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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 262 OF 2011**

Shri. Nisar Jainuddin Mujawar]
Age 45 years, residing at : 11/21]
Bhavani Peth, Solapur, Maharashtra]
(Now detained at Yerwada Central]
Prison at Pune)]..Petitioner

Vs.

1.	The Commissioner of Police]
	Solapur]
]
2.	The State of Maharashtra]
	(Through the Secretary Preventive]
	Detention Home Department]
	(Spl) Mantralaya, Mumbai-400 032.]
3.	The Superintendent, Yerwada]
	Central Prison, Pune]..Respondents

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Mr. U.N.Tripathi Advocate for Petitioner
Mrs.M.H.Mhatre A.P.P. for Respondent-State

....

**CORAM : P.V.HARDAS AND
M.N.GILANI, JJ.**

**RESERVED ON : MARCH 30, 2011
DECLARED ON : MARCH 31, 2011**

JUDGMENT : [PER P.V.HARDAS, J.]

1 Rule. Rule made returnable forthwith. With the consent of the
learned Counsel for the parties this petition is heard finally at the stage of

admission.

2 By this petition under Article 226 of the Constitution of India the petitioner prays for quashing and setting aside the detention order dated 15th January, 2011 issued under Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, issued by the Commissioner of Police, Solapur, and prays for further direction to direct the respondents to release the petitioner forthwith.

3 Such of the facts as are necessary for the decision of this petition may briefly be stated thus:

Order dated 15th January, 2011 came to be passed by the Commissioner of Police Solapur, which is annexed to the petition as Exhibit-A, in exercise of the powers conferred by sub-section (1) (b) of sub section (2) of section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 detaining the petitioner under the Act. The grounds of detention, which are dated 17th January, 2011 referred to four crimes viz;- Crime No. 3061 of 2010 under Sections 3 and 7 of the Essential Commodities Act, Crime No. 17 of 2010 under Sections 143, 147, 148, 149, 323, 324 and 504 of the

Indian Penal Code read with Section 135 of the Bombay Police Act, Crime No. 3011 of 2009 under Sections 3 and 7 of the Essential Commodities Act and the two statements of witnesses 'A' and 'B'. The ground on which the detention has been directed is at paragraph 5 of the grounds of detention. As pointed out by us above, reliance is placed by the detaining authority on the four crimes and the two statements of the witnesses 'A' and 'B'. The petitioner submitted his representation which came to be rejected and the order of detention came to be approved by the State Government. The petitioner therefore has filed the present petition.

4 Mr. Tripathi learned Counsel for the petitioner has urged before us that the order of detention is vitiated on the ground that the translation of certain portions from the documents which were supplied to the petitioner and which documents are at page nos. 40 to 70 had not been provided to the petitioner. Mr. Tripathi has urged before us that the petitioner does not understand English and accordingly the translation of the grounds of detention and copies of the documents relied by the authority came to be provided to the petitioner, however, certain portions which are in English viz. the orders passed by the Magistrate were not provided to the petitioner and therefore, the right of the petitioner to make an effective representation is affected and on that score the order of detention is vitiated. Mrs. Mhatre the learned A.P.P. on behalf of

respondents has urged before us that copies of the documents were provided to the petitioner on 17th January, 2011 along with the translation of the grounds of detention. It is urged before us by the learned A.P.P. that compliance of providing the translation of the English portion in the documents was done by the authorities as the aforesaid portion which is in English in the said document is referred to by the detaining authority in the grounds of detention and the translation of what was referred to by the detaining authority has been provided to the petitioner. It is urged before us that those documents were only referred to by the detaining authority and were not relied upon by the detaining authority and failure to provide the translation thereof would not vitiate the detention order.

5 We have perused the grounds of detention and the detention order is based on the four offences which are registered against the petitioner and the two incamera statements of witnesses 'A' and 'B'. The grounds of detention deal with in extenso with the aforesaid crimes. It is true that the detaining authority has referred to certain orders which had been passed by the Courts and which orders stand reflected in the documents provided to the petitioner. However, the detaining authority has not quoted the English portion of the documents provided to the petitioner at verbatim and therefore, the translation of the ground of detention would not amount to translation being provided of the portion in

English of the documents on which reliance is placed by the detaining authority. The documents which are referred to in the grounds of detention are not made for the mere sake of reference to the detaining authority as relied upon on those documents for the purposes of arriving at the subjective satisfaction that detention of the petitioner is warranted. In that background therefore the contention of the learned A.P.P. that the documents are only referred to in the detention order and are not relied upon by the detaining authority is not correct.

6 Mr. Tripathi learned Counsel for the petitioner has placed reliance on the judgments of the Division Bench of this Court in **'Mrs. Satwinder Kaur Maan Vs. District Magistrate and Anr.'** 2002 ALL MR (Cri.) 1123, **'Kamla Kanhaiyalal Khushalani Vs. State of Maharashtra and another'** AIR 1981 S.C. 814, **'Mehboob Khan Nawab Khan Pathan Vs. Police Commissioner of Ahmedabad and another'** AIR 1989 S.C. 1803, **'Khudiram Das Vs. The State of West Bengal and Others'** (1975) 2 S.C.C. 81.

7 In Kamla Kanhaiyalal Khushalani (supra) the Supreme Court held that documents and material 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, the detenu is deprived of an opportunity of making an effective representation against the order of detention.

8 A reference may usefully be made to the judgment of the Supreme Court in '**Powanammal Vs. State of Tamil Nadu and another**' (1999) 2 S.C.C. 413. The Supreme Court in the said judgment has held thus:

“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 detenu but also to supplying their translation in script or language which is understandable to the detenu. 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, there is 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 the 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 detenu need not show that any prejudice is caused to him. This is because the 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 detenu'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 a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language."

8 Similarly, Supreme Court in '**Sunila Jain Vs. Union of India and another**' (2006) 3 S.C.C. 321 has held that if the bail application contained material facts which detaining authority was required to take into consideration then copy thereof must be furnished to the detenu. The Supreme Court in '**J. Abdul Hakeem Vs. State of Tamil Nadu and others**' (2005) 7 S.C.C. 70 has held that detenu has a right to be supplied with the material documents on which reliance is placed by the detaining authority for passing the detention order. Detention order will not be

vitiated due to non-supply of document which although referred to in the order but were not relied upon by the detaining authority for forming its opinion or made basis for passing the order.

The learned A.P.P. has also placed reliance on the judgment of the Division Bench in '**Smt. Suhasini Krishna Patil Vs. Shri. R.S. Sharma and Ors.**' 2004 ALL MR (Cri.) 908 particularly in respect of the observations of the Division Bench at paragraph 9 which read thus:

'It is well settled that in respect of non-furnishing of documents to the detenu, it is not non-furnishing of each and every document which would vitiate the detention order but only non-furnishing of a vital document would vitiate the detention order. In such circumstances, it would have to be considered whether in the present case the bail application and the order granting bail are vital and material documents. The learned Public Prosecutor has brought to our notice that in the bail application, there is no specific averment pertaining to the facts of the case relating to L.A.C. 886 of 2002. In the said application for bail it was simply stated that the investigation was over and hence no fruitful purpose would be served by keeping the accused in custody. It is further mentioned that

the accused has a permanent place of residence in Mumbai and he is not likely to abscond if he is ordered to be released on bail. It is further stated that the accused is the only earning member in the family. In our view, this is the least that could have been said in any bail application. There are no specific averments pertaining to the facts of L.A.C. No. 886 of 2002. All the grounds stated in the bail application are general grounds and do not deal with the merits of the case or show in any manner as to how the accused person (detenu) is an innocent person. Thus, in this view of the matter, it cannot be said that the application for bail is a vital document. In such case, non-furnishing of such document would not vitiate the detention order.”

9 The aforesaid judgment in our opinion would not be applicable to the present case, as in that case, a demand was made by the detenu for supply of documents which the Court found to be non vital documents and the failure to provide copies of the non vital documents did not vitiate the detention order. In the present case, we are concerned with the failure to provide translation of the portion of the documents which is in English to the detenu.

10 As held by us above, the aforesaid documents which contained portion in English and translation of which was not provided to the petitioner, are the documents which are relied upon by the detaining authority and not merely referred to by the detaining authority and consequently failure to provide the translation of the English portions in the document, has affected the right of the detenu to make an effective representation. In that light of the matter, therefore according to us the petition deserves to succeed.

11 In the result, this petition is allowed and the impugned order of detention dated 15.1.2011 bearing No. 01/PBMSECA/CB/DP/2011 issued by the Commissioner of Police, Solapur is hereby quashed and set aside and the petitioner is directed to be set at liberty forthwith if he is not required in any other case. In the circumstances, there will be no order as to costs.

12 Rule made absolute on the above terms.

[M.N.GILANI, J.]

[P.V.HARDAS, J.]