Malathi Bai Vs. State of Telangana., Rep. by its Chief Secretary General Administration (Law and Order) Dept Secretariat and Others

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SooperKanoon Citation : sooperkanoon.com/1179708

Court : Andhra Pradesh

Decided On : Jan-12-2016

Judge : Nooty Ramamohana Rao &Amp; The Honourable Mrs. Justice Anis

Appeal No. : Writ Petition No. 34054 of 2015

Appellant : Malathi Bai

Respondent : State of Telangana., Rep. by its Chief Secretary General Administration (Law and Order) Dept Secretariat and Others

Judgement :

Nooty Ramamohana Rao, J.

The petitioner seeks a writ of Habeas Corpus for setting at liberty Sri Naresh Singh @ Dabba Naresh, S/o Satyanarayana. The Commissioner of Police, Hyderabad City, 2nd respondent passed an order of detention on 02.05.2015 exercising the power available to him under sub-section 2 of Section 3 of Telangana Prevention of dangerous activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act (for short henceforth the Act') on the ground that the detenue was a Bootlegger as defined in Section 2 (b) of the Act and that he has been acting in a manner prejudicial to the maintenance of public order. This order of detention passed by the Commissioner of Police,

Hyderabad City was approved, within the time limit of 12days provided for under Section (3) of the Act, by the State Government through their orders contained in G.O.Rt.No.1357 General Administration Department dated 13.05.2015. The State Government has also placed the matter for consideration of the Advisory Board, which tendered its opinion on 23.07.2015 and taking the same into account and consideration, the Government passed orders through their G.O.Rt.No.2335 General Administration (Law and Order) Department dated 24.08.2015 fixing the period of detention as 12months commencing from the date of his detention i.e. 23.06.2015.

Heard Mrs.B.Mohana Reddy, learned counsel for the petitioner and Sri H.Venu Gopal, learned Government Pleader for Home (State of Telangana).

Mrs.B.Mohana Reddy, learned counsel for the petitioner, has made very elaborate submissions as to how the order of preventive detention passed by the Commissioner of Police, Hyderabad City is clearly vitiated. But however, she has laid great emphasis upon the procedural irregularities committed in the process.

It is the specific case of the petitioner that the detenue does not know English and Telugu languages, Hindi being the only language known to him. While the order of detention and the supporting grounds of detention were served on the detenue both in English and Hindi languages, but however the copies of the material, which were relied upon by the detaining authority, were served only in English language. The said material was not translated into Hindi language and the same was not served on the detenue. Consequently, the detenue has suffered a great prejudice in making an effective representation against his detention.

Further, the order as well as the grounds of detention refer to the fact of the detenue getting involved in 23cases, whereas the material relating to only 6cases was placed by the sponsoring authority before the 2nd respondent, the detaining authority and the material relating to the rest of the cases was not even placed before the detaining authority, but yet the detaining authority has arrived at subjective satisfaction for preventively detaining the detenue based upon the factum of involvement in 23crimes and hence the activities indulged in by the detenue were perceived as prejudicial to the maintenance of public order. Mrs.B.

Mohana Reddy, learned counsel for the petitioner, has therefore proceeded to set out that the subjective satisfaction of the 2nd respondent, detaining authority is clearly vitiated, for non-consideration of the entire material relating to the remaining cases.

Mrs.B.Mohana Reddy, learned counsel for the petitioner, would further submit that the grounds of detention referred specifically to 6crimes, which are booked against the detenue based upon the incidents that took place on 05.11.2013, 21.04.2014, 08.05.2014, 07.07.2014, 10.07.2014 and 26.09.2014. Thus, between the last of those crimes, which have been referred to and the order of detention that was passed on 02.05.2015, more than 6 months duration is available and hence remotely connected events are taken into account and consideration for purpose of arriving at the subjective satisfaction. To neutralise these submissions, Sri H.Venu Gopal, learned Government Pleader for Home, would urge that the reference made to the involvement of the detenue in 23cases as pointed out by the detaining authority in its order is only for the purpose of noticing the kind of dangerous activities constantly carried out by the detenue. But however, for purpose of forming an opinion as to whether the activities of the detenue are causing prejudice to the maintenance of public order, the Commissioner of Police has looked into 6specific cases, therefore, the fact that the detaining authority has not looked into, in great detail to the other material relating to the remaining 17cases in no manner vitiates the subjective satisfaction arrived at by the detaining authority.

Sri H.Venu Gopal, learned Government Pleader for Home, would further urge that the order of detention as well as the grounds of detention were not only served in English language, but translated versions thereof in Hindi language were also served on the detenue. The detenue was orally explained the entire material. It is, therefore, a clear case where the detenue has been made explicitly clear as to what material had weighed with the detaining authority and hence the detenue has not suffered any prejudice in the matter of submission of a representation against the order of preventive detention.

It was also contended by Sri H.Venu Gopal, learned Government Pleader for Home, that it is the quality of the activities carried on by the detenue, which is of paramount importance for purpose of satisfaction of the detaining authority. If the activities of the detenue are perceived as dangerous to the public health and good, then the only question that is needed to be addressed is Whether the detaining authority has applied its mind appropriately or not to the material available against the detenue and the fact that a different opinion in the matter could have been taken is no ground for replacing the opinion of the detaining authority.

It is true that the order of detention and the grounds of detention specifically adverted to the fact that the detenue has ..committed (23) Bootlegging cases But however, that was only to bring out the intensity of the activities of bootlegging carried on allegedly by the detenue. The material in regard to 6of these crimes has been taken into account and consideration by the Commissioner of Police, Hyderabad City, the detaining authority to make an assessment as to the necessity to detain such a person. Therefore, the detaining authority merely referred, as a matter of fact, to the alleged involvement of the detenue in 23bootlegging cases. But however, for purpose of formation of his subjective satisfaction as to whether the activities indulged in by the detenue are prejudicial to the maintenance of public order, the Commissioner of Police has relied upon the material relating to only 6such crimes. We are, therefore, clearly of the opinion that a mere reference made to the involvement of the detenue in 23bootlegging cases in the order of detention and the grounds of detention does not have any bearing on the ultimate decision arrived at. But at the same time for purpose of formation of the opinion taking into account the material relating to only 6cases, while leaving out the material relating to the remaining cases, does not vitiate in any manner the subjective satisfaction of the detaining authority.

In this context, it is worthy to recall the fundamental principle enshrined behind the concept of Preventive Detention. While recognising the singular significance and importance of life and liberty, the Constitution has also recognised the need and the paramount consideration for maintenance of public order. It is highly essential for the development of any society that it should be rendered, as far as possible, safe and crime free. But however, whenever it is needed to tackle the dangers

posed to the maintenance of larger public order, the State has not been denuded of its right to tackle any such dangers by taking recourse to preventive measures. Prevention of a possible crime is as much significant component of the larger public good as would be to deal very effectively with the offender of the crime committed. That is the balancing act required to be performed by the State while according primacy to the individual liberty, but at the same time for achieving the larger good of the society, it has to fix it's radar for prevention of dangerous activities of some men. Possible prevention of crime will have its own significance in as much as the society at large will derive the direct benefit out of it when the even tempo and its flow of life continues hassle-free. A sense of assuredness will prevail in the society when the State effectively prevents certain dangerous activities from being undertaken at all by the offenders. In juxtaposition thereto, when the dangerous or prejudicial activities are undertaken and crime is committed, the shock and dismay suffered by the society in it's immediate aftermath would get defused over a period of time including when the offender is brought to book. We are, therefore, of the opinion that the power exercisable under Section 3 of the Act, both by the State Government as well as the Commissioner of Police or the Collector " cum " District Magistrate, as the case may be, is essentially intended to prevent the happening of dangerous or prejudicial activities which are likely to impair the even tempo and hassle free flow of life of the society and it is not intended to deal with for past activities carried on by such dangerous men. We are, therefore, clearly of the opinion that a mere reference made to a particular state of affairs concerning the dangerous activities allegedly indulged in by the detenue, but at the same time not considering the said material in connection with every one of such crimes is not really an activity which is called for and the absence of consideration of such material does not vitiate the exercise carried out by the detaining authority under Section 3 of the Act. However, the contention canvassed by Mrs.B.Mohana Reddy, learned counsel for the petitioner, with regard to failure of supply of translated copies of material relied upon by the detaining authority for formation of its subjective satisfaction for ordering the detention of the detenue deserves a worthy consideration.

It is the specific case of the petitioner that the detenue does not know English or Telugu language, but he is only familiar with Hindi language. This fact is hardly in

dispute, as is evidenced by the very fact that the detaining authority has supplied the order of detention and grounds of detention translated into Hindi language apart from serving their originals in English language. The material, which was relied upon by the detaining authority for formation of its opinion is the most vitally crucial material, which alone is liable to form the backbone of the whole actionboth at the hands of the detaining authority as well as the detenue. The subjective satisfaction of the detaining authority derives its strength and sustenance from the material that enabled him to form the necessary opinion for ordering the detention. In other words, the material which formed the basis is the one which has to carry the weight (justification) of the decision itself. Hence, it is a very essential component for indulging in the very exercise of power itself. When it comes to the question of the concerns of detenue, the only mission which he can undertake is to demonstrate before the Advisory Board and the State Government that his preventive detention is wholly unjustified based upon the poor quality of the material that formed the foundational basis for the opinion to detain him preventively. Since the detenue, by virtue of the provisions contained under Section 11(5) of the Act, he is prevented from being represented by a professionally trained lawyer and further, it is apt to remember, that the satisfaction recorded by the detaining authority is only a subjective satisfaction in contrast to an objective one, the detenue can only demonstrate effectively as to how the material which was taken into consideration by the detaining authority cannot legitimately warrant his preventive detention.

It is from this stand point of view, when we look at Article 22 (5) of our Constitution, we can comprehend the significance of the obligation thrust by this provision upon the detaining authority to communicate to the detenue not only the grounds of detention but an opportunity of making representation against any such order of preventive detention at the earliest. How would a detenue make a representation against his preventive detention if the material which formed the basis for the satisfaction of the detaining authority is not made known to him? Firstly, the detenue would be groping in darkness being clueless as to on what lines he could attack the order of preventive detention and when Article 22 (5) of our Constitution conceived of an opportunity to make a representation against the preventive detention order passed, it really meant such an earliest opportunity to be the

effective one. Providing an opportunity of making representation in a mechanical manner is not and cannot be described, either in theory or practice, as an effective one against an order of preventive detention. A representation, if were to be truly an effective one, it must be capable of fetching the representationist the desired result. Making a representation merely for the sake of making one, without there being any possibility of securing even remotely the relief, is in law, no effective representation at all. Such an empty and unproductive exercise is not the one, which is contemplated and conceived of by the Constitutional makers while framing the provision under Article 22 (5) of the Constitution. It is, therefore, imperative for the detaining authority to make the procedural safeguard enshrined under Article 22 (5) of the Constitution as a possible result oriented one but not to treat it as an elusory formality. Hence, the entire material, which is relied upon for formation of subjective opinion by the detaining authority must be placed in the hands of the detenue drawn in a language known to him and then alone the detenue can possibly indulge in a meaningful exercise of it and make an effective representation calling the attention for a fresh look to be given for the decision arrived at by the detaining authority. There is no dispute on the factual score that, while the order of detention and grounds of detention as well as the material which is based upon for formation of then opinion have all been drawn in English language and they are also served on the detenue. This apart, the order of detention and the grounds of detention were got translated into Hindi language and copies of such Hindi translation were also served. But, however, the translated copies of the material which is relied upon, in Hindi language were not served.

Mrs. B.Mohana Reddy, learned counsel for the petitioner, has placed reliance upon the judgment of the Supreme Court rendered in **Lallubhai Jogibhai Patel v. Union of India** (1981) 2 SCC 427) and **Powanammal v. State of Tamil Nadu** (1999) 2 SCC 413) in support of her contention that non supply of translated copies of the material relied upon for detention vitiated the further detention of the detenue.

Sri H.Venu Gopal, learned Government Pleader for Home, with a view to neutralise the forceful submission of Mrs.B.Mohana Reddy, learned counsel for

the petitioner, in this respect placed reliance upon the judgments rendered by the Supreme Court in **Kubicdarusz v. Union of India** (1990 (1) SCC 568) and **State of Tamilnadu v. Abdullah Kadher Batcha** (2009 (1) SCC 333). The principle relating to the significance of supply of documents and materials relied upon by the detaining authority in passing the order of detention in a language understood by him has been considered in detail by the Supreme Court in **Lallubhai Jogibhai Patel's** case in paragraph 8 and 10 in the following words:

8. In the previous petition, though it was alleged that there was delay in supply of copies of the documents relied on by the detaining authority in passing the impugned order of detention, no specific ground was taken that documents covering about 236 pages which were relied upon by the detaining authority in passing the order of detention, were suppressed and not supplied to the petitioner. Indeed this is not denied in the counter-affidavit. The petitioner has affirmed in his affidavit that he came to know about the non-supply of these documents from the judgment of the Gujarat High Court subsequently to the dismissal of his earlier petition. This affirmation remains unchallenged. A catena of decisions of this Court has firmly established the rule that one of the constitutional imperatives embodied in Article 22 (5) of the Constitution is that all the documents and materials relied upon by the detaining authority in passing the order of detention must be supplied to the detenu, as soon as practicable, to enable him to make an effective representation.

Recently, in Smt. Icchu Devi Choraria v. Union of India and Ors. [1981] 1 S.C.R.642 this Court reiterated the principle as follows :

One of the basic requirements of Clause (5) of Article 22 is that the authority making the order of detention must, as soon as may be, communicate to the detenu the grounds on which the order of detention has been made and under Sub-section (3) of Section 3 of the COFEPOSA Act, the words "as soon as may be" have been translated to mean "ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing not later than fifteen days, from the date of detention." The grounds of detention must therefore be furnished to the detenu ordinarily within five days from the date of detention,

but in exceptional circumstances and for reasons to be recorded in writing, the time for furnishing the grounds of detention may stand extended but in any event it cannot be later than fifteen days from the date of detention. These are the two outside time limits provided by Section 3, Sub-section (3) of the COFEPOSA Act because unless the grounds of detention are furnished to the detenu, it would not be possible for him to make a representation against the order of detention and it is a basic requirement of Clause, (5) of Article 22 that the detenu must be afforded the earliest opportunity of making a representation against his detention. If the grounds of detention are not furnished to the detenu within five or fifteen days, as the case may be, the continued detention of the detenu would be rendered illegal both on the ground of violation of Clause (5) of Article 22 as also on the ground of breach of requirement of Section 3 Sub-section (3) of the COFEPOSA Act. Now it is obvious that when Clause (5) of Article 22 and Sub-section (3) of Section 3 of the COFEPOSA Act provide that the grounds of detention should be communicated to the detenu within five or fifteen days, as the case may be, what is meant is that the grounds of detention in their entirety must be furnished to the detenu, if there are any documents, statements or other materials relied upon in the grounds of detention, they must also be communicated to the detenu, because being incorporated in the grounds of detention, they form part of the grounds and the grounds furnished to the detenu cannot be said to be complete with them. It would not therefore be sufficient to communicate the detenu a bare recital of the grounds of detention, but of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detenu within the prescribed time subject of course to Clause (6) of Article 22 in order to constitute compliance with Clause (5) of Article 22 and Section 3, Sub-section (3) of the COFEPOSA Act.

In the instant case, the materials and documents which were not supplied to the detenu were evidently a part of those materials which had influenced the mind of the detaining authority in passing the order of detention. In other words, they were a part of the basic facts and materials, and therefore, according to the ration of Smt. Icchu Devi's case (ibid), should have been supplied to the detenu ordinarily within five days of the order of detention, and, for exceptional reasons to be recorded, within fifteen days of the commencement of detention. In the counter-

affidavit, it has not been asserted that these documents, which were not supplied, were not relevant to the case of the detenu.

10. It is an admitted position that the detenu does not know English. The grounds of detention, which were served on the detenu, have been drawn up in English. It is true that Shri C.L. Antali, Police Inspector, who served the grounds of detention on the detenu, has filed an affidavit stating that he had fully explained the grounds of detention in Gujarati to the detenu. But, that is not a sufficient compliance with the mandate of Article 22(5) of the Constitution, which requires that the grounds of detention must be "communicated" to the detenu. "Communicate" is a strong word. It 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 whole purpose of communicating the 'ground' to the detenu is to enable him to make a purposeful and effective representation. 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. If any authority is needed on this point, which is so obvious from Article 22(5), reference may be made to the decisions of this Court in Harikishan v. State of Maharashtra : ([1962] Supp. 2 S.C.R.918) and Haribandhu Dass v. District Magistrate (AIR 1969 SC 43) (Emphasis is brought out by me)

Again, a somewhat similar question engaged the attention of the Supreme Court in **Powanammal's case** (referred supra). Justice Syed Shah Mohammed Quadri rendering the majority opinion on behalf of Justice K.T. Thomas also (Justice D.P. Wadhwa dissenting), has brought out the principle in paragraph 4 in the following words:

4 The law relating to preventive detention has been crystallized and the principles are well neigh settled. The amplitude of the safeguard embodied in Article 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 detenue but also to supplying their translation in script or language which is understandable to the detenue. 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.

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 detenue 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 detenue'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 detenue, should the document be in a different language.

(Emphasis is brought out)

From the above decisions, it emerges that the non-supply of the core essential material which was relied upon, by the detaining authority for formation of his satisfaction relating to the detention, in contrast to the material which is merely referred to, has to be necessarily supplied in a language known to the detenue. The fact that the contents of the material was explained to the detenue is no substitute to the act of supplying the copies of the documents in the language or script known to the detenue. Supply of such translated copies, forms part of the guarantee held out for making an effective representation against his detention encapsulated under Artcile 22(5) of our Constitution. Consequently, non-supply of translated copies of the core material behind the decision vitiates the exercise of power. The learned Government Pleader has tried to persuade us to arrive at a different conclusion relying upon the judgments rendered by the Supreme Court in **Kubicdarusz and Abdullah Kadher Batcha cases** (referred to supra).

It is true that, dealing with **Kubicdarusz's** case, where a Polish National has been detained on 16.05.1989 under Section 3(1) of the COFEPOSA Act, the Supreme Court was called upon to deal with non-supply of the translated grounds of detention in Polish language. On the factual score, it was emphatically refuted in that case that the detenue was conversant with the English language, as would appear from the answers to the questions put to him during the course of interrogation undertaken by the Intelligence Authorities, when he was detained earlier on 29.04.1989 by the Customs Department attached to the Calcutta Airport on the ground that he was carrying in his possession foreign gold weighing about 70 tolas. It was pointed out specifically that he made certain corrections and signed his statement in English language when interrogated by the Intelligence Officer. In such a backdrop, having set-out the relevant principles in paragraph 3 of the judgment, the Supreme Court had concluded the issue in paragraph 4 of the judgment in the following words:

3. Taking up the first submission, we find that Article 22(5) of the Constitution of India provides that 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 ans shall afford him the earliest opportunity of making a representation against the order. It is settled law that the communication of the grounds which is required by the earlier part of the clause is for the purpose of enabling the detenu to make a representation, the right to which is guaranteed by the latter part of the clause. A communication in this context, must, therefore, mean imparting to the detenu sufficient and effective knowledge of the facts and circumstances on which the order of detention is passed, that is, of the prejudicial acts which the authorities attribute to him. Such a communication would be there when it is made in a language understood by the detenu, as was held in Harikisan v. The State of Maharashtra, 1962 2 Suppl. SCR 918. In Razia Umar Bakshiv. Union of India: [1980]3SCR1398 , Fazal Ali, J. held that the service of the grounds of detention on the detenu was a very precious constitutional right and where the grounds were 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 to the detenu and would

thus vitiate the detention ex-facie. In Nainmal Partap Mal Shah v. Union of India : 1980 CriLJ1479 the detenu stated that he did not know the English language and, therefore, could not understand the grounds of detention, nor he was given a copy of the grounds duly translated in vernacular language. In the counter affidavit the detaining authority suggested that as the detenu had signed a number of documents in English, it must be presumed that he was fully conversant with English. Rejecting the contention it was held by this Court that merely because he may have signed some documents, it could not be presumed, in absence of cogent material, that he had working knowledge of English and under those circumstances there had been clear violation of the constitutional provisions of Article 22(5)so as to vitiate the order of detention. Thus what was considered necessary was a working knowledge of English or full explanation or translation. In Surjeet Singh v. Union of India : 1981 CriLJ614 , the petitioner, being served the detention order and the grounds in English, contended that English was not a language which he understood and that this factor rendered it necessary for the grounds of detention to be served on him in Hindi which was his mother tongue and that the same having not been done, there was in law no communication of such grounds to him; and it was held that under those facts and circumstances it had not been shown that the petitioner had the opportunity which the law contemplated in his favour of making an effective representation against his detention, which was, therefore, illegal and liable to be set aside . ?

4. While it is the settled law that the detention order, the grounds of detention and the documents referred to and relied on are to be communicated to the detenu in a language understood by him so that he could make effective representation against his detention, the question arises as to whether the courts have necessarily to accept what is stated by the detenu or it is permissible for the Court to consider the facts and circumstances of the case so as to have a reasonable view as to the detenu's knowledge of the language in which the grounds of detention were served, particularly in a case where the detenu is a foreign national. If the detenu's statement is to be accepted as correct under all circumstances it would be incumbent on the part of the detaining authority in each such case to furnish the grounds of detention in the mother tongue of the detenu which may involve some delay or difficulty under peculiar circumstances of a case.

On the other hand if it is permissible to ascertain whether the statement of the detenu in this regard was correct or not it would involve a subjective determination. It would, of course, always be safer course in such cases to furnish translations in the detenu's own language. We are of the view that it would be open for the Court to consider the facts and the circumstances of a case to reasonably ascertain whether the detenu is feigning ignorance of the language or he has such working knowledge as to understand the grounds of detention and the contents of the documents furnished. (emphasis is mine)

Thus, **Kubicdarusz's** case came to be decided in the facts and circumstances of that case where there was some material before the Court indicating working knowledge of English language by the detenue, though he was a Polish national. Thus, in the absence of any worthwhile material available on record for us to feel that knowledge of English knowledge is known to the detenue, we cannot accept the plea of the learned Government Pleader offering justification for non-supply of translated copies of the material.

When it came to **Abdullah Kahder Batcha's** case, the Supreme Court has noticed the principles culled out in earlier judgment rendered by it in **Radhakrishnan Prabhakaran vs. State of Tamil Nadu** (2000 (9) SCC 170)and went on to observe in paragraphs 3 and 4 thereof as under:

3. In Radhakrishnan Prabhakaran v. State of T.N. and Ors.: 2000(70)ECC198 , it was observed as follows:

8. We may make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him. It is admitted by the learned Counsel for the petitioner that the order granting bail has been supplied to him. Application for bail has been submitted by the detenu himself when the order of detention was passed which was subsequent to the order granting bail. We cannot comprehend as to how a prior order rejecting bail would be of any relevance in the matter when it was later succeeded by the order granting bail. But learned

Counsel emphasized that the counter filed by the Department was a relevant document, a copy of which has not been supplied to him.

The view in Radhakrishan Prabhakaran's case (supra) was reiterated in J. Abdul Hakeem v. State of T.N. and Ors. : 2005 CriLJ3745 andSunila Jain v. Union of India and Anr. : 2006 CriLJ1636 .

4. The Court has a duty to see whether the non supply of any document is in any way prejudicial to the case of the detenu. The High Court has not examined as to how the non supply of the documents called for had any effect on the detenu and/or whether non supply was prejudicial to the detenu. Merely because copies of some documents have been supplied they cannot by any stretch of imagination be called as relied upon documents. While examining whether non supply of a document would prejudice a detenu the Court has to examine whether the detenu would be deprived of making an effective representation in the absence of a document. Primarily, the copies which form the ground for detention are to be supplied and non supply thereof would prejudice to the detenu. But documents which are merely referred to for the purpose of narration of facts in that sense cannot be termed to be documents without the supply of which the detenu is prejudiced.

The High Court has lost sight of the relevant factors and, therefore, the impugned order of the High Court is clearly unsustainable and is therefore set aside. ?

(Emphasis is brought out)

Therefore, the distinction that one must bear in mind is with regard to the grounds of detention and the core material which formed the basis for the opinion of the detaining authority are essentially required to be communicated in a language known to the detenue, whereas, the other material which is referred to, but, when, was not communicated, it is required to be demonstrated by the detenue as to how prejudice has been caused to him in making an effective representation.

In the instant case, the very basis for formation of the opinion of the detaining authority having not been communicated to the detenue in Hindi language while

communicating the translated version of the detaining order and grounds of detention, it has rendered the further detention of the detenue illegal.

Therefore, we allow this writ petition holding the further continuance of detention of the detenue is illegal. Hence, we set-forth at liberty the detenue, if his detention is not called for any further in connection with any other cases.

Consequently, miscellaneous petitions pending, if any, shall also stand closed. No costs.