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**(2000) 04 KL CK 0003**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 832 of 2000 (S)**

Ramla

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

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**Date of Decision :** 04-04-2000

**Acts Referred:**

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

**Citation :** (2000) 71 ECC 830

**Hon'ble Judges :** Arjit Pasayat, C.J;K.S. Radhakrishnan, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Arjit Pasayat, C.J.—Questioning legality of detention order passed in respect of M. Andru (hereinafter referred to as "detenu") in terms of Section 3(1)(ii) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short "the Act"), this Habeas Corpus Application has been filed by his wife. Grounds of detention reveal that on 1.7.1999, one Yoosaf Kaipurath was intercepted on his arrival at Calicut Airport by Air India Flight from Dubai and after his customs clearance through counter No. 1, on the reasonable belief that he was carrying non-duty paid gold and other contraband goods. In the presence of two independent witnesses, his travel documents and baggages were examined. When he was asked whether he carried any dutiable items or gold, he replied in the negative. On reasonable belief that he had concealed undeclared gold in his baggage, Superintendent (Air intelligence Unit), Calicut Airport requested two independent witnesses to witness the examination of his body and baggage. When detenu was asked to open a rexin suitcase, he replied that he was not having its key and stated that the same was given to him by one Hameed from Dubai to hand over the same to a person who would identify him by calling, "Yoosaf son of Mohamud". Subsequently, the zip from the lock was removed and suitcase was opened. Articles contained in the suitcase were taken

out and on examination it was found that gold of 24 Ct. purity weighing 2323 grams valued at Rs. 9,61,772 (approx.) concealed in it. On interrogation, he stated as to how the articles came to his possession. He said that he was given the suitcase with an instruction to hand it over to a person who will call him "Yoosaf son of Mohammad" while going out of the Customs Baggage Hall of Calicut Airport. Said Yoosaf Kaipurath was arrested on 2.7.1999. Another person, Mahammud Valiyaparambath, was also arrested. On search of his articles, contraband items worth nearly Rupees 11,52,576 were seized. On enquiry, he stated that said articles were handed over to him by one Valayam Hameed at Dubai with instruction to hand it over to a person who will call him by his name or his wife's name Saibu. On the basis of enquiry made, detenu was arrested on 2.7.1999 and produced before Chief Judicial Magistrate, Manjeri who remanded him to judicial custody till 16.7.1999 and the order of remand was extended up to 30.7.1999 by Addl. Chief Judicial Magistrate (Economic Offences), Emakulam. Order of detention was passed on 19.8.1999 with a view to prevent him abetting smuggling activities. He was intimated that he can make representations, if so desired, against his detention to the Detaining Authority, Central Government and Advisory Board. His representation dated 4.12.1999 were rejected by State Government and Central Government on 6.12.1999 and 11.1.2000 respectively.

2. In support of the application, it is stated that a very relevant factor, namely, that detenu was released on bail by this Court in Cri.M.C. 3606 of 1999 by order dated 12.8.1999, had not been placed before detaining authority and copy of the order has not been supplied along with grounds of detention. Application for bail and order granting bail are relevant documents which were available long before order of detention was passed. These aspects were not considered by detaining authority. It is highlighted that in the ground of detention, it has been clearly stated in paragraph 15 that Chief Judicial Magistrate, Manjeri remanded detenu to judicial custody till 10.7.1999 and the same was extended up to 30.7.1999. Order of remand has also not been supplied along with grounds of detention, though that was relied upon. In the counter-affidavit filed, there seems to be no serious dispute about the fact that order of bail was passed by this Court prior to the order of detention. Learned Counsel appearing for State and Central Governments have submitted that these factors cannot be considered to be fatal to detention as the order of bail was within the knowledge of detenu and was passed on the basis of his application non-supply does not prejudice him in any manner.

3. Though several other points have been urged in support of the application, we do not think it necessary to go into them in view of the fact that the effect of non-mention about the bail order and non-supply of copies thereof would decide the fate of the case.

4. In Prof. S.A. Siddiqui Vs. Prof. M. Wajid Khan and Others, , it was, inter alia, observed as follows:

27. 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. We have, therefore, no alternative but to hold 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) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case.

5. Stand of the respondents that detenu having knowledge about those orders is not prejudiced does not stand on firm footing. As was observed in *M. Ahamedkutty's case* (supra), it is immaterial whether detenu had knowledge about such order or not. In *Mehrunissa Vs. State of Maharashtra*, , it was held that the fact that detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of the document was held to be fatal. Similar view was expressed by Apex Court in *Mohd. Zakir Vs. Delhi Administration and Others*, . In *Ahamed Nassar Vs. The State of Tamil Nadu and Others*, it was observed as follows (at page 39; of Cri.L.J):

20. So far stand of the respondent with reference to the advocate's letter dated 19th April, 1999 it cannot be held to be a justifiable stand. These technical objections must be shun where a detenu is being dealt under the preventive detention law. A man is to be detained in the prison based on subjective satisfaction of the detaining authority. Every conceivable material which is relevant and vital which may have bearing on the issue should be placed before the detaining authority. Sponsoring authority should not keep it back, based on his interpretation that it would not be of any help to a prospective detenu. Decision is not to be made by the sponsoring authority. The law on this subject is well settled, a detention order vitiates if any relevant document is not placed before the detaining authority which reasonably could affect his decision.

In *Abdul Sathar Ibrahim Manik Vs. Union of India and others*, it was observed that in a case where detenu is released on bail and is not in custody at the time of passing order of detention, then the detaining authority has to necessarily rely upon this as that would be a vital ground for recording detention. In such cases, the bail application and the order granting bail should necessarily be placed before the authority and copies should also be supplied to detenu. In *Noor Salman Makani Vs. Union of India and others*, , it was observed that whether a particular document is vital or not again is an issue which depends on the facts in each case. In the said case, it was held that detention order itself was passed when detenu was in jail and the detaining authority noted this fact and being satisfied that there was every possibility of his being released on bail, passed the detention order. If subsequently detenu is released on bail even subject to

certain conditions that does not bring about any material change. On the other hand, release on bail is a stronger ground showing that detenu who is not in custody is likely to indulge in prejudicial activities again. A distinction between bail being granted before order of detention and bail being granted subsequent to order of detention is of relevance. When detenu was already on bail before detention order was passed, bail order and bail application are vital documents which are to be considered by the detaining authority.

6. These aspects were highlighted by us in OP 21231 of 1991 by judgment dated 27.1.2000.

Aforesaid being the position, order of detention is bad and has to be quashed and we direct so. Detenu shall be released forthwith unless required to be in custody in connection with any other case. The Original Petition is allowed.