the consequences of their acts. They are basically society's assurances that the authorities will behave properly within rules distilled from long centuries of concrete experiences.

29. In *Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others*, , the Apex Court in the facts of the case, in paras 10, 12 and 14 observed as under:

10. In the present case, since the order of bail dated 15-8-2010 was neither placed before the Detaining authority at the time of passing the order of detention nor the Detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the Detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the Detaining authority.

12. In *Rekha*, the detention order was held to be bad as the Detaining authority was not aware of the fact that the bail application of the detenu was pending on the date when the detention order was passed. In the present case, the detenu was already released on bail but the Detaining authority was not aware of the fact of grant of bail to the detenu.

14. The other offences referred to in the order of detention suffer from remoteness and want of proximity to the order of detention. None of the criminal cases, except the offence registered on 14-8-2010, referred to in the grounds for

detention, can be said to be proximate, to the order of detention.

30. In *Subramanian Vs. State of Tamil Nadu and Another*, , the Apex Court, in the facts of the case, observed that the satisfaction of the Detaining Authority is considered to be of primary importance with certain latitude in the exercise of its discretion. It further observed that public order is the even tempo of life of the community taking the country as a whole or even a specified locality.

31. In *State of Punjab Vs. Sukhpal Singh*, the Apex Court, in the facts of the case, in paras 11 and 12 observed as under:

11. Following *Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another*, it could be said that in this case of prosecution it may not be possible to bring home the offender to book as witnesses may not come forward to depose against him out of fear, or it may not be possible to collect all necessary evidence without unreasonable delay and expenditure to prove the guilt of the offender beyond reasonable doubt.

12. Considering the relevant facts and circumstances including the time and place, the contents of the detention order and the allegations in the grounds of detention in this case, we are of the view that non-registration of any criminal case could not be said to have shown non-application of mind or absence of subjective satisfaction on the part of the Detaining authority.

32. In *Nutan J. Patel (Ms) Vs. S.V. Prasad and Another*, , the Apex Court, in the facts of the case, in para 4 observed as under:

4. In relation to the detention of the detenus in Criminal Appeals Nos. 850 and 915 of 1994 under PIT NDPS Act, the Madras High Court allowed the writ petition and set aside the order of detention on the ground that the detenus were not informed of their constitutional right to make a representation to the Detaining Officer and it vitiates the right guaranteed under Article 22(5) of the Constitution. The Court had upheld the above view. It is seen that the detenu was informed on 20-4-1992 that he was at liberty to make a representation to the State Government, Central Government and to the Advisory Board. It was asserted that he made a representation through the prison authorities to the Government of Andhra Pradesh. In other words, from these facts, it would be clear that the detenu was not informed of his constitutional right to make a representation to the Specified Officer for reconsideration of his detention. In view of the law laid down by this Court, the failure on the part of the Specified Officer to inform the detenu that he has a constitutional right to make representation to the Specified Officer against the order of detention, violates Article 22(5) of the Constitution. The order of detention gets vitiated.

33. In *Sophia Gulam Mohd. Bham Vs. State of Maharashtra and Others*, , the Apex Court, in the facts of the case, in para 11 observed as under:

11. Now, an effective representation can be made against the order of detention only when copies of the material documents which were considered and relied

upon by the Detaining authority in forming his opinion that the detention of Bham Faisal Gulam Mohammed was necessary, were supplied to him. It is only when he has looked into those documents, read and understood their contents that it can be said that the detenu can make an effective representation to the Detaining authority, State or Central Government, as laid down in Article 22(5) of the Constitution which provides as under:

22. (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.

34. In *State of Maharashtra and Others Vs. Santosh Shankar Acharya*, , the Apex Court, in the facts of the case, observed that the only logical and harmonious construction of the provisions would be that in a case where an order of detention is issued by an officer under subsection (2) of Section 3 of the Act, notwithstanding the fact that he is required to forthwith report the factum of detention together with the grounds and materials to the State Government and notwithstanding the fact that the Act itself specifically provides for making a representation to the State Government u/s 8(1), the said Detaining Authority continues to be the Detaining Authority until the order of detention issued by him is approved by the State Government within a period of 12 days from the date of issuance of the detention order. It further observed that this being the position, non-communication of the fact to the detenu that he could make a representation to the Detaining authority so long as the order of detention has not been approved by the State Government in a case where an order of detention is issued by an officer other than the State Government under subsection (2) of Section 3 of the Maharashtra Act would constitute an infraction of a valuable right of the detenu under Article 22(5) of the Constitution and the ratio of the Constitution Bench decision of this Court in *Veeramani Vs. State of T.N.*, would apply notwithstanding the fact that in *Veeramani Vs. State of T.N.*, the Court was dealing with an order of detention issued under the provisions of the COFEPOSA Act.

35. We have perused the material placed before us and considered the provisions the law and the judgments cited supra.

36. Apart from the several grounds raised by the petitioner, we find two grounds raised herein to be of vital significance which would vitiate the detention order as it violates the fundamental rights guaranteed to the detenu under Article 22(5) of the Constitution of India. The first ground is that the petitioner was not informed of his right to make representation against the detention order and the second ground is that the petitioner's representation made to the State Government against the detention order has not been decided so far. The learned counsel appearing for the respondents-State and the Union of India submitted that on both these grounds the impugned detention order need not be held to be

violative of the fundamental rights of the petitioner and under the scheme of the provisions of the National Security Act.

37. From the material placed on record and the submissions advanced by the learned counsel for the respondents-State, it is clear that on both these grounds the State failed to provide any explanation. It is a matter of record now that the petitioner was not informed of his right to make representation, nor the representation made to the State has been decided so far. The question is as to whether on these grounds the petitioner's detention could be held to be void and violative of the fundamental rights guaranteed under the Constitution?

38. Considering the law laid down in this regard, as cited above, the scheme of the provisions of the National Security Act and the in view of the fundamental rights guaranteed under the Constitution of India, we are of the view that on these two grounds itself the petitioner's detention order could be set aside. Under the provisions of the National Security Act, it is mandatory to communicate the grounds on which the order of detention is passed. It is further mandated that the Authority shall afford opportunity to make representation against the order of detention, to Appropriate Government. The State tried to place reliance on the communication dated 12th June, 2013 made by the Collector and District Magistrate, South Goa District, Margao, to the Superintendent, Central Jail, Aguada which states that in case the detenu submits any representation, the same shall be forwarded to the Office of the District Magistrate, South Goa, Margao by special messenger "for onward submission to the higher office". This communication, of course, does not satisfy the requirement that the detenu must be informed of his legal and constitutional right to make representation against the detention order to the appropriate Government and the Advisory Board. We are, therefore, not inclined to accept this explanation put forth by the State.

39. In respect of the legal provision as to whether the order of detention passed by the District Magistrate, South Goa District is required to be served on the detenu, the learned Senior Counsel appearing for the petitioner placed reliance on the judgment of the Supreme Court in the case of Nazir Ahmed Gujar (supra). The counsel appearing for the respondents submitted that in the said case, the facts were altogether different. In that case, no affidavit was filed on behalf of Tihar Jail Authorities to show that the order of detention was served on the detenu and he was granted opportunity to represent against the same. There was nothing placed on record to show that the detention order was in fact served on the detenu. Therefore, it was submitted that there was nothing on record indicating service of detention order which is mandatory requirement under the provisions of the Act. As the petition is being decided on the above two grounds raised by the petitioner, we need not dilate much on the other grounds raised by the petitioner.

40. The provisions of Articles 21 and 22 of the Constitution of India cast obligation on the Detaining Authority that appropriate mandatory procedure as

required in law is followed and observed when a person is detained. This procedure has to be followed meticulously. Personal liberty has been considered to be of paramount significance, while fundamental rights of a citizen were safeguarded under the Constitution of India. Therefore, stringent procedure has been prescribed by the Constitution framers which has to be strictly adhered to by the concerned Authorities. At times it may sound that procedural compliances are technical in nature, but when it comes to safeguarding liberty of a person, an obligation is cast on the Detaining Authority to fulfill these procedural requirements which are mandatory in nature, in strict sense and in letter and spirit of law.

41. In respect of the material placed before the Detaining Authority, we are clear in our mind that it relates to subjective satisfaction of the Detaining Authority. We may observe that out of the three cases referred to above, in two cases, the petitioner was acquitted and in one case, he was discharged and in another case, bail was granted by the High Court.

42. For the foregoing reasons, we are of the view that the impugned detention order dated 4th February, 2013 passed by the District Magistrate, South Goa District, Margao-Goa is bad in law. The impugned order is quashed and set aside. As the petitioner was already released on bail, no further orders are required to be passed in respect of his release from detention. The writ petition is, accordingly, allowed. Rule is made absolute in the above terms. There shall be no order as to costs.