
(1990) 07 BOM CK 0019

In the Bombay High Court

Case No : Criminal Writ Petition No. 33 of 1990

Puthiya Mudathummam Mujeeb

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 11-07-1990

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)
Constitution of India, 1950 — Article 22(5)

Citation : (1991) 2 BomCR 135

Hon'ble Judges : B.U. Wahane, J;A.A. Desai, J

Bench : Division Bench

Advocate : Maqsood Khan and Sujauddin Ahmed, for the Appellant; Habibuddin Ahmad, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A.A. Desai, J.—This petition is directed against the order of detention dated 12th January, 1990 passed by the respondent No. 2, the Secretary (Preventive Detention) to the Government of Maharashtra, Home Department, (Special) Mantralaya, Bombay, in exercise of the power under sub-section (1) of section 3 of the Conservation of Foreign Exchange And Prevention of Smuggling Activities Act, 1974 (Act No. 52 of 1974). (hereinafter referred to as "the Cofeposa")

The first ground of challenge as formulated by Shri Maqsood Khan, the learned Counsel appearing for the petitioner, is that the absence of cogent and sufficient material indicative of the likelihood either of the petitioner being released on bail or thereupon his indulging in the activity of smuggling goods, has vitiated the subjective satisfaction as reached by the detaining authority. To fortify this ground, it is pointed out that the detenu reached Bombay from Dubai on 2-8-1989. He was arrested u/s 104 of the Customs Act and was then sent to judicial custody. It is pointed out that since then he has been in the judicial custody and continued to be so even on the date when the impugned order of

detention was served on him on 2-2-1990. It is, therefore, urged that the activities of the petitioner since in the Custody have been sufficiently prohibited. He has not applied for grant of bail. Moreover, he did not take any step to obtain the relief of grant of bail. As such, there is nothing on record which can be a basis for the presumption of his likelihood of being released on bail. Another limb of the same argument of the learned Counsel is that there was no previous history or antecedents indicating the prejudicial or objectionable activity of the petitioner excepting the incident dated 2-8-1989, to indicate any compelling reason justifying the detention of the petitioner. Mr. Maqsood Khan, therefore, made a submission that the detaining authority has not possessed the material suggesting the probability as recorded in the grounds of detention dated 12-1-1990.

In support of this submission, the learned Counsel placed reliance on the Judgements Today page 184 Dharamendra v. Union of India, particularly on the observation made by the Supreme Court in para 21 of the Report. It is pointed out that the order of detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention, and (ii) that there were compelling reasons justifying such detention despite the fact that detenu is already in detention. The Supreme Court further observed that the expression, "compelling reasons" in the context of making order of detention of a person already in custody implies that there must be a cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of antecedents and activities of the detenu, it is likely that after his release from custody, he would indulge in prejudicial activities. In view of the observation, we propose to examine the substance of the ground as contained in Grounds of Detention dated 12-1-1990. The detaining authority at page 21 has made as mention "Though you are still in judicial custody, I am satisfied that there is a compelling necessity to detain you under the Cofeposa Act to prevent you from smuggling goods in future as you are likely to be granted bail under the normal law at any time". Applying the test laid down by the Supreme Court in the case cited supra, the detaining authority has satisfied the first test regarding the awareness of the person in the judicial custody. Now, we propose to examine whether there were material sufficient and cogent indicating compelling reasons to pass the order of detention.

3. As urged before us by the learned Counsel there was no such material to draw an inference that the petitioner was likely to be released on bail. In the absence of such material, the presumption is without any foundation which results in vitiating the order of detention. In support of this proposition, the learned counsel placed reliance on the decision rendered by this Court in Criminal Writ Petition No. 154 of 1989 dated 22-8-1989, Criminal Writ Petition No. 231/1990 dated 24-4-1990. Criminal Writ Petition No. 55/1990, dated 21-3-1990. The learned Counsel in furtherance of his submission contended before us that the

relevant material in this regard could be filling of application or pendency of such application for grant of bail or any other attempt legally permissible for a person to secure the order of release on bail. Since neither there was a pending application nor there was any attempt suggestive of a securing the relief of bail, the detaining authority erroneously reached a conclusion that the petitioner is likely to be released on bail. We have in great detail examined the submission as made. It is hardly debatable that the aim and object of the Cofeposa Act is preventive in nature. It is also legally acknowledged that the provisions under the common law are not sufficient to check the menace which has been undertaken by the Act. If the submission as canvassed is accepted, then the Sponsoring Authority, namely, the Officers of the Customs Department could initiate the proposal for detection of person in custody only when such application for grant of bail is made. This would lead to defeating the object of the Act. Besides this, the process of detention which is being initiated by the Department of Custom and ultimately culminates in passing order of detention by the authorities specified under the Act involves certain stages, obligations and is also time consuming. In these circumstances, making the Sponsoring Authority to wait till such application is moved, according to us, would not be either rationale or logical.

4. We feel that the Sponsoring Authority can initiate the proposal and the detaining authority can pass the order even in anticipation or contemplating the likelihood of release on bail of the person in judicial custody. Such likelihood of being released on bail can be presumed from the circumstances which are prevailing at the relevant time. Position in law, procedure and practice thereunder is also one of the relevant consideration in this regard. The offence under the Customs Act is no doubt non-bailable. However, according to the position of law as prevailing the courts are competent to release the accused on bail. The law thus provides a right which can be availed by the person in custody. The accused in custody is also entitled to avail such a right as provided by law. There was no handicap or embargo for the accused to avail such right. These aspects may not be borne on record but can be taken into account by Detaining Authority. Moreover, in this case another person known as T. T. Shashikumar, who was connected with the consignment, was released on bail. The petitioner as per the address recorded on the consignment was shown as a resident of Bombay. We feel that this material was sufficient for the detaining authority, reasonably to reach a conclusion that the petitioner is likely to be released on bail under the normal law of the land. Since the presumption as drawn has a basis from the circumstances and the provisions of law, we are unable to agree with the submission that the presumption is vitiated for want of sufficient and cogent material.

5. The learned Counsel for the petitioner then relying on the decision reported in Ramesh Yadav Vs. District Magistrate, Etah and Others, and Shashi Aggarwal Vs. State of U.P. and Others, made a submission that mere possibility of release on bail of the accused is not sufficient for ordering the detention. In the alternative,

the submission of the learned Counsel is that such possibility of release cannot be a basis of detention. The Detaining Authority is further under obligation to consider the relevant materials, which are indicative that on being released the person concerned in all probability would indulge in such prejudicial or smuggling activities. The learned Counsel tried to submit that there is nothing on record, no previous history of this man, and except the incident in which he is involved there is no previous antecedent. Mr. Maqsood Khan placing reliance on a decision *Anand Prakash Vs. The State of Uttar Pradesh and others*, , made a submission that incident dated 2-8-1989 being solitary, detention order made in furtherance thereof would be nothing but to supplant the prosecution, under the ordinary law. The basis of the said solitary incident de hors of previous history or antecedents leads to vitiating the subjective satisfaction and as such the impugned detention is liable to be set aside.

6. The Supreme Court in a decision reported in *Saraswathi Seshagiri v. State of Kerala* AIR 1988 S.C. 1165 has provided a guideline as to when a solitary incident could be a foundation or basis for the order of detention. It is observed in para 8 of the report.

"we must of course make it clear that it is not our view that in no case can a single solitary act attributed to a person form the basis for reaching a satisfaction that he might repeat such acts in future and in order to prevent him from doing so, it is necessary to detain him. The nature of the act and the attendant circumstances may in a given case be such as to reasonably justify an inference that the person concerned, if not detained, would be likely to indulge in commission of such acts in future,---"

In view of the test laid down, we will have to examine the nature of the incident as involved and other attending circumstances so as to ascertain the merit of the ground as raised.

It is revealed from the ground of detention that on 29-7-1989 a trunk and a T. V. carton consigned in the name of P.M. Mujeeb of 117/15 Dimtikar Road, Nagpada, Bombay, reached Bombay by Air India Flight from Dubai. The Customs" officers took a search of these consignments. On verification in presence of panchas they found 40 gold bars of foreign mark weighing 4664 grams valued at Rs. 14,45,840/- concealed in the trunk. The consignment was not in company of the passenger. On 2-8-1989 petitioner arrived at Sahar Air Port India of the Flight from Dubai. He claimed the said consignment of trunk. The petitioner was, therefore, arrested u/s 104 of the Customs Act. The skill engaged and the risk undertook for bringing the contraband gold to India makes the militant attitude in the prejudicial activities writ large. It is of significance that the petitioner undertook the risk only for monetary consideration. This aspect is indicative of the courage and determination of the petitioner to out-law for an appropriate reward. The Customs Authorities as referred to in the ground of detention made an observation that. "It is evident that, "you agreed to clear the consignment of two packages containing the huge quantity of contraband gold despatched from

Dubai in your house as consignee for a monetary consideration of Rs. 5,000/- besides fare to and for air ticket to Bombay". One of the submissions before us is that the inference as drawn is totally unwarranted. The objection as raised is not well founded according to us. The total consideration, in this venture to smuggle the contraband gold to Bombay involved was to and for fare and Rs. 5,000/- which are in addition. This offer of total consideration, at any rate, could not be for merely lending the base for consignment containing the contraband gold in a concealed position. The amount as offered by way of reward could be and must be, commensurating with the job and risk undertaken by the petitioners. We, therefore, do not find any infirmity, legal, or, otherwise, in drawing the inference as recorded in the grounds of detention.

Besides the risk and skill as exhibited, the petitioner is an Indian National; as per the address on the consignment, he was a resident of Bombay. He went to Dubai, on the passport granted to him on 8-10-1985. He was in the service in Dubai and made a trip to India some time in December 1987. He stayed at Dubai for a period of about 5 years. This definitely indicates his acquaintance and close link with the circle which deals with the contraband gold. Taking into account the skill engaged, the risk undertook for a monetary consideration or reward, coupled with close links and acquaintance with the concerned circle, as attending circumstances, we find that the solitary incident as narrated in Grounds of detention provides a compelling necessity for the Detaining Authority to detain him by exercising the power under sub-section (1) of section 3 of the Act. The Detaining Authority in reply to the averments in para 9 adverted to this aspect. It is averred that taking into consideration the quantum of seizure of gold and modus operandi resorted, provided them a necessary and sufficient reason to initiate the action of preventive detention against the petitioner. We, therefore, hold that the subjective satisfaction in this regard is arriving at a conclusion by the detaining authority has not been vitiated on the ground as contended before us.

7. The second challenge to the order of detention is contained in Ground No. II of the petition at page 7. It reads as thus :---

"The petitioner says and submit that the sponsoring authorities ought to have placed before the detaining authority the retractions made by the petitioner and his co-accused T. T. Shashikumar on 3-8-1989 when they were produced before the Additional Chief Metropolitan Magistrate. It is further contended that the above said retraction were made in the open Court, in the presence of the Customs. Remand Officer and they were taken on record."

The learned Counsel while supporting the ground invited our attention to Annexure-D which is an application dated 3-8-1989 made by the petitioner in the Court of Additional Chief Metropolitan Magistrate. The averments read as thus :---

"I do not know what was written in the written statement. I was forced to sign the statement. I do not know the accused Shri. T. T. Sashikumar. I was assaulted

by the Customs" Officers and due to that my body is paining. T. T. Shashikumar is falsely implicated by the department. Panchanama was not drawn in my presence. I was kept in illegal custody of 5 days."

The learned Counsel further pointed out that the report was made by the petitioner on 3-8-1989 to the Court, which reads as thus :---

"That I was assaulted by 7-8-officers of Customs".

Mr. Maqsood Khan, the learned Counsel, tried to submit for some time that the petitioner by these applications to the Court tried to retract or retracted from his earlier statement. These documents were not placed before the detaining authority. They are vital and material to arrive at a subjective satisfaction. Omission thereof has vitiated the process of subjective satisfaction and as such the order of detention suffers from illegality.

8. In the first application, the applicant merely claimed the ignorance about his statement, panchanama and T. T. Shashikumar. The panchanama of the consignment was admittedly made on 29-7-1989 when the petitioner was at Dubai whereunder the contraband gold was seized from the consignment consigned in his name. Mr. Maqsood Khan then pointed out that there was a second panchanama on 2-8-1989. However, there is no reference in the application as regards that panchanama. The petitioner when he pointed out that there was a second panchanama on 2-8-1989. However, there is no reference in the application as regards that panchanama. The petitioner when he left for Dubai as per his statement was also ignorant about person named as T.T. Shashikumar. He was merely informed at Dubai that the persons will come to collect the consignment from him. It was also informed to him that the persons will identify the petitioner as per indication given by the person known as Kadar with the identity as agreed and settled earlier. Ignorance about T.T. Shashikumar, therefore, could not be said to be a retraction. As such, we do not find any retraction or deviation from a statement earlier made.

9. Mr. Maqsood Khan then changing the trend of his argument urged before us that the documents or substance may or may not be styled as "retraction "but their vitality for the purposes of a consideration is undisputed. They are material and were liable to be placed before the detaining authority before they record their subjective satisfaction. Adverting to the question of vitality, Mr. Maqsood Khan has pointed out that there is a specific averment stating that the petitioner was forced to sign these statements. Secondly, there is an averment suggesting that T.T. Shashikumar was falsely implicated by the department. He contended before us that T.T. Shashikumar is certainly involved in the incident reflected in the ground of detention, and he was forced to sign by the department by causing assault on him. He, therefore, submitted that the statement u/s 108 of the Customs Act, which is the basis for the ground of detention, was involuntary. It was obtained by force, coercion, and torture and this aspect is placed would have influenced the subjective satisfaction of the authority. In support of this, he

pointed out the documents placed on the record.

10. The first document as reproduced above is Annexure-D dated 3-8-1989. The petitioner has a no doubt stated that he was forced to sign the statements. He has further stated that "I was assaulted by the Customs" Officers". However, there is no definite statement that the assault was caused to him either to secure his statement or to obtain his signature on the statement u/s 108 of the Customs Act.

It is pertinent to note at this stage that in this application dated 3-8-1989 he has averred that he was kept in illegal custody for 5 days. Admittedly the petitioner reached Bombay from Dubai on 2-8-1989 at 1-45 a.m. The recording of statement and drawing of panchanama were completed by 4 a.m. He was admittedly produced before the Magistrate on 3-8-1989. As such, the averment in the application that he was in the custody for a period of 5 days is completely distorted and false.

11. Another statement which the petitioner made on 3-8-1989 in the open Court as claimed and reproduced above also does not suggest that the alleged assault with sticks, fists and blow was with an ulterior motive to procure the statement or signature of the petitioner. It is interesting to note that the petitioner was referred for medical examination. Page 34 of the petition is the report submitted by Dr. Sapkal, Chief Medical Officer of Bombay Central Prison. He examined the petitioner on 4-8-1989 referring to certain injuries like tenderness. Their age was shown as "y. 24 hours". Even accepting this medical evidence, we have to hold that the assault could be on 3-8-1989. As discussed, the statement was recorded on 2-8-1989. As such, even presuming the assault on 3rd, it has no bearing or relevance to a recording of statement which admittedly took place in the early morning of 2-8-1989. Besides this, Dr. Sapkal recorded the history as per the version of the petitioner and referred the same in his letter dated 7-8-1989. According to this history, the petitioner was assaulted on 1-8-1989 at about 1.30 a.m. Again undisputedly on 1-8-1989 the petitioner or his co-accused were neither in custody or control or in company of the Customs" Officers, since the petitioner reached Bombay early in the morning on 2-8-1989. We have examined this aspect with some more details only with a view to ascertain the alleged aspect of assault has any relevance or bearing with recording or in procuring the statement u/s 108 of the Customs Act. The alleged assault since unconnected with the statement, recording of panchanama or other formalities which have been undertaken by the Customs" Authorities at Sahar Airport on 2-8-1989, we find that whatever statements made irrespective of their character, has no relevance muchless the vital for the purposes of recording the subjective satisfaction.

12. Mr. Maqsood Khan, the learned Counsel has placed reliance on a decision of this Court in Criminal Writ petition No. 65 of 1989 dated 23-4-1989. It is observed :---

"If this is so, then admittedly the detaining authority was not made aware about the injuries found on the buttocks of the detenu on examining by the staff of the Court as well as by doctor. Those were crucial and material facts which could have influenced the subjective satisfaction of the detaining authority while deciding the question as to whether retraction is genuine or not."

As discussed earlier, there has been no retraction or deviation from a statement made earlier. We have discussed in details that the petitioner in his application dated 3-8-1989 has expressed the ignorance as regards the certain aspects specified above. There is no retraction, deviation or disowning of any statement, claim, assertion, made by the petitioner earlier to 3-8-1989. Besides this, as discussed above, the alleged assault or injury sustained were not in the proceeds of taking down the statement or obtaining the signature. As such, there was neither retraction nor a question of examining the retraction. The placing of the report of injury in the instant case, is, therefore, of no relevance. The decision on which reliance is placed is, therefore, of no assistance to the learned Counsel for the petitioner.

13. The learned Counsel then specifically asserted before us that apart from other statement, his version about the ignorance of T. T. Shashikumar and further assertion of false implication of T. T. Shashikumar, certainly amounts to a retraction and even otherwise Shashikumar since involved in the incident this assertion or retraction or statement was required to be considered before arriving at a conclusion by the detaining authority. The learned Counsel made a submission that this is a vital document and has a definite impact on the process of subjective satisfaction. He, therefore, placed reliance on a decision reported in (1) Padala Veera Reddy Vs. State of Andhra Pradesh and others, . and (2) M. Ahamedkutty Vs. Union of India (UOI) and Another, , and made a submission that omission to consider this document has resulted in invalidating the process of subjective satisfaction.

14. It is true that T.T. Shashikumar has been referred to in the grounds of detention. He was a person till that time unknown to the petitioner but as per the instruction of the original consignor was to come on the Airport to receive the consignment. The grounds of detention at page No. 19, no doubt, refer T.T. Shashikumar as a person who has identified the petitioner as per the identity mark settled by the original consignor. It is also referred that the statement of the petitioner and T . T. Shashikumar was recorded u/s 108 of the Customs Act. It is further referred that T. T. Shashikumar and petitioner both were arrested u/s 108 of the Customs Act. These reference in the grounds of detention, according to us, are merely to complete the narration of the incident. Association or connection of T.T. Shashikumar with a contraband gold was not the ground to exercise the power under sub-section (1) of section 3 of the Act. His reaching the Airport to receive the consignment is not the aspect which becomes either foundation or basis to detain the petitioner. As the aspect and connection of T. T. Shashikumar is merely referred without reliance, omitting to place the statement

even treating it as a retraction would not in any manner have the bearing on the subjective satisfaction of the detaining authority. Similarly, the applications made by T. T. Shashikumar himself about the assault etc. would be equally of no consequence. We, therefore, do not uphold the contentions as raised by the learned Counsel for the petitioner.

15. The third challenge as canvassed by the learned Counsel contains in ground No. 5 of the petition reads as under :---

"That the petitioner is conversant with Malayalam language only and, therefore, the Malayalam translation of the documents are given to the petitioner. The detaining authority has failed to furnish to the petitioner Malayalam translation of the Airway Bill. The detaining authority has also not furnished to the petitioner Malayalam translation of the marginal endorsements and typed portion of the remand application".

In view of this, it is urged that non-supply of the documents in vernacular amounts to non-communication of the ground and material on which the order of detention is based. It, therefore, creates an inroad in the right to make representation effectively as contemplated under clause 5 of Article 22 of the Constitution of India.

In support of the submission, the learned Counsel placed reliance on the following judgements :---

" M. Ahamedkutty Vs. Union of India (UOI) and Another, ."

It is held therein that non-supply of the documents results in violation of Article 23(3). Our attention is then invited to a judgment of this Court reported in 1987 (1) BCR 617 Shashikumar v. Union of India. This Court has observed that "if the detaining authority thought it expedient to furnish the translation even though the detenu knew English, then the detenu was entitled to take advantage of the translation and to point out that the translation which he relies upon did not convey the faithful meaning of the original grounds of detention u/s 9(1) of the Act". According to us, both the authorities as cited have no application to the question as raised before us.

16. The learned Counsel then placed reliance on the judgment of this Court dated 17-4-1990 in Criminal Writ Petition No. 222 of 1990. This Court made an observation, particularly, in para 5 :---

"We are unable to accede to the submission that the detenu is familiar with English language and, therefore, the supply of defective translation in Kannada is of no relevance. In the first instance, the mere statement that the detenu understands English well cannot lead to the inference that the detenu can very well read the English copies. In case, the Detaining authority felt that the detenu is familiar with English language, then there was no occasion to supply copies of Kannada translation. Secondly, the mere fact that the detenu has signed the statement in English cannot lead to an inference that the detenu is familiar with

English language and can read the same".

In the said judgment, this Court also considered the decision of the Supreme Court reported in *Kubic Dariusz v. Union of India* A. I. R. 1990 S. C. 606. Considering the said judgments, this Court recorded its observation as under :---

"The conclusion reached by the Supreme Court was on the basis of the facts available in that case and it is not possible to reach identical conclusion on the set of facts existing in the present case."

We, therefore, propose to examine the dictum laid down by the Supreme Court in the case of *Kubic Dariusz* referred to by this Court in a judgment cited supra. The Supreme Court has held :---

"It is settled law that the communication of the grounds which is required by the earlier part of Cl. (5) of Art. 22 is for the purpose of enabling the detenu to make a representation, the right to which is granted by the latter part of the clause. A communication in this context, must, therefore, mean importing to the detenu sufficient and effective knowledge of the facts and circumstances on which the order of detention is passed."

It is further observed :---

"Such a communication would be there when it is made in a language understood by the detenu."

In the case before the Supreme Court, the detenu was a Polish National to whom the grounds of detention were communicated in English. The Supreme Court taking into consideration the various aspects, as made apparent on record, reached a conclusion that the detenu had a workable knowledge of English and as such non-communication of the grounds in his National language did not violate Article 22(5).

In view of the dictum as laid down what follows according to us is that whether the communication in a particular language creates impediment for the detenu to exercise his right under clause 5 of Article 22; if answer to this question is in affirmative, then it leads to violation of Article 22(5). However, if the answer is otherwise in negative, the complaint of denial of right under Article 22(5) cannot be sustained. Further it is apparent from the dictum laid down by the Supreme Court that the ability or capability of understanding particular language by a particular person is a matter of inference. Such inference can be drawn from various incidents or indications. Such symptoms occasionally could be singular or may be for some time multiples of it. But if the Court reaches a conclusion that the detenu was capable to understand a particular language, namely, English then in that eventuality it means that he is capable to read and write and understand the said language. Capability to understand the language does not envisage either proficiency or command or excellence in the language. When the person claims that he can read and write, it means that he reads the substance and understands what is communicated therein and when he claims that he can

write, it certainly depicts that he can write what he intends to communicate. Familiarity with a language of a particular person is definitely indicative of that he is well acquainted with the language for the purposes of understanding and communicating. To say that person is familiar with the language but he is not capable to understand or communicate in the said language would be derogatory to the literic sense of familiarity with the language. In view of the decision laid down by the Supreme Court in the case cited supra, we find that the Court can ascertain whether the person at the relevant time was capable in knowing the contents of the documents and grounds. The detaining authority might even by way of abundant precaution have supplied the documents and grounds in a particular language. However, that does not necessarily suggest that the detenu was familiar only with that language. If some of the documents supplied are not translated in the said language unless creates an embargo shall not provide a ground to complain the violation of Article 22(5). In view of this, we propose to examine the averments and allegations in the instant petition. The petitioner in the grounds reproduced above has alleged that he is conversant with Malayalam language only. His claim of knowing that language only is a question of fact. We may mention that just at the beginning. We cautioned the learned Counsel since the petition is not duly sworn. Even otherwise, the allegations as made appeared to be erroneous and misleading. It is pointed out to us that in a statement u/s 108 of the Customs Act recorded on 2-8-1989, the petitioner has specifically asserted that he can read and write English. We hold that the petitioner was capable of understanding the same and was also capable to write in the same language whatever he intends to communicate. Besides this, the petitioner was on a foreign land for a period of 5 years. It is a common experience that the people earn more proficiency in the working language rather than their mother tongue. Moreover his applications and statements made to the Additional Chief Metropolitan Magistrate on 3-6-1989 were in English. He has signed the same also in English, looking to the language as deployed in the said application, it appears that he was well equipped with a legal assistance. Furthermore, he acknowledged the grounds of detention and the documents in English without making any demur. Taking into account all these incidents, we can reasonably draw an inference that the petitioner was a person capable of knowing the English language and as such, omitting to supply documents referred to, in Malayalam did not create any impediment or inroad in his right to make representation against the order of detention. In view of this conclusion, we hold that there is no violation of clause 5 of Article 22, and as such the ground must fail.

17. It is lastly and faintly urged by the learned Counsel that the copy of Airway Bill supplied to the petitioner was not legible. We do not find any substance in the grievance that supply of such illegible copy further affects his right. We may mention here that the Airway Bill was a document of the petitioner. When he reached Bombay from Dubai, he himself identified the consignment. Besides this, and according to us what was pertinent and material for subjective satisfaction is

arrival of the trunk consignment to Bombay by Air India Flight No. 718 dated 29-7-1989. It is further mentioned in the ground of detention that consignment was covered by Air Way Bill in question. The reference to Airway Bill is, therefore, incidental to the main incident of reaching of the consignment of contraband gold at Bombay. As such even otherwise according to us the document has no relevance. As discussed earlier that even if the document was illegible it being the document of the petitioner and who himself identified the consignment, no prejudice, in any manner, has been caused. Furthermore, as discussed earlier, the document being incidental, we hold that even non-supply of the same would not have created any impediment in the right guaranteed.

Besides this, we may observe that illegibility of a document, act or deed cannot always be an absolute phenomenon. Normally, and always it is subjective. Whether from a particular document, the detenu could not understand the contents thereof is a matter exclusively within his knowledge. What is exclusively within the knowledge of a particular person cannot become a matter of inference. When the document were supplied on 2-2-1990, as we have discussed, there is no demur on this aspect. Moreover, the facts exposing the grievance have not been sworn before us. As such, we find that the ground is without any force.

16. In the result, the petition must fail. The order of detention dated 12-1-1990, passed by the Secretary (Preventive Detention), to the Government of Maharashtra , Home Department (Special), Mantralaya, Bombay, is hereby Confirmed. The petition is dismissed.