

(2014) 08 MAD CK 0219

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 546 of 2014

Selvam

APPELLANT

Vs

The Secretary to Government

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(3)
Constitution of India, 1950 — Article 19(1)(g), 21, 22, 22(5)
Penal Code, 1860 (IPC) — Section 147, 294(b), 307, 323, 324
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3

Citation : (2014) 08 MAD CK 0219

Hon'ble Judges : V.S. Ravi, J; S. Manikumar, J

Bench : Division Bench

Judgement

S. Manikumar, J.—Selvam @ Selvendran, has been detained as a Goonda, in Central Prison, Madurai. He has sought for a Writ of Habeas Corpus, to quash the order of detention passed by the District Collector and District Magistrate, Ramanathapuram District, in his proceedings in No. 2 in No. 13/Goonda/2014 dated 08.05.2014 and to set the detenu at liberty.

2. Material on record discloses that the detenu has come to adverse notice in Kamuthi Police Station Cr. No. 119/14, under Sections 147, 323, 324, 498(A), 307 IPC and Section 4 of TNWH Act on 29.04.2014, which is under investigation. Pending investigation, the detenu is alleged to have involved in another Cr. No. 121 of 2014, for the offences under Sections 364(A), 365 IPC @ 364(A), 365, 294(b), 506(ii) IPC. He has been arrested and produced before the learned Judicial Magistrate, Kamuthi, on 29.04.2013 and remanded to judicial custody upto 13.05.2013. He has been lodged in Central Prison, Madurai. He has filed a bail application in Cr. M.P. No. 1078 of 2014 on 07.05.2014. On the materials placed, the District Collector and District Magistrate, Ramanathapuram, 2nd respondent, in exercise of the powers, under sub section (1) of Section 3 of the

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) read with G.O. (D) No. 101, Home, Prohibition and Excise (XVI) Department, dated 18.04.2014, under sub-section 2 of section 3 of the said Act, vide proceedings in No. 2 in No. 13/Goonda/2014 dated 08.05.2014, clamped, an order of detention against the petitioner.

3. Being aggrieved by the same, the petitioner has sent a representation dated 10.05.2014 to the District Collector and District Magistrate, Ramathapuram, 2nd respondent herein, to set aside the order of detention. A representation, dated 11.05.2014, is also stated to have been sent to the Secretary to the Government, Home, Prohibition and Excise Department, Government of Tamil Nadu, Secretariat, Chennai, 1st respondent, wherein, the petitioner/detenu has stated that, in the booklet furnished to him, though it has been stated that, the detenu was arrested on 29.04.2014 in Crime No. 119/2014, translated copy of the remand order in Tamil, has not been furnished, so as to enable the petitioner to make an effective representation.

4. In his representation, dated 11.05.2014, addressed to the 1st respondent, the petitioner has also contended that Tamil and English version of several pages in the Booklet differs, and that the 2nd respondent has mechanically passed the order of detention, without considering the said discrepancy. The detenu has also contended that several pages in the booklet were illegible, and therefore, he was not able to read and understand the same and hence, sought for supply of typed copies of those pages. In the said representation, the detenu has also sought for copy of G.O.(D) No. 101, Home, Prohibition and Excise (XVI) Department, dated 18.04.2014, a vital document relating to the order of detention, so as to make an effective representation to the competent authority, against the order of detention.

5. Based on the above pleadings, Mr. R. Alagumani, learned counsel for the petitioner submitted that translated copies of pages 5, 11 and 73 of the Booklet (i.e.) Arrest Report dated 10.05.2014, Remand order dated 29.04.2014 in Crime No. 119/2014 and the similar case, cited by the detaining authority, in the grounds of detention, pertaining to one Muniasamy, have not been furnished to the detenu, so as to enable him, to make an effective representation.

6. Reiterating the contents of the representation of the petitioner dated 11.05.2014 addressed to the 1st respondent, learned counsel for the petitioner further submitted that despite request for production of copy of G.O.(D) No. 101, Home, Prohibition and Excise (XVI) Department, dated 18.04.2014, relied on by the detaining authority, the same has not been furnished to the detenu, thus violating Article 22(5) of the Constitution of India.

7. He further submitted that legible copies were not furnished and thus, there is a violation on the part of the Detaining Authority in considering the

representation, in proper perspective and also the procedure contemplated under law. According to him, the detainee was not furnished with the relied on documents, in the language known to him.

8. Reliance has also been placed on a decision of the Apex Court in Union of India (UOI) Vs. Ranu Bhandari, in support of his contention that there is a violation of Article 22(5) of the Constitution of India, in not supplying documents, relied on by the Detaining Authority, to the detainee in the language known to him and alleging that there is infraction of constitutional rights, he has prayed to set aside the impugned order.

9. Based on the counter affidavit, booklet and the letter, dated 28.05.2014, of the Additional Secretary to Government, Home, Prohibition and Excise Department, Government of Tamil Nadu, Secretariat, Chennai, Mr. C. Ramesh, learned Additional Public Prosecutor, submitted that copies of Arrest Report dated 10.05.2014, Remand order dated 29.04.2014 in Crime No. 119/2014 and the similar case, cited by the detaining authority, in the grounds of detention have been furnished to the detainee, in the language known to him and therefore he had knowledge of remand. He further submitted that as per the letter dated 28.05.2014 of the 1st respondent, representation of the petitioner, dated 11.05.2014, has been received by the 1st respondent. According to him, the detention order has been passed, after arriving at the subjective satisfaction of the Detaining Authority. Therefore, he prayed to sustain the impugned order.

Heard the learned counsel for the parties and perused the materials available on record.

10. At Page 5 of the booklet furnished to the detenu, the Inspector of Police, Kamuthi Police Station, has submitted a report to the learned Judicial Magistrate, Kamuthi, seeking for remand in Cr. No. 119 of 2014, under Sections 147, 323, 324, 307, 498(A) IPC and Section 4 of the Women Harassment Act. In the said report, the learned Judicial Magistrate, Kamuthi, seemed to have passed an order of remand. Though the petitioner has mentioned the date of representation as 11.05.2014, from the letter No. 8571/Home, Prohibition and Excise Department, Secretariat, Chennai-9, dated 28.05.2014, it could be deduced that the representation dated 12.05.2014 sent through the Superintendent of Prison, Central Prison, Madurai, has been received by the Government on 19.05.2014 and that a reply has been given.

11. As rightly contended by the learned counsel for the petitioner, no separate remand order has not been enclosed in the booklet. Though by representations, dated 10.05.2014 and 11.05.2014 respectively, the petitioner has sought for a copy of the remand order, the same has not been furnished. It is one of the material documents, relied on, by the Detaining Authority, for arriving at the subjective satisfaction, as to whether, the detainee was in judicial custody or not and if on enlarged on bail, would indulge in such activities prejudicial to the public order.

12. From the perusal of the remand report, enclosed at Page 11 of the booklet, it could be deduced that the learned Judicial Magistrate, Kamudhi, has passed an order, which is a typed order. Therefore, two things emerged from the above,

(i) Remand order in Tamil version is not furnished, (ii) In spite of specific request, made by the petitioner, in his representation, dated 12.05.2014, to the 1st respondent, copy of the remand order, in Tamil version, has not been furnished.

13. Enclosing documents in the booklet, is to establish that the detaining authority has considered the same for the purpose of arriving at the subjective satisfaction, relevancy of which, may be explained, if called for. But the material taken into consideration by the detaining authority should also been known to the detenu, so as to enable him to make an effective representation, when detention order is challenged. Therefore, when the detenu demands an order of remand, it is obligatory on the part of the respondents to furnish the copy of the order, in the language known to him. Satisfaction of the authority that the detenu is in remand is different from informing the detenu of his remand in a case, which is also a fact considered by the detaining authority. Thus adherence to both, serve different purposes. Furnishing of documents considered by the detaining authority to arrive at the subjective satisfaction, is to make known the detenu the contents of the documents in the language known to him, for the purpose of making an effective representation, as per Article 22(5) of the Constitution of India.

14. On the failure on the part of the abovesaid document, in the language known to the detenu, there is a violation of Article 22(5) of the Constitution of India. On the aspect of furnishing the copy of the remand order, a document relied on by the Detaining Authority, this Court deems it fit to consider the following decisions:-

(a) In *Kubic Darusz Vs. Union of India (UOI) and Others*, , an important ground raised was that the detenu was not furnished with the grounds of detention in the language known to him. The detention order was in English. The detenu belonged to Poland and he wanted copy of the document in Polish language. After considering a catena of decisions, the Apex Court held as follows:-

Continued detention of the detenu has been rendered illegal by non-consideration of his representation by the appropriate government according to law, resulting in violation of Article 22(5) of the Constitution of India. Where the grounds are couched in a language which was not known to the detenu, unless the contents of the grounds were fully explained and translated to the detenu it would tantamount to not serving the grounds of detention and would thus vitiate the detention *ex facie*. It is the settled law that the detention order, the grounds of detention and the documents referred to and relied upon are to be communicated to the detenu in a language understood by him so that he can make effective representation against his detention.

(b) In *Powanammal Vs. State of Tamil Nadu and Another*, Tamil version of the remand order was not furnished. When that was raised as a ground in a Habeas Corpus Petition, this Court dismissed the same. On appeal, the Apex Court framed the following question:-

The short question that falls for our consideration is whether failure to supply Tamil version of the order of remand passed in English a language not known to the detainee, would vitiate her further detention.

Inviting the attention of the Apex Court to Article 22(5) of the Constitution of India, learned counsel for the appellant therein has submitted that Constitution of India imposes twin obligations on the authority making the order of detention in respect of a person. They are: (1) to communicate to such person the grounds on which the order of detention has been made and (2) to afford him the earliest opportunity of making a representation against the order. It is worthwhile to extract paragraphs 8 and 9 of the majority view of the Apex Court.

8. The law relating to preventive detention has been crystallized and the principles are well neigh settled. The amplitude of the safeguard embodied in Art. 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detainee but also to supplying their translation in script or language which is understandable to the detainee. Failure to do so would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order. (See *Hadibandhu Das Vs. District Magistrate and Another*,

9. However, this court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detainee need not show that any prejudice is caused to him. This is because non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detainee's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document, would equally apply to furnishing translated copy of the document in the language known to and understood by the detainee, should the document be in a different language.

(c) In *Kuppammal vs. The District Collector and District Magistrate, Thiruvallur District, Thiruvallur*, reported in 2001 MLJ (Crl.) 445, the Hon''ble Division Bench of this Court held as follows:-

?15. It is well settled that strict compliance with the prescribed procedure or all

legal requirements are considered as essential by various judicial pronouncements of the Apex Court and this Court. The detaining authority is required to follow strictly and scrupulously the forms and rules of law prescribed in that behalf or by the statutory provisions under which the order of detention is being made after arriving at a subjective satisfaction. In the event of any deviation or violation of the statutory provisions or infraction of Constitutional guarantees, the Courts will not hesitate to quash the orders of detention. Whatever be the justification to detain the slightest infraction of the constitutional guarantees would lead to the detenu being set at liberty.

18. It is by now well settled that in all detention laws, the orders of detention and the continuance of detention should be in conformity with Article 22 of the Constitution and the procedure laid down therein and slightest infraction of the constitutional protection guaranteed by Article 22 and in some cases Article 21 or 19(1)(g) would be a valid ground to make rule nisi absolute and consequently Courts do direct the detenu to be set at liberty forthwith.?

(d) In *Rabiyathil Pathavia Vs. The State Government of T.N. and 2 others*, , certain documents were given to the accused with a covering letter stating the purpose. The documents in English were not translated. The detenu therein was not in a position to know the contents of the document. In the abovesaid circumstances, the Hon"ble Supreme Court, following the judgment in *State of Tamil Nadu Vs. Senthil Kumar and Anr*, , of the Apex Court, at paragraph 4, held as follows:-

4. However, the detenu has a strong case on the other point, namely, the order of detention is not in Tamil, and is not accompanied by any covering letter explaining the purpose for which the documents were served on the detenu. Evidently, the documents in question were served on the detenu without the detenu being told about the purpose for which they are served. Failure on the part of the authorities to inform the purpose for which the documents were supplied to the detenu without any covering letter, will certainly vitiate the order of detention. Whenever a document is served on a detenu, the detenu should be in a position to know the purpose for which it is served on him, especially, when such documents are served after initial order of detention was passed against him. So long as the purpose for which the documents are served on the detenu is not disclosed, it will certainly create confusion in the mind of the detenu in the matter of submitting an effective representation, thereby, causing infraction of the constitutional right of the detenu as envisaged under Article 22(5) of the Constitution. That apart, the detenu has a case that he knows only Tamil and does not know English. Admittedly, the Tamil translation of the additional documents is also not served on the detenu. The view we are taking is fortified by no less authority than the decision, of the Supreme Court reported in *State of Tamil Nadu v. Senthil Kumar*, (vide paragraph 13).

(e) In *Daku Devi vs. State of Tamil Nadu*, (HCP. No. 590/2004 dated 21.09.2004), the detenu sought for copies of documents in Hindi claiming that

he does not know English as he had studied only upto Vth Standard. The request was rejected on the ground that the documents sought for were standardised documents. In the said case, the detenu was an Exporter. It was also contended that the detenu had signed the representation in English and in other places. Therefore, for the abovesaid reasons, non furnishing of the documents in the language known to him would not vitiate the order of detention. Having considered the rival submissions, at paragraph 20, the Hon"ble Division Bench held as follows:-

?20. In the present case, even the order of preventive detention itself indicates that the detenu was not conversant in writing English, which obviously implies that he was not capable of reading English. It is axiomatic that a person who does not know how to write English, cannot read English and similarly a person who does not know how to read English, cannot write English. The detenu himself had made a request for furnishing copies of the documents in Hindi. At that stage, such request was not rejected on the ground that the detenu knew English, but on the ground that the documents being in standardised form was well within his knowledge. If the authorities knew that the detenu knew English, they must have given that answer even in the very beginning. The specific assertion made by the petitioner in the Habeas Corpus Petition has not been challenged by filing any counter affidavit. Merely because the detenu signed in English in the representation or in other places, it does not mean that he was in a position to read and understand the language to such an extent to enable him to make an effective representation. Even the representation to which our notice has been invited by the learned counsel for the petitioner, clearly indicates that the detenu did not know how to read and write English. On the face of such unassailed materials, a mere contention raised at the hearing stage without any convincing supporting materials, cannot be accepted. In such view of the matter, the order of detention is liable to be quashed as non-furnishing of translated copies of relied documents relied upon by the detaining authority himself has vitiated the order of detention.?

(f) In Hadibandhu Das Vs. District Magistrate and Another, , the Supreme Court:-

?Mere oral explanation of a complicated order of the nature against the appellant without supplying him the translation in script and the language in which he understood would in our judgment, amount to denial of right of being communicated the grounds and of being afforded the opportunity of making a representation against the order.?

(g) In A.C. Razia Vs. Government of Kerala and Others, , the majority view of the Supreme Court at paragraph 10 is as follows:-

?We are concerned here with clause (5) of Article 22. The dual rights under clause (5) are: (i) the right to be informed as soon as may be of the grounds on which the order has been made, that is to say, the grounds on which the subjective satisfaction has been formed by the detaining authority and (ii) the

right to be afforded the earliest opportunity of making a representation against the order of detention. By judicial craftsmanship certain ancillary and concomitant rights have been read into this Article so as to effectuate the guarantees/safeguards envisaged by the Constitution under Clause (5) of Article 22. For instance, it has been laid down by this Court that the grounds of detention together with the supporting documents should be made available to the detenu in a language known to the detenu. The duty to apprise the detenu of the right to make representation to one or more authorities who have power to reconsider or revoke the detention has been cast on the detaining authority. So also the duty to consider the representation filed by or on behalf of the detenu with reasonable expedition has been emphasized in more than one case and where there was inordinate delay in the disposal of representation, the detention was set aside on that very ground.?

(h) In *Muruga Thevar vs. State of Tamil Nadu*, reported in 2007(1) MLJ (Crl.) 987, one of the grounds, on the basis of which, the detention order therein was questioned was that the remand order and the remand extension order, which formed the basis for the detaining authority to come to the conclusion that the detenu was in custody in connection with a criminal case, were not furnished in Tamil. It was contended that the detenu did not know English. Reliance was placed on *Powanammal's* case, cited *supra*. On the abovesaid aspect, the Hon'ble Division Bench of this Court, at paragraph 6 held as follows:-

?A perusal of the grounds of detention indicates that the two documents in questions viz., the remand order and remand extension order formed the basis for the detaining authority to come to a conclusion that the detenue was in custody in connection with the criminal case and that she was likely to be released on bail after filing the bail application. Therefore, it can be said that the documents in question were relied upon documents. Once such conclusion is reached, the ratio of the decision laid down by the Honourable Supreme Court is squarely applicable. Therefore, it is immaterial as to whether any prejudice was caused to the detenue and since the translated version of the relied upon document had not been given, it must be taken that the order of detention was vitiated.?

(i) In *Karunakaran vs. State of Tamil Nadu*, (HCP. No. 626/2008 dated 06.04.2009), copy of the remand report, arrest card were not served on the detenu along with the translated copies of the documents. On the above aspect, at paragraph 6, the Hon'ble Division Bench has held as follows:-

?6..... But, in so far as the translated version is concerned, when the copies are served upon the detenu, there was really a request for giving a translated copy and actually the translated copy was not supplied to him. It is quite evident from the communication particulars what is all mentioned thereunder is that he could get the translated version from the counsel who is already appointed to him. But that is not accepted, when the detenu is not conversant with the language in which the copies were served and when the request is also made,

the authorities should have supply the same so that he could understand the contents of the material. Mere supply of the copies of the documents relied on without making the detenu to understand what it is, would not satisfy the law and hence non compliance by giving the translated version would also made the order suffers and further this would be violative of right available to the detenu and this would make the order suffer.....?

(j) In *B. Sesurani vs. State of Tamil Nadu*, (HCP(MD) No. 909 of 2013 dated 29.10.2013), one of the grounds of challenge was that a bail application relied on by the detaining authority was not furnished in Tamil, which deprived the detenu therein to make an effective representation. While setting aside the detention order, the Hon'ble Division Bench, at paragraphs 8 and 9 held as follows:-

8. It is true that the Detaining authority is empowered to detain any person, which is in conversion of law and habitually committed the offence. But while doing so, the order of detention has to be communicated along with the relied on documents, if that could be material information, not only in the English Version, but also in the language known to the detenu. In the instance, the detenu should understand the order in the language known to him i.e. Tamil version, which has not been furnished by the Detaining Authority. Therefore, denial of such document in Tamil Version would vitiate the impugned order and accordingly, the same cannot be allowed to stand.

9. The Constitution requires that the grounds must be communicated in a language understood by the person concerned so that he can make an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu. Therefore, the detention order passed against the detenu is vitiated in law.

15. Thus It is well settled in catena of decisions that if any material document is considered by the detaining authority for arriving at a subjective satisfaction by the Detaining Authority, the detenu is entitled to a copy of such document, in the language known to him and that the contents of the same should also be explained. In the case on hand, there is no failure on the part of the Government, in furnishing the copy of the remand order, despite request.

16. On the aspect of furnishing legible copies of documents, it is worthwhile to consider the following judgments:-

(a) In *Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others*, , the Apex Court observed that the work "communication" is a strong word which means that sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenu in writing in a language which he understands. The Apex Court emphasised that if the grounds are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed.

(b) In *Mohd. Zakir Vs. Delhi Administration and Others*, , the Supreme Court held as follows:

?It is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention *pari passu* the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. It is manifest that question of demanding the documents is wholly irrelevant. The infirmity in this regard is violative of constitutional safeguard enshrined in Art. 22(5) of Constitution.?

(c) In *Ibrahim Ahmad Batti alias Mohd. Akhtar Hussain alias Kandar Ahmed Wagher alias Iqbal alias Gulam Vs. State of Gujarat and Others*, , the Supreme Court held as follows:

?In other words, mere service of the grounds in Urdu accompanied by copies of material documents and statements in English, Hindi or Gujarati on the petitioner on July 7 is no sufficient compliance of the duty to communicate contemplated by Article 22(5) according to counsel and he insisted that only on July 15, 1982 when Urdu translations of the bulk of documents and statements were served it could be said that the grounds were communicated to the detenu i.e. after 13 days of his detention without there being any exceptional circumstances and even on that date all Urdu translations were not furnished and this has happened notwithstanding the revocation of the earlier order precisely for failure to supply Urdu translations. It is in this manner that the constitutional safeguards conferred on the petitioner under Article 22(5) read with Section 3(3) of the COFEPOSA have been denied to him and, therefore, the continued detention of the petitioner is illegal.?

(d) In *Bhupinder Singh v. Union of India* reported in 1987(2) SCC 234, the detention order was challenged, on the grounds that legible copies were not furnished. Observing that the detenu was clearly denied of making representation and that there was a clear contravention of the right guaranteed under Article 22(5) of the Constitution of India, the Apex Court held that the detenu was entitled to be set at liberty. As he was on parole, the Supreme Court ordered that he need not be surrendered.

(e) In *Manjit Singh Grewal @ Gogi v. Union of India* reported in 1990 Supp. SCC 59, the appellant therein sought for certain documents. Copies supplied to him, were not legible. He was detained under Section (31) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities, 1974. When detention was challenged, the High Court dismissed the writ petition on the ground that there was no violation of the procedural safeguards. On appeal, the Apex Court, having found that the document supplied were not legible, quashed the detention and at Paragraph 4, held as follows:

?4. In view of the fact that the copies of the documents were, in fact, supplied at the request of the appellant, but the copies supplied were illegible, we are of the

opinion, that the safeguards provided by the Constitution have not been followed. In that view of the matter, the decision of the High Court cannot be sustained and, therefore, is set aside. The order of detention, dated June 9, 1988 is quashed and the appellant be set at liberty, unless he is required in respect of any other proceedings.?

(f) On the aspect of supply of illegible copies, this Court in *M.S. Rani v. District Magistrate and Collector of North Arcot Ambedkar Dist., Vellore and others* reported in 1992(2) MWN (Cri.) Mad 189, after considering a decision of this Court in W.P. No. 4229 of 1992, dated 25.08.1992 [*G. Sahadevan v. District Magistrate and Collector of North Arcot Ambedkar District, Vellore*], at paragraph 16, held as follows:

?The ratio laid down in the said decision applies to the facts of the instant case and the impugned order is liable to be quashed on the ground of violation of Article 22(5) of the Constitution of India, for not furnishing legible copies of the material documents relied on so as to make effective representation.?

(g) In *Kala v. District Magistrate and Collector of North Arcot Ambedkar Dist., Vellore and others* reported in 1992(2) MWN (Cri.) Mad 189, at Paragraph 6, this Court held as follows:

?It may be stated that supply of illegible copies of documents amounts to non-supply of documents. The ratio laid down in the above quoted case squarely applies to the facts involved in the instant case as here also legible copies of the relevant documents which have been considered in forming the subjective satisfaction by the detaining authority were not furnished to the detenu. Further, even though they were called for in the representation, his request was turned down. In the circumstances, the failure on the part of the authorities to furnish legible copies and refusal to supply legible copies when they were asked for the purpose of making an effective representation, infringes his right under Art. 22(5) of the Constitution. Hence we have no hesitation in holding that the impugned order of detention is vitiated on the ground of violation of Art. 22(5) of the Constitution and that the impugned order is liable to be quashed.?

(h) In *Tapas Chowdhury Vs. Union of India (UOI) and Others*, , one of the points raised was supply of illegible copies of certain documents and non-supply of certain documents. The Calcutta Division Bench, while setting aside the order of detention, at Paragraphs 10 and 11, considered the following decisions,

10. The imperative necessity of supplying the copies of the documents, statements and other materials relied upon in the grounds of detention has also been unequivocally emphasised by the Supreme Court in its decision in *Ichu Devi v. Union of India*,. In *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*,], it has been held by the Supreme Court that the grounds in Article 22(5) of the Constitution of India do not mean mere factual inferences but mean factual inferences plus factual materials which led to such factual inferences and the failure to communicate the factual material as a part of the grounds would

amount to non-communication of grounds on which the order of detention has been made and would thus infringe Article 22(5). In this connection the following observation of the Supreme Court in paragraph 7 of the said decision may be noticed:-

"It means that the detenu is to be informed not merely, as we said, of the inferences of fact but of all the factual materials which have led to the inferences of fact. If the detenu is not to be so informed the opportunity to solemnly guaranteed by the Constitution becomes reduced to an exercise in futility. Whatever angle from which the question is looked at, it is clear that "grounds" in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The "grounds" must be self-sufficient and self-explanatory. In our view copies of documents to which reference is made in the "grounds" must be supplied to the detenu as part of the "grounds"."

11. In *Kamla Kanyalal Khushalani Vs. State of Maharashtra and another*, it has been held by the Supreme Court in paragraph 4 that the documents and materials relied upon in the order of detention formed an integral part of the grounds and must be supplied to the detenu *pari passu* the grounds of detention and if the documents and materials are supplied later, then the detention is deprived of an opportunity of making an effective representation against the order of detention. Again in paragraph 6 of the said decision it has been observed by the Supreme Court thus:-

"***** * the law of preventive detention has now to satisfy a two fold test; (1) that the protection and the guarantee afforded under Article 22(5) is complied with, and (2) that the procedure is just and reasonable. In this view of the matter unless the materials and documents relied on in the order of detention are supplied to the detenu along with the grounds, the supply of grounds *simpliciter* would give him not a real but merely an illusory opportunity to make a representation to the detaining authority."

(i) In *Re: Sm. Puspa Soni*, reported in 1996 CrL L.J. 2801, the detenu was served with the grounds of detention in Hindi language as well as in English language. According to the detenu, many pages in the grounds of detention both in Hindi and English were illegible and there existed a lot of discrepancy in the English grounds of detention and Hindi grounds of detention. It was the further contention of the petitioner that Hindi grounds of detention served upon the detenu was not complete. After considering various decisions on the point, the Calcutta High Court held as follows:

9. It is well known that the preventive detention is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of detenu even though the detention may have been valid till

the breach occurred and regardless of the social cost involved in the release of a possible renegade.

(j) In *Anand Damani Vs. Union of India and Others*, , it was the contention of the petitioner that some of the documents, which, the detaining authority relied on, in the order of detention, were illegible and accordingly the procedural safeguard as provided under Article 22 of the Constitution of India, was not followed. The Calcutta High Court, at Paragraph 18, observed as follows:

We have to remember that Article 21 of the Constitution of India provides that life and liberty of a citizen could not be taken away by any authority of law and when Article 22 specifically laid down the procedure that has to be followed for curtailing the liberty of a citizen, those procedures should be strictly followed inasmuch as the constitutional safeguard if not followed will result in vitiating the order of detention passed by the detaining authority.

(k) In *Shri Shadab Khan Vs. Shri R.H. Mendonca and others.*, , one of the contentions made, challenging the order of detention, was that certain documents furnished to the detenu were illegible and thus, the right guaranteed under Article 22(5) of the Constitution of India, was denied. Following the decision made in *Manjit Singh Grewal @ Gogi v. Union of India* reported in 1990 Supp. SCC 59, at Paragraph 4, held as follows:

¶4. We wish to emphasise that the right of the detenu to make a representation under Article 22(5) of the Constitution of India stipulates the right of making an effective representation and not a illusory one. And when illegible copies of documents are supplied to the detenu, as is the case here, the right to make an effective representation is whittled down to an illusory one. And this is in clear violation of the mandate of Article 22(5) of the Constitution of India. Since in the instant case the detenu's right of making an effective representation under Article 22(5) of the Constitution of India was violated, his continued detention is rendered illegal in law and the detention order would have to be set aside.?

(l) In *Aswini Kumar More and Lily More Vs. Union of India and Others*, , the challenge to the detention order was on the grounds, inter alia, that certain documents, statements and materials along with grounds of detention furnished, were found to be illegible. There were other grounds of challenge as well. After considering the decisions made in (1) *Tapas Chowdhury Vs. Union of India (UOI) and Others*, (ii) (*Kirit Kumar v. Union of India*) (iii) (*Nafisa Khalifa Ghenom v. Union of India*) (iv) 1987 (Suppl.) SCC 576 (*Nandagopal Saha v. Union of India.*) (v) *Amit Kumar Agarwalla and Others Vs. Union of India (UOI)*, (vi) (*Md. Alam v. State of West Bengal.*) (vii) *Naina Jain Vs. Union of India (UOI) and Others*, , and on the facts and circumstances of the case, the Hon"ble Division Bench of Calcutta High Court, set aside the detention order.

(m) In *Smt. Kusum Mangala Singh Vs. R.H. Mendonca and Others*, , certain copies furnished were illegible or partly legible. Infringement of Article 22(5) of the Constitution was made. Reliance was placed on the decision made in *Moosa*

Velliat Vs. The Asstt. Secretary, Government of Maharashtra and Others, . Accepting the same, while setting aside the detention order, the Bombay High Court, at Paragraphs 6 and 7, held as follows:

6. In our view, on account of the circumstance, mentioned in paragraph 5 above, the detenu was prevented from ascertaining whether the translated copy given to him was a faithful translation of the original, and thus was deprived of his right to making a representation under Article 22(5) of the Constitution of India. We wish to emphasise that in the obligation of the respondents to furnish copies of original documents is implicit the obligation that such copies should be legible.

7. Since the copy of the original bail application and the bail under was illegible in part, in our view, the detenu's right to make an effective representation under Article 22(5) of the Constitution of India was impaired.

(n) In Smt. Gurmeet Kaur Vs. Shri B.S. Mohite, Commissioner of Police and others, , copies of the bail application in two CRS supplied to the detainee was illegible and by observing that right to make effective representation under Article 22(5) of the Constitution of India, was seriously affected, the detention was set aside.

(o) In Jamat Ali Mondal alias Mego alias Tapan Das Vs. Union of India and Others, one of the challenges to the detention order, was that the document supplied, was not in the language known to the detainee. The detainee sought for the documents in Bengali. After referring to a decision of the Calcutta High Court in Amit Kumar Agarwal v. Union of India reported in 1998 Cal CrL LR 109, at Paragraph 9, held as follows:

.....In our opinion, could lead the concerned authority empowered to take a decision on the petitioner's representation to arrive at a finding that the detention of the petitioner was not Justified and/or otherwise has been made for unauthorised purposes. Apart from the fact that while supplying copies of the documents, the detaining authority is not only obliged to supply such documents, whereupon reliance has been placed by him and which would have a nexus with the right of the detenu to file effective representation, such documents must be complete in all regards and must also be legible. There is no dispute in this proposition that translated copy of such documents must also be supplied in a language which the detenu understands. As noticed hereinbefore, even in the Information slip appended with the proposal made by the Zonal Director his specific statement has been made that the language or script known to the detenu is Bengali. In Mst. LMS Ummu Saleema's case (supra), the Apex Court had no occasion to consider this aspect of the matter. The Apex Court in the fact of that case relying upon or on the basis of its earlier decision in Khudiram Das Vs. The State of West Bengal and Others, , stated that the constitutional requirement under Article 22(5) was to be taken as Insistence that the basic fact and particulars which Influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the order of detention must be

communicated to the detenu so that the detenu may have an opportunity of making an effective representation against the order of detention. The Apex Court in several decisions as noticed hereinbefore, has categorically held that the question as to whether that any prejudice has been caused to the detenu and/or documents which had not been supplied were already known to him would be of no moment. Reference in this connection, maybe made to Mehrunissa Vs. State of Maharashtra, , M. Ahmed Kutty v. Union of India and Ab. Sathar Ibrahim Manik.

10. Keeping in view the admitted fact that Bengali version of the Items No. 5 to 8 aforementioned had not been supplied, we are of the opinion that the order of detention cannot be sustained as it is well settled that history of liberty is history of procedural safeguard.

(p) In Ruma Moitra Vs. Union of India (UOI) and Others, , the order of detention was challenged on the grounds, inter alia that supply of illegible documents and that non-furnishing of relevant documents, infringed the Constitutional rights. Placing reliance on decisions made in Smt. Dharmista Bhagat Vs. State of Karnataka and Another, , Amit Kumar Agarwalla and Others Vs. Union of India (UOI), and Aswini Kumar More and Lily More Vs. Union of India and Others, , the Calcutta High Court quashed the order of detention.

(q) In Gurusamy v. The Secretary to Government of Tamil Nadu, Prohibition and Excise Department reported in 2006(1) CTC 654, while accepting the contention that many documents supplied to the detenu in the shape of a booklet were illegible and therefore, the detenu was not in a position to make an effective representation, at Paragraph 8, the Hon''ble Division Bench held that,

8. Even though such a contention has been denied by the respondents in their counter affidavit, on perusal of the booklet, we find that several pages in the booklet are not legible. For example, pages 1, 2, 15 and 22 of the booklet appear to be quite illegible. It is thus obvious that assertion of the detenu that he was not in a position to make effective representation because legible copies were not supplied, is worthy of acceptance. The documents are supplied to the detenu with a view to make effective representation. If some of the relevant documents supplied are not legible, it is obvious that the detenu would be prejudiced and would not be in a position to make proper representation. This contention is therefore acceptable.

(r) In S. Parthiban v. The State of Tamil Nadu reported in 2008(2) MWN (Cr.) 433 (DB), among other grounds, the order of detention was set aside, on the grounds that the remand request available, at page number 47 of the paper book, was in English and totally illegible and not readable.

(s) In Smt. Kasthuri Vs. The District Collector and District Magistrate, The Secretary to Government, State of Tamil Nadu, Home, Prohibition and Excise Department and The Superintendent, Central Prison), after considering the guidelines issued in D.K. Basu Vs. State of West Bengal, regarding arrest and of

the fact that inspite of request, to provide translated copies, the same was not furnished to the detenue, at Paragraph 11, a Hon''ble Division Bench held as follows:

11. We are of the view that non-consideration of the vital contradiction, with regard to the place of arrest available at Page Nos. 113 B and 175 of the Booklet supplied to the detenu is nothing but non-application of mind in passing the detention order, which vitiates the detention order. It is not in dispute that a relied on document available at Page Nos. 69 to 71 of the typed set is only in English. However, inspite of the request made by the detenu, translated copy of the same in Tamil, language known to the detenu the same was not furnished to him, so as to enable the detenu to make effective representation.

(t) In Queen Mary v. State reported in 2010(1) MWN (Cr.) 219 (DB), at Paragraph 6, the Division Bench held as follows:

6. We have also paid our attention to the documents available in the paper book. Upon such perusal, we are satisfied with the contention of the learned counsel for the petitioner that the copies of the important documents like Arrest Memo and the Remand Report are not legible and by supplying such illegible copies of the said documents, the detenu has been deprived of the right of making an effective representation at the earliest point of time for revocation of the detention order. Of course, the second respondent, has filed the counter affidavit stating that the copies supplied to the detenu are legible and that if the detenu makes a representation for supply of more clear copies, the same will be supplied. The expectation of the Detaining Authority that the detenu should apply for supply of legible copies itself is an erroneous assumption when the personal liberty of a person is sought to be denied by resorting to the provisions of Preventive Detention Laws. Every real opportunity must be given to the detenu to make an effective representation at the earliest. In this case, it is a fact that copies of a number of documents supplied to the detenu in the paper book are not legible and that the same will amount to denial of reasonable opportunity to make an effective representation at the earliest point of time.

(u) In C. Nagaraj Vs. State of Tamil Nadu and Another, , a Division Bench of this Court, held as follows:

it is necessary that the detenue should be furnished with the copy of the remand order not only in English version but also in the language known to him so as to enable him to make effective representation for redressal of the grievance before the appropriate forum.

(v) In The Medical Officer, Government Primary Health Centre Vs. Rasupaiyan @ Rasu and P. Kalimuthu, , a Division Bench of this Court, at Paragraph 8, held as follows:

8. Thus, in the light of the above settled position, in view of supply of illegible copy of bail dismissal order, that too with defective translation and also

considering the fact that safeguards provided by the Constitution have not been followed, the impugned detention order.....is quashed.

17. Letter, dated 28.05.2014, of the Additional Secretary to Government, Home, Prohibition and Excise Department, Government of Tamil Nadu, Secretariat, Chennai, discloses that the representation, dated 12.05.2014, has been rejected by the said authority, stating that clear copies of Arrest Report dated 10.05.2014, Remand order dated 29.04.2014 in Crime No. 119/2014 and similar case, cited by the detaining authority, in the grounds of detention, have been served to the detenu in the booklet.

18. Perusal of the materials available on record, discloses that the petitioner, in his representations, dated 10.05.2014 and 11.05.2014 respectively, addressed to the respondents 1 and 2, has sought for the copies of the Arrest Report, Remand Order in Tamil and similar bail order, cited in the grounds of detention, and has pointed out the illegibility of documents, enclosed at Pages 5, 11 and 73 that, they were in English. Responding to the request, the Additional Secretary to Government, Home, Prohibition and Excise Department, Government of Tamil Nadu, Secretariat, Chennai, by letter dated 28.05.2014, which has been marked to the petitioner/detenu, has rejected the representation, dated 12.05.2014, stating that all the documents sought for have been furnished, except, furnishing of G.O.(D) No. 101, Home, Prohibition and Excise (XVI) Department, dated 18.04.2014, stating that it is not mentioned in the Preventive Detention Act, to serve the same to the detenu. Therefore, it is abundantly clear that the representation, dated 12.05.2014 addressed to the 1 respondent has been acted upon, but, even then, the translated version of the remand order, has not been furnished. Consideration of the representation, dated 11.05.2014, is defective.

19. Under Article 22(5) of the Constitution of India, when any person is detained, in pursuance of an order made under any law, which provides for preventive detention, the authority making the order shall, as soon as may be, not only 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. The contention of the learned Additional Public Prosecutor that the representation of the petitioner, dated 12.05.2014, has been duly considered by way of a reply, dated 28.05.2014 and communicated to the petitioner, is not correct.

20. For the reasons stated supra and in the light of the decisions, the impugned detention order is liable to be set aside and accordingly, set aside. The Habeas Corpus Petition is allowed. Consequently, the detenu is directed to be released forthwith, if his presence is not required in connection with any other case.