

(2018) 04 BOM CK 0025
In the Bombay High Court
Case No : WRIT PETITION NO. 5292 OF 2017

RUPESH RAM THAKUR

APPELLANT

Vs

THE COMMISSIONER OF POLICE AND ORS

RESPONDENT

Date of Decision : 06-04-2018

Acts Referred:

Constitution of India, — Article 21, 22, 22(1), 22(2), 22(3), 22(4), 22(5), 22(6) 226
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-
Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged
in Black-Marketing of Essential Commodities Act, 1981 — Section 3, 3(3) 4, 5, 5A, 6,
7, 8(1), 13, 14

Citation : (2018) 04 BOM CK 0025

Hon'ble Judges : S. C. DHARMADHIKARI, J, PRAKASH. D. NAIK, J

Bench : Division Bench

Advocate : Udaynath Tripathi, M. H. Mhatre

Final Decision : Allowed

Judgement

Â S. C. Dharmadhikari, J

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges an order of detention dated 17th October, 2017.Â This order

has been passed under section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous

Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (hereinafter referred to as the

â??MPDA Actâ??).

2. The petitioner has raised several grounds, but in the opening arguments, the petitioner's counsel Mr. Tripathi submitted that the continued detention

of the petitioner is vitiated on the amended ground, which has been introduced with the leave of this court.Â That ground is contained in paragraph

4(I) at pages 10A and 10B of the paper book. It reads as under:-

4(I) The Petitioner says and submits that a representation of the detenu was submitted to the State Government on 09.02.2018 by his lawyer on

his behalf which was handed over to the Home department, Mantraya, Mumbai same day. The Petitioner says and submits that one of the

Important grounds urged in the said representation is about various as many as 12 documents whose translation in Marathi language was not true

and correct. A copy of the said representation is hereto annexed as Exhibit 'D'. The detenu in his representation has requested the State

Government to furnish him correct Marathi translation of grounds of detention as well as other documents to enable him to make effective

representation along with other grounds of challenge. A specific written request was made to the detaining authority/State Government to supply

these documents at the earliest. So far the said Authority has not considered the representation of the detenu nor has furnished the document

requested for. The Petitioner submits that wrong translations were by way of addition, omissions and other ways. The Petitioner is a

Maharashtrian and has studied a little in Marathi medium, he is able to read write and understand Marathi language only. The Petitioner has been

supplied with wrong translation and other documents and further inspite of specific request demanding true and correct translations of grounds of

detention and other documents, the petitioner is deprived from making effective representation guaranteed under Article 22(5) of the Constitution of

India. The order of detention is illegal and bad in law for non consideration of the representation expeditiously and non supplying the documents

requested for. The order of detention is illegal and bad in law liable to be quashed and set aside.

3. After the amendment was carried out to the petition, the amended memo duly served, we heard both sides. On 15th March, 2018, after hearing both

sides, the following order came to be passed:-

1. During the course of arguments today, Mr. Tripathi, relying upon the amended ground and appearing at page 10A, para 4(I), submitted that

Annexure-D is a copy of the representation which was forwarded by the detenu through his Advocate. Copy of that is at pages 25A to 25K of the

petition.

2. Mr. Tripathi would submit that at page 25B, ground (b), the detenu, through his Advocate, specifically stated that certain portions of the grounds of detention in Marathi and as set out in this representation are not the true and fair translations of its counterpart English versions. The detenu could not make an effective representation. Hence, a request was made to supply a true and correct translation of the Marathi grounds and other documents as enlisted in this representation.

3. Inviting our attention to the supplemental affidavit in reply of the Detaining Authority at pages 54 and 55 of the paper book, Mr. Tripathi would submit that the ground taken by way of amendment to the petition as also the contents of the subsequent representation at the above said para are not controverted. The reply affidavit proceeds on the footing that the detenu has argued that his representation (second in line), after the filing of this petition, was not considered promptly and diligently. Mr. Tripathi submits that as if this is a ground taken, the reply goes and sets out the alleged explanation for the delay in consideration of this representation. With respect, according to Mr. Tripathi, that is not the ground of challenge. At the same time, in para 3 of this affidavit in reply the Detaining Authority denies that the petitioner has been supplied with wrong translations and in spite of a further request to supply true and correct translation that has not been acceded to and refused. With this background, Mr. Tripathi would submit that now the learned APP says, on instructions, that on 27-2-2018 the detenu was indeed supplied with the translation of the grounds of detention in Marathi while the detenu was lodged in the prison and undergoing this detention.

4. We specifically inquired with Ms Mhatre and she says that it is correct that the detenu was indeed supplied with these translations on 27-2-2018, during the pendency of this writ petition.

5. Given the above dichotomy and contradictions allegedly appearing in the affidavit of the Detaining Authority, on a specific query from the Court, Ms Mhatre seeks time to file a further affidavit of the Detaining Authority so as to explain the circumstances in which the translations were supplied on 27-2-2018.

6. She says that the affidavit would be filed on or before 24-2-2018.

7. We place this matter under the same caption on 5-4-2018.

4. Mr. Tripathi would, therefore, submit that the continued detention of the petitioner is vitiated for the simple reason that Article 22(5) of the

Constitution of India states that the petitioner has a right to make a representation and the detaining authority shall offer to him the earliest opportunity

to make the same.Â That right is not an empty formality.Â For that right to be exercised meaningfully and effectively, the petitioner must not only

may be allowed to make a representation against the order of detention, but that representation should be duly considered.Â In the instant case, the

representation made by the petitioner, copy of which is to be found at page 25A to 25C raises several grounds and contains composite prayers.Â The

prayers are that the order of detention should be revoked and set aside, that the petitioner be supplied the copies of documents requested for and

equally the information sought so as to enable him to make an effective representation.Â If these twin prayers have been incorporated and inserted in

the representation, then, the representation cannot be disposed of by informing this court that it stands rejected. Further, if it was indeed rejected and

thus, both the prayers dealt with, then, it was not necessary for the respondents to have filed an affidavit after the hearing of this petition on 15th

March, 2018. The additional affidavit filed in reply to this petition and particularly the amended ground compounds the matter.Â Rather, it makes a

mockery of the constitutional mandate enshrined in Article 22(5) of the Constitution of India and the rule of law itself.

Mr. Tripathi would submit that if the representation dated 9th February, 2018 was already rejected and the earlier affidavit justifies the rejection so

also asserts that the petitioner was supplied with true and correct Marathi translation of the English documents, then, it is inexplicable as to how the

deponent in this additional affidavit in reply then deals with the amended ground again.Â Mr. Tripathi invites our attention to pages 63 and 64 of the

paper book, namely, para 2 of the affidavit in reply to urge that if the representation, which was composite or containing both prayers stood rejected,

then, there was no purpose or justification for forwarding the copies of the demanded documents to the detainee in jail.Â They have been supplied is

admitted in this affidavit.Â Though the representation is made by the advocate for and on behalf of the detainee, the advocate is not informed anything

about the fate of the representation, much less its rejection.Â It is the detainee,

who has been forwarded the documents in Jail vide letter dated 22nd February, 2018.Â This would, therefore, pre-suppose that there were twin prayers in the representation.Â Those were not considered.Â They were not dealt with.Â They are now purported to be dealt with and with this explanation.

5. Mr. Tripathi would submit that it is not the case of the respondents and throughout that once this writ petition was filed in this court challenging the detention order and it is sub-judice that the detainee cannot forward any representation to the State Government.Â It is not their case that successive representations, even if permitted to be made and forwarded, the Government is not obliged to consider them, particularly during the pendency of this writ petition.Â One could have understood this stand, according to Mr. Tripathi and then that would have required a separate or distinct answer.Â

That being not the stand, but there is an explanation provided for despatch of the documents to the detainee in jail, then, that pre-supposes that there was merit in the grounds raised in the representation and the complaint that accurate copies of the Marathi translation were not supplied earlier.

Â Once incorrect translation was supplied to the detainee, then, he could not have made an effective representation against the detention order.Â If

he was disabled from making such representation on account of the documents being held back, then, on account of this explanation, the continued detention is vitiated.

6. Mr. Tripathi seeks to rely upon the following decisions of this court and the Hon'ble Supreme Court in support of the above contentions:-

- (i) Aslam Noorani vs. M. N. Singh and Ors., 2002 CRI. L. J. 1102.
- (ii) Shri. Aslam Amin Shaikh vs. Shri. M. N. Singh and Ors., Cri. Writ Petition No. 155 of 2003, decided on 20th September, 2003.
- (iii) Mrs. Nafisa Khalifa Ghanem vs. Union of India and Ors., 1982 SCC (Cri) 236.
- (iv) Ramchandra A. Kamat vs. Union of India and Ors., (1980) 2 SCC 270.

7. On the other hand, Ms. Mhatre learned APP appearing for the respondents would submit that there is no merit in this ground.Â She would submit

that the translations or the documents referred by the petitioner hereinabove were indeed supplied, but that was just by way of an abundant caution.Â

There was no mandate or obligation to supply these documents, particularly after the representation was duly considered and rejected. Merely

because the representation was filed post institution of this writ petition, it was not incumbent upon the Government to have dealt with it or reply it.Â

Once the matter was pending before this court, the Government was obliged only to furnish an explanation to this court.Â The affidavit furnishes an

explanation to the court and no benefit or advantage can be derived from the alleged dichotomy or contradiction in the stand of the State Government

noted earlier.Â On that count, the continued detention is not vitiated.

8. Ms. Mhatre relies upon the following two judgments rendered, firstly by the Hon'ble Supreme Court and secondly by this court:-

(i) David Patrick Ward and Anr. vs. Union of India and Ors., (1992) 4 SCC 154.

(ii) Smt. Khushbu Sandeep Jain vs. State of Maharashtra and Ors., 2014 All MR (Cri) 3544.

9. For properly appreciating the rival contentions, we must make a reference to the power conferred in the State to make an order of detention.Â

That power is to be foundÂ in the present law in section 3.Â Section 3 reads as under:-

â??3. (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial

to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a

Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct, that during such period as

may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the

powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed six months

but the State Government may, if satisfied as aforesaid that it is necessary so to amend such order to extend such period from time to time by any

period not exceeding six months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government,

together with the grounds on which the order has been made and such other

particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State

Government.â??

10. A perusal of this provision would reveal as to how on the necessary satisfaction being reached, an order of preventive detention can be made.Â

By sub-section (3) of this section, once this order of detention is made by an officer mentioned in subsection (2), he shall forthwith report the fact to

the State Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the

matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by

the State Government. Section 4 provides for execution of detention orders, whereas, section 5 contains a power to regulate place and conditions of

detention. The grounds of detention can be treated as severable by virtue of section 5A and no detention order shall be treated as invalid or inoperative

on certain ground, which is a provision carved out by section 6.Â We are not concerned with section 7, which confers powers in relation to

absconding persons, but by section 8(1), there is a mandate on the authority making the order of detention to, as soon as may be, but not later than five

days from the date of detention, to communicate the detenue the grounds on which the order has been made and it shall afford him the earliest

opportunity of making a representation against the order of the State Government.Â The constitution of Advisory Boards, reference to Advisory

Boards, procedure of Advisory Board, action upon report of Advisory Board need not be considered.Â By section 13, the maximum period of

detention is stipulated, whereas, there is a power to revoke the detention order.Â That power is to be found in section 14.Â Further, there is a power

to release temporarily the persons detained.Â Article 22 of the Constitution of India has followed Article 21.Â By Article 21 of the Constitution of

India, there is protection of life and personal liberty.Â Article 22 of the Constitution of India grants protection against arrest in certain cases.Â The

power of arrest and detention in custody stipulated by clauses (1) and (2) and elaborated in clause (3) of Article 22 need not detain us.Â We are

concerned herewith a power of preventive detention.Â Clauses (4), (5) and (6) of

Article 22 concern the preventive detention. The clause (5) of

Article 22 of the Constitution of India, a reference to which can be found in the phraseology of MPDA Act reads as under:-

22. Protection against arrest and detention in certain cases.

(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.

11. By clause (7) of Article 22, the Parliament is empowered to make a law. We are also not concerned with that provision presently.

12. It is undisputed before us that the right to make a representation means right to make an effective and meaningful representation. That is not an

empty formality as is rightly contended before us. For the right to be exercised meaningfully, the detainee is entitled to know the grounds of

detention and the materials to support the same as have been referred in the detention order. If the materials are in the form of documents and

papers which are not in a language known to the detainee, then, it is undisputed that the law obliges a translation of such documents and papers to be

supplied to him. When we talk of meaningful and effective representation, it is further obligatory to provide a correct translation. In the instant

case, the ground as also the representation referred above complains that the petitioner though detained and pursuant to an order of detention dating

back to 17th October, 2017 has a right to make it and pray therein that true and correct translation of the documents be supplied. These documents

were indeed relied upon. This petition is instituted on 18th December, 2017, still, none prevented the petitioner from making an representation to the

Government post institution of the petition. At least no provision of law or no principle preventing the petitioner from making such representation is

brought to our notice. Be that as it may, such a representation dated 9th February, 2018 was indeed made. We have already referred to its

contents and the composite nature of the prayers therein. The affidavits filed on behalf of the respondents earlier proceed on the footing that this

representation was not considered expeditiously and that is the complaint of the petitioner. Far from it, the complaint was that such representation

containing twin prayers was not considered at all.Â That the rejection as communicated is deemed to be rejection of the composite or twin prayers is not the stand either. Meaning thereby, it was considered in entirety and in the light of the grounds and the prayers made.Â There is nothing communicated in relation to the prayer to supply correct and accurate copies of the Marathi documents.Â Admittedly and undisputedly, the petitioner maintains that he is Maharashtrian and studied in Marathi medium.Â He is able to read, write and understand Marathi language only.Â He be supplied, therefore, the Marathi translation of the relied upon documents.Â If this is his version, then, undisputedly, the reply to the petition or to the representation makes no reference to this prayer at all.Â There is no material placed before us, though we called for the original file, which would enable us to conclude that both requests of the petitioner were duly considered.Â In fact, after receipt of the representation dated 9th February, 2018, the file that is produced before us refers to a representation stated to have been made prior to 9th February, 2018.Â Our query was not in relation to this representation at all.Â Our query, as noted by us, in our earlier order was in relation to this representation of 9th February, 2018. Admittedly, this representation was placed before the competent authority.Â The affidavit filed by the detaining authority as also by the State Government earlier makes a reference to the detainee's representation dated 22nd November, 2017 received in the MPDA Desk on 23rd November, 2017 by Speed Post.Â How it was dealt with and expeditiously is explained in the affidavit of the State Government, particularly the Department of Home, filed in answer to this petition on 30th January, 2018.Â Para 2 of this affidavit informs this court that this representation was rejected and the rejection was communicated to the detainee on 30th November, 2017.

13. As noted above, we are not concerned with this representation at all.Â The amended petition does not make any reference to this representation, but to a representation dated 9th February, 2018 and post institution of this petition.Â In relation to that, the first affidavit filed in reply to the amended petition, in paragraph 3 at running page 55, simply says that it is denied that the petitioner has been supplied with wrong translation and other documents in spite of specific request made by him demanding true and correct translation of grounds and other documents.Â It was denied that the

petitioner was deprived of his right of making effective representation, which is guaranteed under Article 22(5) of the Constitution of India. After

referring to the rejection of the first representation, it is admitted that the second representation was received in the office of the detaining authority on

9th February, 2018. How expeditiously it was dealt with is then sought to be explained. Once again, we clarify that this is not an issue before us

at all. It may have been dealt with and considered expeditiously, but what the affidavit in reply overlooks is the fact that this representation

contained two prayers. It prays to revoke the detention, but it also makes a grievance that the petitioner could not make any effective representation

in the absence of true and correct translation of the documents. It may be that this is a ground introduced later on and in the second

representation. However, we have allowed the petition to be amended to insert this ground of challenge. Secondly, the amended ground refers to

a representation made after the filing of the petition, but which reiterates the request to supply true and correct translation of the documents relied

upon while making the detention order. It is not denied that there is an obligation to supply true and correct translations. If indeed those were

already supplied to the petitioner and he is just raising a false plea or is seeking to quash the detention order on a ground raised purely as an

afterthought, then, that stand should have been clearly spelt out in the affidavit in reply. That is not the stand taken. The stand is not that

successive representations are made only to buy time or to raise some ground or the other. It is also not stated in the affidavits that the successive

representations do not contain any new ground or new prayers, but reiterate the old stale pleas. We could have understood this stand as well.

The stand is specific. Earlier it was urged that the petitioner was supplied with true, correct and accurate Marathi translations of the relied upon

documents. If that was the position, the Government should have stood by its denials. Those denials get diluted in the affidavit in reply filed after

the order of this court dated 25th March, 2018. The detaining authority, on 27th March, 2018, asserts in paragraph 2 of the affidavit as under:-

2. With reference to amended ground 4(i) of the petition, it is submitted that the detenu vide his representation dated 9.2.2018 demanded true and

fair Marathi translation of grounds of detention as well as other documents to enable him to make effective representation, as detenu is able to read,

write and understand Marathi language only.

It is submitted that in earlier additional affidavit dated 26.2.2018, I have denied that the petitioner has been supplied with wrong translation, therefore,

he has been deprived from making effective representation, guaranteed under Article 22(5) of the Constitution of India.Â It is submitted that in spite

of such denial in earlier affidavit about supply of wrong translation, the copies of demanded documents were supplied to the detenu in jail on 27.2.2018

vide letter dated 22.2.2018.

it is submitted that the representation dated 9.2.2018 is the second representation of the detenu to the Additional Chief Secretary (Home).Â The

parawise comments were called for by the State Government on 9.2.2018 from the office of the Commissioner of Police Thane.Â The said

comments were forwarded to the State Government on 22.2.2018 alongwith copies of demanded documents by making minor changes in it which

could not hamper the right of the detenu to make effective representation, even though they were not provided to the detenu on earlier occasion.Â I

say that on the same day, by letter dated 22.2.2018 copies of said documents were forwarded to the Jail Authority, to hand over to the detenu.Â The

same has been accordingly forwarded to the Jail authority on 27.2.2018.Â I say that I have supplied the said documents to the detenu since, in the

documents earlier supplied to detenu, there were some minor changes, which could not have vitiated the detenu's right to make effective

representation, if not supplied.Â However, by way of an abandon precaution the copies were supplied to the detenu and therefore in earlier affidavit

dated 26.2.2018, I have specifically denied the wrong translation of the documents being supplied to the detenu.Â In this background though it

appears that there are contradictions in the affidavit which would not affect, and prejudice the right of the detenu to make effective representations

therefore there is no substance to say that there are contradictions in the earlier affidavit which violates the right of the detenu to make representation

under Article 22(5) of the Constitution of India.â??

14. To our mind, therefore, the detaining authority admits that the translations earlier supplied were wrong.Â They contain some errors or they

contain minor changes, but maintain that they are now supplied.Â Pertinently, they were supplied to the detenue in Jail on 27th February, 2018 by

letter dated 22nd February, 2018. Prior thereto, it is evident from the affidavits in reply that the representation dated 9th February, 2018 was

rejected by the State Government. It was rejected on 22nd February, 2018. If that is how the State Government has approached the matter, then,

we see no reason for supplying the translations later on to the detainee in Jail and without any explanation in that behalf being provided while rejecting

the second representation. In other words, when that representation was considered and rejected, it is not the stand of the Government that the

petitioner's version that the translations were inaccurate or incorrect is baseless and without any merit. Rather, there was merit in the petitioner's

complaint. The stand is that firstly, it is denied that the petitioner has been supplied with wrong translation and therefore, he has been deprived of his

right of making a representation guaranteed by Article 22(5) of the Constitution of India. In spite of such denial in the earlier affidavit about supply

of translations, the copies of demanded documents were supplied to the detainee in Jail on 27th February, 2018 vide letter dated 22nd February,

2018. The second representation of the detenu dated 9th February, 2018 was forwarded to the Government on 22nd February, 2018 along with the

copies of demanded documents by making minor changes in it. It would not hamper the right of the detainee to make representation. Even they

were not provided to the detainee on the earlier occasion. This explanation of the respondents admits that there were some errors in the translation

and if not errors, there were minor changes made and therefore, by way of abundant caution, copies were supplied to the detainee in custody.

15. The deponent seems to be glossing over the representation, copy of which is very much with him when he files the first reply affidavit and

successive affidavits. The representation makes a reference to the continued detention being illegal on the grounds set out in the same. In ground

(b) at page 25B, the detainee says that certain portions of the grounds of detention in Marathi, as stated by him in detail, are not true and fair

translation of its counter part in English version. As a result, he could not make effective representation. He should be supplied true and correct

translation of grounds and other documents and then he proceeds to narrate from firstly to lastly at pages 25C to 25D as to which of the documents

and referred in which ground contain translation errors. The errors are not minor as is now proclaimed. Instead of the word 'like amount'

being translated accurately in Marathi, it is translated as 'life amount'. There is a reference to certain names and addresses, but in Marathi

version, that is not translated correctly. The petitioner proceeds to give instances of such errors and that is why the admission on the part of the

detaining authority of the later exercise to supply the translation to the detainee in custody is fatal.

16. If this representation of 9th February, 2018 is received and dealt with, then, why the documents were supplied subsequent to its rejection and as

explained in this affidavit remains unclear to us. If throughout it is maintained that the right of effective representation is not denied, then, this

version of the detaining authority on affidavit is perplexing. It is thus clear that the representations were dealt with in a casual manner. The

detainee has a right of making an effective representation and guaranteed to him by Article 22(5) of the Constitution of India is present to the mind of

the detaining authority. The right to make effective representation means he should be in possession of all documents and translations thereof,

which are relied upon in making the detention order or forming the grounds of such detention. The subjective satisfaction is culled out from these

grounds and the contents of the documents relied upon therein is evident from the version of the respondents themselves. In these circumstances,

we are of the clear opinion that the petitioner's right to make an effective representation against his continued detention is denied to him.

17. Ms. Mhatre's reliance upon the two judgments of the Hon'ble Supreme Court and this court are clearly misplaced. In the case of David Patrick

Ward and Anr. (supra), the detention order was challenged by British Nationals. Amongst several grounds, one of the grounds was that when a

representation was made to the State Government, it was not considered. It was not considered on the ground of pendency of the writ petition.

The procedure adopted is wholly wrong because the Hon'ble Supreme Court, in more than one cases, has emphasised the need for expeditious

consideration of representation. While dealing with this ground, on the basis of the materials placed before it, the Hon'ble Supreme Court concluded

that there is no merit in the same. The representations stated to have been sent to the State Government after filing of the writ petition were nothing

but a copy of the writ petition themselves. Those were received by the State Government through Naini Jail authorities and the affidavit of the State

Government explains as to how these representations were also properly considered.Â Since the representations were nothing but copies of the writ petition, the Government took a stand that because the issue raised in these representations is already sub-judice, the question of again considering them does not arise.Â There was a clear and firm stand taken in the counter affidavit filed by the State Government that the relief sought in the writ petition cannot be granted.Â Once that clear stand was taken, the question of the State Government then considering the representations, which are nothing but copies of the writ petition themselves, does not arise.Â This is how the Hon'ble Supreme Court distinguished the judgments, which mandate expeditious consideration of the representation of the detainees.Â This is thus, a purely factual matter and highlighted before the Hon'ble Supreme Court.Â No principle of law can be culled out and of the nature canvassed now before us.Â If the State Government was not obliged to consider the representation forwarded by the detainee before us post institution of the writ petition, then, there is no warrant then to urge that this representation was expeditiously considered with all the prayers made therein and all the prayers were rejected.Â That is not the stand taken at all.Â The stand is, as and by way of abundant caution, the petitioner was again supplied with the translations.Â The counsel appearing for the State forgets that implicit in this is an admission that the earlier translations were not accurate and complete.Â There is an admission that there were minor changes made therein.Â If the changes were made in the translated documents post detention order and post the institution of the petition and while considering the representation dated 9th February, 2018, then, the principle if at all culled out from this decision is of no assistance.

18. Smt. Khushbu Sandeep Jain (supra) was a case of successive habeas corpus petitions.Â The objection of the State Government was that the first writ petition was rejected.Â The second writ petition does not raise any fresh ground of challenge, but is mere reiteration of the earlier grounds, which were noted while dealing with the first petition.Â That is how this court summarised the legal principles and then also dealt with the contention that merely because a subsequent representation has been made to the detaining authority and post the disposal of the earlier writ petition, unless there was any fresh materials or new grounds placed before the authority in the subsequent representation, that was not enough to maintain the second

petition.Â In other words, in the absence of new grounds or fresh materials either in the subsequent representation or in the grounds of challenge in

the memo of the second petition, the said petition was not maintainable.Â This judgment is also of no assistance to the State Government.

19. Mr. Tripathi relied upon several judgments.Â In none of which, this peculiar issue was considered.Â It may be that Aslam Noorani (supra)

comes closer to what we have held.Â In that as well, dual prayers were made.Â The rejection of the dual prayers was not communicated and it was

admitted that due to typographical mistake in the reply letter, the communication rejecting the representation cannot be held to be affecting the right to

make effective representation.Â This court did not allow the Government to adopt such a stand.Â It maintained that because there was a

typographical mistake in the reply to the representation, his continued detention is vitiated.Â Beyond this, we do not see any principle and of the

nature sought to be relied upon.Â Even in the case of Aslam Noorani, the argument was that the second representation could not have been rejected

or could not have remained unattended.Â The petitioner was told to contact the detaining authority so far as his request regarding furnishing of vital

documents.Â Instead the State Government should have considered the representation is, therefore, the conclusion reached and relying upon sub-

section (3) of section 3 of the MPDA Act.Â We are not dealing with such a controversy.

20. It goes without saying that Article 22(5) of the Constitution of India contains a guarantee and if that guarantee is to be rendered meaningful, the

opportunity to make a representation must be effective.Â It is not an empty formality.Â To that extent, the other judgments relied upon have a vital

bearing.

21. In fact, in the case of Ramchandra A. Kamat (supra), the Hon'ble Supreme Court held thus:-

â??6. The right to make a representation is a fundamental right. The representation thus made should be considered expeditiously by the Government.

In order to make an effective representation, the detenu is entitled to obtain information relating to the grounds of detention. When the grounds of

detention are served on the detenu, he is entitled to ask for copies of the statements and documents referred to in the grounds of detention to enable

him to make an effective representation. When the detenu makes a request for such documents, they should be supplied to him expeditiously. The

detaining authority in preparing the grounds would have referred to the statements and documents relied on in the grounds of detention and would be

ordinarily available with him. When copies of such documents are asked for by the detenu the detaining authority should be in a position to supply them

with reasonable expedition. What is reasonable expedition will depend on the facts of each case.

7. It is alleged by the detenu that there had been unreasonable delay in furnishing of the statements and documents referred to in the grounds of

detention. It is the duty of the detaining authority to satisfactorily explain the delay, if any, in furnishing of these documents. We are in this context not

referring to the statements and documents not referred to in the grounds of detention for it may be that they are not in the possession of the detaining

authority and that reasonable time may be required for furnishing copies of the relevant documents, which may not be in his possession.

8. If there is undue delay in furnishing the statements and documents referred to in the grounds of detention the right to make effective representation

is denied. The detention cannot be said to be according to the procedure prescribed by law. When the Act contemplates the furnishing of grounds of

detention ordinarily within five days of the order to detention, the intention is clear that the statements and documents which are referred to in the

grounds of detention and which are required by the detenu and are expected to be in possession of the detaining authority should be furnished with

reasonable expedition.

10. The explanation given by the detaining authority regarding the delay in furnishing copies as seen in his counter affidavit is that the constitutional

right of the petitioner to make effective representation had not been infringed. According to the detaining authority ""it was not incumbent upon the

detaining authority to supply copies of all the documents relied upon in the grounds of detention to the petitioner alongwith the grounds within 5 days of

detention as petitioner has contended. In this context it would be relevant to state that the grounds were sufficiently detailed so as to enable the

petitioner to make an effective representation against the detention."" He further stated that all steps were taken to comply as expeditiously as possible.

It may not be necessary for the detaining authority to supply copies of all the documents relied upon in the grounds of detention at the time when the

grounds are furnished to the detenu but once the detenu states that for effective representation it is necessary that he should have copies of the

statements and documents referred to in the grounds of detention, it is the duty of the detaining authority to furnish them with reasonable expedition.

The detaining authority cannot decline to furnish copies of the documents on the ground that the grounds were sufficiently detailed to enable the

petitioner to make an effective representation. In this case, the detaining authority should have taken reasonable steps to provide the detenu or his

advocate with the statements and documents as early as possible. The reply to the detenu was not sent by the detaining authority and it is not clear

whether he appreciated the necessity to act expeditiously. As noted already, a communication was sent by the Deputy Secretary to the Deputy

Director, who did not comply with the direction and furnish copies of the statements and documents. After a lapse of 12 days i.e. on 22-9-1979, the

Deputy Director offered inspection.â??

22. In the light of the above discussion, we are of the opinion that there is merit in the contentions of Mr. Tripathi, based on this amended ground.Â

Once we found that the continued detention is vitiated, we have not allowed Mr. Tripathi to argue other grounds though he says that even they have

substance.

23. As a result of the above discussion, we quash and set aside the detention order.Â The writ petition is allowed.Â Rule is made absolute.Â The

detenue-Rupesh Ram Thakur be released forthwith, if not required in any other case.