

(1991) 06 BOM CK 0031

In the Bombay High Court

Case No : Criminal Writ Petition No. 1362 of 1990

Smt. Hawabi Sayed Arif Sayed Hanif

APPELLANT

Vs

L. Hmingliana, Secretary (Preventive Detention) and others

RESPONDENT

Date of Decision : 27-06-1991

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 2, 3, 9
Constitution of India, 1950 — Article 245
Criminal Procedure Code, 1973 (CrPC) — Section 177
Customs Act, 1962 — Section 2
Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 — Section 3, 5

Citation : (1991) 93 BOMLR 673 : (1992) CriLJ 437 : (1992) 1 MhLj 348

Hon'ble Judges : Sujata V. Manohar, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : M.G. Karmali and P.G. Merchant, for the Appellant; Mrs. Ranjana P. Desai and Mr. Samant, APP. and R. M. Agarwal, for the Respondent

Judgement

Mrs. Sujata Manohar, J.—The petitioner is the wife of one Sayed Arif Sayed Hanif against whom an order of detention has been issued u/S. 3(1) of the conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the "COFEPOSA Act") on 23rd October 1990 by the Secretary (Preventive Detention, Government of Maharashtra, Home Department. This order has been issued against the detenu in order to prevent him from smuggling goods. 2. In the Grounds of Detention, it is stated that in pursuance of intelligence collected by the Officers of the Directorate of Revenue Intelligence, surveillance was maintained by the Officers of the Directorate of Revenue Intelligence in the sea off Karwar for a suspected Arab Dhow carrying silver being smuggled into India. On 25-9-1990 these officers sighted the Arab Dhow about 3 to 5 nautical miles away from the Karwar harbour. It was stopped. And on inspection, the officers found 150 packages containing contraband silver ingots. There was a crew of 9 persons on Board whose names are set out in the

grounds of detention. These 150 packages of silver ingots were transferred to the coast guard ship for safe keeping. The coast guard ship as well as the Arab Dhow and silver ingots were brought to Bombay and the silver packages were seized. The vessel was also seized.

3. On 27-9-1990 the statements of the 9 crew members were recorded. The detenu was not a part of the crew. He has been detained as having master-minded the smuggling operations in question. The detenu Sayed Arif Sayed Hanif is a resident of Bombay. He had offered Sajjid Ali Abdul Rahman Qureshi, one of the crew members, the job of piloting a vessel from Dubai to the Indian Coast carrying contrabands. The detenu had called Sajjid Ali to his residence in Bombay and had handed over to him a passport, an air-lines ticket, 100 U.S. dollars, 400 dollars in Traveller's cheques and Rs. 2000/- in Indian currency. Sajjid Ali was directed to proceed to Dubai. The detenu also went to Dubai and he arranged for the smuggling of 150 silver bricks into India. The first attempt of smuggling silver bricks into India was made in July 1990 when the detenu had instructed the vessel and its crew to bring the vessel off the Light-house at Murud, on the Maharashtra coast in 5-6 fathoms of water. He had directed Sajjid Ali to contact him on a walkie - talkie set as described in the grounds of detention. When the vessel arrived near the light-house, conditions were not suitable for landing. Hence the vessel returned to Dubai. The second attempt to smuggle silver was made in August 1990. On this occasion also the detenu went to Dubai to make arrangements for shipment of silver bricks being smuggled into India. He gave instructions to the crew to take the silver consignment to a place off the Goa coast near Goa Airport in 5-6 fathoms of water. In the alternative, the consignment was to be taken to place off the Karwar light-house in 5-6 fathoms of water. This attempt also failed as it was not possible to land the contraband at either place. The third attempt was made in September 1990, when as per the instructions of the detenu an attempt was made to smuggle the silver into India at a place off the Karwar coast near the red-light-house. The vessel was, however, apprehended, as set out earlier, by the Revenue Intelligence.

4. In his statement the detenu has stated that he is doing sundry jobs helping people smuggle goods into India. This statement has been subsequently retracted. The detenu however, in 1987 was apprehended with 80 gold bars with foreign marks which he was carrying in a Fiat car which he was driving from Delhi to Bombay. Proceedings in respect of the seizure of this gold are still pending at Delhi. It is stated in the grounds of detention that the detenu is a habitual smuggler and that he is likely to continue to indulge in smuggling activities in future unless he is detained. The order of detention is dated 23-10-1990. It is served on the detenu on 26-10-1990.

5. At the time of the detention order the detenu was in Jail. The grounds of detention refer to this fact, as also to the fact that bail has not been granted to the detenu in spite of his application. The authorities go on to say that the persons who are charged with smuggling are generally granted bail and therefore

there was a compelling necessity to issue the detention order to prevent the detenu from indulging in such prejudicial activities in future even though he was in judicial custody.

6. On 19-11-1990 a declaration was made u/S. 9(1) of the COFEPOSA Act by the Central Government. The material part of this declaration, which is challenged by Mr. Karmali, learned advocate for the detenu, is as follows :

"Now therefore, I, the undersigned, hereby declare that I am satisfied that the aforesaid Shri Sayed Arif Sayed Hanif is likely to smuggle goods into and through the Indian coastal waters contiguous to the State of Karnataka which is highly vulnerable to smuggling as defined in Explanation 1 to S. 9(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974."

This declaration was served on the detenu on 8-12-1990. His continued detention has been confirmed by the Advisory Board.

Jurisdiction :

7. In the present petition the detenu has challenged his continued detention under the COFEPOSA Act on several grounds. The first challenge of the detenu is to the jurisdiction of the Secretary, Preventive Detention, Government of Maharashtra, Home Department to issue the order of detention. According to the detenu the order of detention has been passed against him on the basis of the incident of 25-9-1990 which took place off the Karwar Coast, in the State of Karnataka. Hence it is submitted by Mr. Karmali that it is only the authorities in the State of Karnataka or the Central Government that can issue an order of detention. The State of Maharashtra has no jurisdiction in this regard.

8. Section 3 of the COFEPOSA Act empowers the Central Government or the State Government or any officer of the Central Government or any officer of a State Government as specified in that section and specially empowered for that purpose, to make an order of detention if satisfied with respect to any person including a foreigner, that it is necessary to do, so, with a view to prevent that person, inter alia, from smuggling goods or engaging in transporting or concealing or keeping smuggled goods, or otherwise dealing in smuggled goods.

9. u/s 2(a) of the said Act, the "appropriate Government" is defined to mean, as respects a detention order made by the Central Government or a person detained under such order, the Central Government; and as respects a detention order may by a State Government or by an officer of a State Government or a person detained under such order, the State Government. These sections do not, in terms, delimit the territorial jurisdiction of a State Government to issue an order of detention. It is, however, urged by Mr. Karmali that in the case of a trial of a criminal offence, the court within whose local jurisdiction a crime is committed has the jurisdiction to try that offence. (See S. 177 Criminal Procedure Code). By analogy, he submits that a detention order can only be

made by the State Governments within whose territory the act giving rise to detention took place.

10. This argument, in our view, is fallacious. In the first place, a preventive detention order is not made in respect of any specific act which has already taken place. The order of preventive detention, by its very nature, is to prevent the person concerned from acting in a prejudicial manner as set out in the COFEPOSA Act, in futuro. The apprehended activities of the detenu, should, undoubtedly, have some nexus with the State which has made the order of detention (when such order of detention is made by the State Government or any of its officers so empowered under the provisions of the said Act). Where the detenu is a resident of a particular State, this may lead the State concerned to entertain a legitimate apprehension that the detenu may indulge in prejudicial activities such as smuggling, within that State; or that he may conspire to indulge in such activities, within the State. In such a situation that State would be entitled to make an order of detention. What is relevant for the purpose of preventive detention is not where the past activity took place but where the future activity is likely to take place. The past is relevant only to the extent that it gives rise to apprehensions regarding the future. If the apprehended future activity has territorial nexus with the State in question, that State can issue an order of preventive detention. Moreover if the person likely to indulge in a prejudicial activity is a resident of a particular State this may legitimately give rise to an apprehension of his indulging in such activity within that state.

11. In this connection Mr. Karmali drew our attention to Art. 162 of the Constitution which provides that the executive power of a State extends to matters with respect to which the legislature of a State has the power to make laws. Art. 245 provides inter alia that the legislature of a State may make laws for the whole or any part of the State. The two articles, read together prescribe that the executive power of a State must be exercised in connection with that State. As far back as 1957, the Supreme Court, in the case of *The State of Bombay Vs. R.M.D. Chamarbaugwala*, said with reference to Art. 225 that the doctrine of territorial nexus is well established. "Sufficiency of territorial connection involves a consideration of two elements, namely (a) the connection must be real and not illusory and (b) the liability sought to be imposed must be pertinent to that connection". These principles have been applied not merely to consider the validity of taking statutes enacted by a State, but other State statutes also (vide *The State of Bihar and Others Vs. Charusila Dasi*, regarding public religious endowments). The same principles would extend to the executive acts of a State in view of Art. 162. As an order of preventive detention seeks to prevent a person from indulging in a prejudicial activity in future, the person being detained or the apprehended activity must have territorial nexus with the State making the order.

12. In the present case, both the detenu and the apprehended activity of smuggling have a territorial nexus with the State of Maharashtra. The detenu is a

resident of Bombay. The grounds of detention point to a conspiracy hatched by the detenu in Bombay to smuggle silver ingots from Dubai into India. The detenu had engaged some of the crew members of the vessel which brought the contraband silver into India, in Bombay. Their air-tickets have also been purchased by the detenu in Bombay. The grounds of detention also indicate that arrangements were made for the disposal of smuggled silver ingots in Bombay. According to the respondents the seizure of silver was also in Bombay although it was taken charge of for "safe custody" at Karwar.

13. Moreover, the grounds of detention show that of the two previous attempts made to smuggle the silver, the first attempt was to smuggle the silver at a spot within 5 or 6 nautical miles of Murud, which is in Maharashtra. This may legitimately give rise to an apprehension that in future smuggling may take place in the State of Maharashtra. There is, therefore, a clear nexus between the detenu, his activity of smuggling goods and the State of Maharashtra. The fact that the incident of 25th September 1990 took place off the coast of Karwar in Karnataka does not mean that future smuggling will be confined only to the State of Karnataka. Hence this incident is not sufficient by itself to oust the jurisdiction of the State of Maharashtra or its officer to make an order of detention. 14. In this connection Mr. Karmali has drawn our attention to the declaration under S. 9(1) of the COFEPOSA Act which refers only to the likelihood of the detenu smuggling goods into India and through the Indian Coastal waters contiguous to the State of Karnataka. He has submitted that the activity sought to be prevented was therefore, only in the State of Karnataka. In our view, however, a declaration u/S. 9(1) has to be read along with the original order of detention which was passed for deciding the question of jurisdiction. Because the question relates essentially to the jurisdiction of the detaining authority to pass the original order. The declaration u/S. 9(1) must necessarily be made by the Central Government. Hence the question of territorial jurisdiction of a State Government does not arise in respect of a declaration u/S. 9(1) and cannot be determined solely by reference to that declaration. On a perusal of the grounds of detention alone with the declaration u/S. 9(1), it is clear that there is a strong territorial nexus between the smuggling activities which are sought to be prevented and the State of Maharashtra also and not merely the State of Karnataka.

14. Validity of Declaration u/s 9(1) :

15. It is next submitted by Mr. Karmali that the declaration u/S. 9(1) of the COFEPOSA Act in the present case is bad in law and should be set aside, because the declaration refers to smuggling goods in or through Indian Coastal waters instead of Indian customs waters. Now, u/S. 9(1) a declaration as set out therein can be made by the Central Government or any officer of the Central Government (as specified in that section) if he is satisfied, inter alia, that such a person smuggles or is likely to smuggle goods into, out of or through any area "highly vulnerable to smuggling". Explanation (1) to S. 9(1) defines "area highly vulnerable to smuggling", inter alia, as (i) the Indian customs waters; (ii) the

inland area fifty kilometers in width from the coast of India falling within the territories of the States of Gujarat, Karnataka, Kerala, Maharashtra, Tamil Nadu and the Union territories of Goa, Daman and Diu and Pondicherry, etc.

16. Section 2(d) defines "Indian Customs waters" as having the same meaning as in clause (28) of S. 2 of the Customs Act 1962. S. 2(28) of the Customs Act 1962 defines "Indian Customs waters" as "waters extending into sea up to the limit of contiguous zone of India u/S. 5 of the Territorial waters, Continental Shelf, Exclusive Economic zone and other Maritime Zones Act, 1976 (hereinafter referred to as the Territorial Waters Act, 1976) and includes any bay gulf or river.

17. The Territorial Waters Act, 1976 defines "territorial waters". S. 3 of that Act state that the sovereignty of India extends and has always extended to the territorial waters of India. Under sub-sec. (2) of S. 3, the limit of territorial waters is the line, every point of which is at distance of twelve nautical miles from the nearest point of the appropriate baseline.

18. Section 5 defines the "contiguous zone" of India as an area beyond and adjacent to the territorial waters. And the limit of the Contiguous zone is the line, every point of which is at a distance of twenty four nautical miles from the nearest point of the baseline as set out in S. 5 of the Territorial Waters Act, 1976. The Contiguous Zone extends beyond territorial waters. Indian Customs Waters, therefore, cover an area extending to 24 nautical miles from the coastal baseline in the States specified in explanation 1 to S. 9(1) of the COFEPOSA Act. Looking to this definition of. "Indian Customs Waters", they cover not merely Indian Coastal Waters but also much more, because the customs waters extends to 24 nautical miles beyond the coastal baseline. Indian coastal waters are therefore within the Indian customs waters. The declaration in the present case, therefore, which refers to the likelihood of the detenu's smuggling goods into and through the Indian coastal waters contiguous to the State of Karnataka, clearly refers to an area within the Indian Customs waters which is highly vulnerable to smuggling. It complies with the requirements of S. 9(1).

19. Mr. Agarwal, learned advocate for the Central Government, has described this with reference to "coastal" waters instead of "customs waters" as merely a typographical error which does not affect the order. According to Mr. Karmali learned advocate for the petitioner, an error of this nature indicates non-application of mind by the Central Government. In the first place, it is not clear whether this is merely a typographical error. Assuming however, that it is so, does it necessarily vitiate the order of detention ?

20. Mr. Karmali drew our attention to a decision of the Division Bench of this Court dated 6th June 1988 in Criminal Writ Petn. No. 246 of 1988, Mackie Francis Pereira v. State of Maharashtra, decided by Pendse and Tipnis JJ. In that case, in the grounds of detention, the date of the raid which was carried out was wrongly mentioned as 13th September 1987 instead of 23rd September 1987. The court held that as the wrong date was mentioned the detenu was deprived of a

reasonable opportunity of making any effective representation. Although it was urged that it was a typographical error, the court held that if it was a typographical error it would amount to non-application of mind by the detaining authority. In that case the date of the raid was very material and it was an incident in respect of which the detenu was entitled to make a representation. An error of this nature would also indicate non-application of mind. In the present case however, there was no such error in the grounds of detention. The error is in the declaration u/S. 9(1) when it describes the area highly vulnerable to smuggling. The location of smuggling activities is clearly set out in the grounds of detention. The right of the detenu to make a representation is not affected in any way by this typographical error in the declaration. Hence the ratio of the Division Bench has no application here.

21. In *re Shoilen Dey*, reported in AIR 1949 Bom 75 : 1949 Cri LJ 173 a Division Bench of this court considered a case where the detenu was charged with inciting labourers of Tata Air India, Bombay. There was no such company in existence. The Company which was in existence was Air India Limited. The court said that there was no indication in the detention order as to which company was meant. The error in the detention order was material and showed want of due care and caution on the part of the authority. It, therefore, struck down the detention order. In the case of *Dwarika Prasad Sahu Vs. The State of Bihar and Others*, there was a mistake in stating the contents of a cash memo which was a material document relied upon for the purpose of detention. In fact there were two cash memos and not one as set out in the grounds of detention. The court said that the grounds of detention were misconceived and not existing, and that the District Magistrate had proceeded to make the order of detention without even caring to examine as to whether the grounds of detention were right or not. It therefore set aside the detention order. In these cases there were important factual mistakes in the detention order and the grounds of detention which vitiated the detention order. In the present case, we are not concerned with the grounds of detention at all. We are only concerned with the declaration u/S. 9(1). There are no factual mistakes which affect either the grounds of detention or the right to make a representation. Even the so-called error of referring to the area of smuggling activity as coastal waters, in fact, correctly describes the area of smuggling activity. We have only to see in the present case whether the declaration u/S. 9(1) is in compliance with all the requirements of that section. In our view the declaration complies with the requirements of S. 9(1) because Indian Coastal waters form a part of the Indian Customs Waters.

Delay :

22. It is next urged that there has been a delay in service of the declaration u/S. 9(1) on the detenu. This has affected the detenu's right to make a representation. The declaration was made on 19-11-1990. It was served on the detenu on 8-12-1990 and the detenu was produced before the Advisory Board on 19-12-1990. In this connection the respondents have filed an affidavit in order to

explain why the declaration of 19-11-1990 was served on the detenu only on 8-12-1990. The declaration which was made by the Central Govt. On 19-11-1990 was received by the Sponsoring Authority on 22-11-1990. On 23-11-1990 the declaration was sent to the Central Prison at Aurangabad for service on the detenu as the detenu was lodged there. It was received by the Superintendent Aurangabad Central prison on 27-11-90. In the meanwhile the detenu had been brought to the Bombay Central Prison. Hence on the very next day i.e. on 28-11-1990 the declaration was sent by Registered post to the Central Prison at Bombay. This was received by the Bombay Central Prison only on 7-12-1990. As the detenu was in J.J. Hospital, it was sent to the Hospital prison on 8-12-1990. And on the same day it was served on the petitioner - detenu. In these circumstances there is no unreasonable or unexplained delay on the part of the authorities concerned in serving the declaration on the detenu. Moreover, the meeting of the Advisory Board was held on 19-12-1990, 11 days after the service of the detention order. The detenu therefore had sufficient time to make a representation in connection with this declaration also.

23. Our attention was drawn to a decision of the Delhi High Court in the case of Sh. Parammal Siddik Vs. Union of India (UOI) and Others, where the Delhi High Court said that a period of 10th days between the serving of the copy of a declaration on the petitioner and the meeting of the Advisory Board was not sufficient for preparing a representation. In the case before the Delhi High Court, there was a gross delay of 4 months in serving the declaration on the detenu. The explanation for this delay of about 4 months in serving the copy of the declaration was not satisfactory. In this context the Court said that a mere 10 days of making a representation were insufficient. In the case of Smt. Azra Fatima Vs. Union of India (UOI) and Others, , the Supreme Court drew a distinction between the delay in serving the grounds of detention and the delay in serving a declaration. There was a delay of 21 days in serving the declaration. The explanation for the delay was accepted by the Supreme Court. A gap of 13 days between the date of service and the meeting of the Advisory Board was also considered adequate. In circumstances of the present case, in our view, it cannot be said that the detenu has been deprived of an opportunity of making a proper representation in respect of his continued detention under the declaration.

Non-placement of Documents

24. It was next submitted on behalf of the detenu that certain material documents were not placed before the concerned authority at the time when the declaration u/S. 9(1) was made. In the grounds of detention a reference has been made to a statement Sajjid Ali which he had retracted on 1-10-1990. There is a reference this statement as well as its retraction in the grounds of detention. Thereafter, in the interregnum between the making of the detention order and the making of the declaration u/S. 9(1), Sajjid Ali made a further detailed retraction of his statement in his bail application which was dated 8th November, 1990. Mr. Karmali submits that this detailed retraction ought to have been placed

before the Central Government for consideration at the time when it made a declaration u/S. 9(1). He points out that certain additional documents were in fact placed before the declaring authority. But this detailed retraction was not so placed.

25. We have to consider whether not placing of this second retraction before the declaring authority vitiates the declaration u/S. 9(1) in any manner. It is rightly pointed out by Mr. Agarwal on behalf of the declaring authority that the fact that Sajjid Ali had re-treated his original statement was already before the declaring authority. A more detailed retraction would make no difference to the case before the declaring authority. He also points out that this detailed retraction was not by the detenu himself but by one of the co-detenus. The second retraction therefore is not a vital document which would affect the making of a declaration u/S. 9(1) of the COFEPOSA Act. Moreover, declaration u/S. 9(1) is for the purpose of continuing detention of the detenu in cases where inter alia, the detenu is likely to smuggle goods into, out of or through any area highly vulnerable to smuggling. The attention of the declaring authority, therefore, has to be focussed on the area which is highly vulnerable to smuggling. Of course the declaring authority u/S. 9(1) must consider whether any ground is made out for the continued detention of the detenu. In our view, in the present case, the second retraction of a co-detenu is not a vital document which would affect the decision of the declaring authority.

26. It is next submitted that the full text of the remand order in respect of other co-detenus was not placed before the detaining authority. The remand application No. 981/90 dated 28-9-90 was made in respect of the crew members. A copy of this remand application is annexed to the grounds of detention. At the foot of the remand application the order is endorsed to the effect that all accused are remanded to judicial custody till 11-10-1990. It was submitted by Mr. Karmali that full text of the remand order was not placed before the detaining authority. This "full" text of the remand order is a cryptic order which is as follows :

ORDER

- (1) P.N. (Foreign National),
- (2) Investigation is not over,
- (3) Adjudication is not over,
- (4) Defence advocate not prays bail.

Sd/- 28-9-90 Addl. Chief Metropolitan Magistrate, 8th Court, Esplanade, Bombay".

In our view, not placing this order before the detaining authority has not affected in any manner either the subjective satisfaction of the detaining authority or the detenu's right to make a detailed representation. All that the detaining authority

required to know was whether any bail application had been made and if so, what was the outcome of that bail application; or whether any remand application in respect of the detenu had been granted or not. The order which is in fact conveyed to the detaining authority is sufficient for this purpose.

27. Undoubtedly there are a number of cases where the courts have said that placing the full text of the judicial order before the detaining authority is mandatory for the authority to arrive at any subjective satisfaction as to the necessity or otherwise of passing an order of preventive detention. But whether in a given case, the full text of any judicial order on a remand application is required to be placed before the detaining authority or not, will depend upon the nature of the order, the nature of the application in which the order is made and the relevance of this order to the detaining authority's subjective satisfaction. Looking to the nature of the order, in our view, placing of the "full" text of the order would not have made any difference in the present case to the subjective satisfaction of the detaining authority. As observed by the Supreme Court in the case of *Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr*, it is not necessary to furnish copies of documents to which casual or passing reference may be made but which are not relied upon by the detaining authority in making the order of detention. In *Criminal Writ Petn. No. 372 of the 1990 Apines Victor v. A. K. Batabyal* in their judgment dated June 22, 1990 Kurdukar and Sindhakar JJ. a similar contention was negatived by the Division Bench. In that case also the remand application was placed before the detaining authority with the order noted at the foot of it. But the full text of the order was not placed. The Court, after considering the text of the order, held that no prejudice had been caused by not placing the full text of the order before the detaining authority.

28. Mr. Karmali drew our attention to a decision dated 22-11-1990 of *Puranik & Dani JJ.* in *Criminal Writ Petn. No. 729 of 1990 Kanchan Chandra Hemrajani v. Union of India*. In that case the remand application was placed before the detaining authority but the full text of the order of bail along with conditions imposed, was not placed. The court said that the bail order and the conditions imposed were directly relevant. Not placing such an order before the detaining authority vitiated the order. In the case of *Reshma v. Union of India*, *Criminal Writ Petn. No. 881 of 1988* decided by *Jahagirdar & Tipnis JJ.* on 28-10-1988 also, in a similar situation where a conditional order of bail was not placed before the detaining authority, the order of detaining was held to be bad. As pointed out earlier, the order in the present case is very different in character. The substance of the order passed on the remand application was before the authority. The ratio of these cases cannot therefore apply. Translation :

29. It was also urged that Gujarati translation of the reverse side of the Seamens' cards of the co-detenus were not furnished to the detenu. The detenu however, was furnished with a Gujarati translation of all the material particulars on the Seamens' cards of all the co-detenus. These material particulars which were furnished to the detenu in Gujarati were in respect of the name of the

Seaman concerned, the number of the card, the date when it was issued, the date when it expired, nationality of the Seaman, the occupation of the seaman etc. All these particulars have been supplied in Gujarati in a tabular form. In our view, all material particulars have been translated in Gujarati and supplied to the detenu. Mr. Karmali points out that the name of the vessel, which is on the reverse of the Seamans' cards, is not so furnished. In our view this is not a vital particular which would affect in any way the detenu's right to make a representation. Adequate material is supplied to the detenu including the name of the vessel concerned, in the grounds of detention and the documents supplied.

30. The last point urged before us is that the passport of Sajjid Ali, one of the co-detenus, has not been translated into Gujarati. The detenu has however, been furnished with xerox copies of all the relevant pages of the passport of Sajjid Ali. It is pointed out before us by Mrs. Desai, learned additional public prosecutor for respondents 1, 4 and 5 that it would be very difficult to translate a document like a passport into Gujarati. In any event, the contents of the passport of Sajjid Ali are not referred to by the detaining authority in the grounds of detention for the purpose of detaining the detenu. It is not a vital or material document xerox copies of the relevant entries in the passport are also furnished to the detenu. The detenu did not ask for a translation of these pages. In this circumstances, not furnishing a Gujarati translation of the pages of the Passport of Sajjid Ali does not, in any manner, affect the right of the detenu to make a representation.

31. Lastly it was urged by Mr. Karmali that at the time when the detention order was made the detenu was in judicial custody. As per the decision of the Supreme Court in the case of Kamarunnissa and Others Vs. Union of India and another, the grounds of the detention must nearly show (1) that the authority passing the order is aware of the fact that the detenu is actually in custody; (2) the authority has reason to believe, on the basis of reliable material placed before it, that there is a real possibility of the detenu being released on bail; (3) on being so released the detenu, in all probability, will indulge in prejudicial activities and (4) that it feels that it is essential to detain him to prevent him from so doing. In the present case all these tests laid down by the Supreme Court are fulfilled. The grounds of detention clearly mention that the detenu is in judicial custody. It is also set out that he has not been released on bail. However, generally in cases of smuggling, the accused are ultimately released on bail and hence, since he is a habitual smuggler, he is likely to indulge in smuggling activities in future if he is released on bail. Therefore it is necessary to issue a detention order. In substance all these factors are present before the detaining authority while making the detention order.

In the premises the petition fails. The Rule is discharged.

32. Rule discharged.