

IBRAHIM AHMAD BATTI

v.

STATE OF GUJARAT & OTHERS

October 13, 1982.

[V.D. TULZAPURKAR AND R.B. MISHRA, JJ.]

Constitution of India, 1950, Article 22(5) and Section 3(3) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1947—Meaning and import of—Failure to supply the translations of the documents etc. relied on, in the language known to the detenu and/or delayed—Supply without communication of the reasons recorded for the delay would be a clear violation of the constitutional mandate of Article 22(5).

On April 15, 1982, the Customs Officers raided bungalow No. 3, Sweta Park Society, Bhuderpura, Ambawadi, Ahmedabad, allegedly belonging to the petitioner-detenu, but standing in the name of Rekhaben Champaklal Seth and during the search that followed in the presence of the petitioner and one Hasmukh Prabhudas Sharma contraband of several items were recovered and seized under the reasonable belief that they were smuggled goods liable to be confiscated under the Customs Act, 1962. This seizure was followed by recording of confessional statements of the petitioner and his co-conspirators. During the follow up action certain other premises were searched and further contraband was seized. By an order dated April 19, 1982, issued by the State of Gujarat under Section 3(1) of COFEPOSA, the petitioner was detained in Ahmedabad Central Prison, with a view to preserving him from keeping and transporting smuggled goods. Grounds of detention dated April 23, 1982 alongwith copies of statements and documents relied upon by the detaining authority were served on the petitioner. The petitioner's representation to the Advisory Board was accepted, since the failure on the part of the detaining authority to supply the translations in Urdu of the grounds and documents relied upon, amounted to a clear violation of the constitutional mandate of Article 22(5) vitiating the order of detention. Consequently, the order of detention was revoked by the State under section 8(f) of COFEPOSA and directed his release forthwith, unless he was required to be retained in custody under orders of any competent Court of Law. However, on the same day i.e. on 1st of July 1982, the State Government passed another order of detention against the petitioner under section 3(1) of the COFEPOSA and served it on him on 2nd of July 1982 whilst he was in judicial custody under Court's Order in two cases, one under the Arms Act and another under the Foreigner's Act. This detention order was also passed with a view to preventing him from smuggling goods and engaging himself in transporting smuggled goods and keeping smuggled goods." Grounds of detention running into 32 typed pages in English together with copies

of all the statements and documents referred to and relied upon in the grounds, in regional language, were served upon the petitioner on 7th July, 1982. Urdu translations of only some of these documents were supplied on 15th of July 1982 without furnishing the recorded reasons for the delay in supplying them. The petitioner's representations made through his counsel on 5th August 1982, having been rejected on 13th August, 1982 the petitioner has filed this writ petition under Article 32 of the Constitution, contending that non-supply of Urdu translations of some of the statements and documents relied upon by the detaining authority. In spite of the revocation of an earlier order on this ground, and the non-communication of the reasons for the delayed supply of Urdu translations in respect of the rest of the documents, have resulted in violation of Article 22(5) of the Constitution read with section 3(3) of the COFEPOSA.

Allowing the Petition, the Court,

HELD : In section 3(3) of the COFEPOSA, the concept of 'reasonable time', or "the shortest possible time" or reasonably requisite time", predicated by the expression "as soon as may be" has been retained but it is only with a view to meet the practical exigencies of administrative affairs that the detaining authority is permitted to communicate the grounds of detention, not later than 5 days ordinarily, and not later than 15 days, if there are exceptional circumstances and that too with a safeguard of reasons being recorded in writing. In other words, section 3(3) provides for the outer limits and the grounds of detention must, therefore, be furnished to the detenu ordinarily within 5 days from the date of detention but in exceptional circumstances and for reasons to be recorded in writing, the time may stand extended but in any event it cannot be later than 15 days from the date of detention. Unless the first duty imposed upon the detaining authority under Article 22(5) is discharged within the prescribed time, it would not be possible for the detenu to exercise his right of making a representation against his detention—a corresponding right arising from the second duty cast on the detaining authority, namely, to afford the detenu the earliest opportunity of making such representation against his detention. [549 D-H, 550 A-B]

Abdul Jabbar Butt v. State of Jammu & Kashmir, [1957] S.C.R. 51; *A.K. Ray's case* [1982] 1 S.C.C. 271, referred to.

2:1 The principle clearly enunciated in *Smt Icchu Devi's case* [1980] 4 S.C.C., 53 is that copies of all documents, statements and materials referred to or relied upon in the grounds of detention (meaning thereby which has influenced the mind of the detaining authority in arriving at its subjective satisfaction about the necessity to detain the detenu) must be communicated to him within the time prescribed under section 3(3) of the COFEPOSA and that without this the right to make representation cannot be meaningfully exercised. [552 D-E]

2:2 From the decided cases, it would follow that if the grounds together with copies of all documents, statements and other materials incorporated in the grounds by reference on which the detaining authority has relied are required

A to be communicated to the detenu under Art. 22(5) read with section 3(3) of COFEPOSA within the prescribed time, then, not merely the grounds of detention but also the copies of all incorporated documents, statements and other materials must be supplied to the detenu in a script or language which he understands and failure to do so would amount to a breach of the mandate contained in Article 22(5) read with section 3(3) of COFEPOSA. [553 C-D]

B *Lallubhai Jogibhai Patel's case* [1981] 2 S.C.R. 427, *Harikisan's case* [1962] Supp. 2 S.C.R. 918, *Hadibandhu Das's case* [1969] 1 S.C.R. 227, *Smt. Razia Umar Bakshi's case* [1980] Supp SCC 195; *Kamala Kanyalal Khushalani's case* [1981] 1 S.C.C. 748 and *Sunil Dutt's case* A.I.R. 1982 SC 53, referred to.

C 2:3 Not merely the exceptional circumstances must exist justifying the delay in communicating to the detenu all the materials relied upon, but these should be communicated to the detenu to enable him to make an effective representation. [554 G-H]

Bishwa Mohan Kumar Sinha v. State of Bihar & Ors I.L.R. (1974) 53 Pat. 884; *Bishwanath Prasad Keshari v. State of Bihar & Ors.* I.L.R. (1975) 54 Pat. 72; approved.

D 3:1. Preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and, therefore, in preventive detention jurisprudence whatever little safeguards the constitution and the enactments authorising such detention provide assume utmost importance and must be strictly adhered to and one of such safeguards is that unless exceptional circumstances really obtain the delay in supply of grounds of detention as also the documents and statements incorporated therein by reference beyond the normal period of five days would be fatal. [556 D-F]

F In all the facts and circumstances no exceptional circumstances obtained in the case justifying the delay and as such the same constitutes a breach of the constitutional as well as legislative mandate. (1) Upon revocation of the earlier detention order on 1st of July 1982, there was no urgency to issue the impugned order on the same day or serve it on the detenu on the following day since he was already in judicial custody in other two cases, one under the Arms Act and the other under the Foreigners Act and no bail having been granted to him, there was no fear of his absconding from Ahmedabad, there being no urgency the detaining authority could have kept all the material ready in Urdu and supplied the same to him immediately after detaining him second time; (2) In the absence of information as to the number of Urdu translators put on the job except vaguely stating "handful translators were available" and the reasons for not entrusting to others who do not observe Ramzan. it is difficult to swallow the proposition that the State Government (with all its power and resources could not find requisite number of qualified persons to do that job so as to make Urdu translations of the concerned documents and statements available to the detenu within the normal period of five days; and (iii) With the previous

detention order having been vitiated on the very ground, greater vigilance and expedition was expected from the detaining authority. [556 G-H, 557A-E]

3:2. It is true that neither Article 22(5) of the Constitution nor does the COFEPOSA contain any provision which casts a duty upon the detaining authority to inform the detenu anything about the exceptional circumstances due to which delay may occur or about the fact whether reasons have been recorded in writing or not for the delay. It is also true that the court will, of course, go into and satisfy itself about these matters when any issue in that behalf is raised before it. [557 H, 558 A]

3:3. Under the scheme of COFEPOSA, against his detention the detenu has a right to make a representation to an authority as well as to the Advisory Board and such representation against his detention can be on merits of the grounds of detention as also for the failure on the part of the detaining authority to observe strictly the requisite safeguards and on satisfying the superior authority or the Advisory Board on either count he is entitled to have his detention revoked or quashed. In other words, the detenu is entitled to satisfy either the superior authority or the Advisory Board that the delay that has occurred in the supply of requisite material to him was not justified because exceptional circumstances did not exist or those put forward were unreal or invalid. Obviously, the detenu will not be in a position to do so if the alleged exceptional circumstances are not communicated to him. Therefore, duty to inform the detenu about the existence of exceptional circumstances and what they were for delay in supplying grounds of detention and/or the documents and statements incorporated therein arises by necessary implication and flows from the right which is conferred upon the detenu to make representation against the detention. The impugned failure in this case constitutes another breach of the safeguard contained in Article 22(5) of the Constitution read with section 3(3) of COFEPOSA and vitiates the continued detention of the petitioner.

[558 B-G, 559 A-B]

(4) Non-supply of Urdu translation of the documents has clearly prejudiced the petitioner in the exercise of his right to make an effective representation against his detention and hence the safeguard contained in Article 22(5) is clearly violated. The petitioner is a Pakistani national and Urdu seems to be his mother tongue and a little knowledge of English figures, ability to read English words written in capital letters and a smattering knowledge of Hindi or Gujarati would not justify the denial of Urdu translation to him of the material documents and statements referred to as incriminating documents in the grounds and relied upon by the detaining authority in arriving at its subjective satisfaction. [559 E-G, 560 E-D]

ORIGINAL JURISDICTION : Writ Petition (CRL) No. 1077 of 1982.

(Under Article 32 of the Constitution of India)

Ram Jethmalani, P. H. Parekh, Bhaskarbai Mehta, C. A. Shah and J.M. Parekh for the petitioner.

A *D. V. Patel and R. N. Poddar*, for the Respondent (State of Gujarat).

Ashwani Kumar and Miss A. Subhashini for the Respondent—
Union of India.

B The Judgment of the Court was delivered by

C TULZAPURKAR, J. By this petition Ibrahim Ahmad Batti, the detenu herein, is seeking to challenge the detention order dated 1st July, 1982 issued by the respondent No. 1 (State of Gujarat) under s. 3 (1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1947 (for short, 'the COFEPOSA') and praying for a writ of *habeas corpus* directing his release after quashing the same.

D On 15th April, 1982, the Custom Officers raided Bungalow No. 3, Sweta Park Society, Bhuderpura, Ambawadi, Ahmedabad, allegedly belonging to the petitioner but standing *benami* in the name of Rekhaben Champaklal Sheth and during the search that followed in the presence of the petitioner and one Hasmukh Prabhudas Sharma contraband comprising 700 pieces of gold with foreign markings weighing 7000 tolas, radios, camera, Video cassette recorder, colour T.V. synthetic fabrics, crockery, etc. of considerable value and Indian currency of Rs. 72,766 were recovered; the said gold and other articles were seized under the reasonable belief that the same were smuggled goods liable to confiscation under the Customs Act, 1962. This seizure was followed by recording of confessional statements of the petitioner and his co-conspirators. During the follow up action certain other premises were searched and further contraband was seized. By an order dated 19th April, 1982 issued by the Respondent No. 1 under s. 3 (1) of the COFEPOSA, the petitioner was detained in Ahmedabad Central Prison with a view to preventing him from transporting smuggled goods and keeping smuggled goods. Grounds of detention dated 23rd April, 1982 alongwith copies of statements and documents relied upon by the detaining authority were served on the petitioner. The petitioner made a representation against the said order of detention, which was considered by the Advisory Board, who opined thus :

H "...although at the date when the detention order was passed there was sufficient cause for reaching the subjective

satisfaction that it was absolutely necessary to detain the detenu under s. 3 (1) of the Act, the subsequent failure on the part of the detaining authority to supply the translations in Urdu of the ground, and documents relied upon was a clear violation of the constitutional mandate of Art. 22 (5) so as to vitiate the order of detention and hence, in our view, there exists no sufficient cause for the continued detention of said detenu."

Following the above opinion of the Advisory Board, the respondent No. 1 by its order dated 1st of July, 1982 revoked the detention of the petitioner under s. 8 (f) of the COFEPOSA and directed him to be released forthwith, unless he was required to be retained in custody under the orders of any competent court of law. However, on the same day i.e. 1st of July, 1982, the respondent No. 1 issued the impugned order of detention against the petitioner under s. 3 (1) of the COFEPOSA and served, it on him on 2nd July, 1982 whilst he was in judicial custody under Courts order in two cases, one under the Arms Act and the other under the Foreigners Act pending against him and after taking him in custody again under the impugned order detained him in Ahmedabad Central prison under the COFEPOSA. This detention was effected "with a view to preventing him from smuggling goods and engaging himself in transporting smuggled goods and keeping smuggled goods." Grounds of detention running into 32 typed pages in English as well as translated in Urdu, together with copies of all the statements and documents, referred to and relied upon in the grounds, in regional language were served upon the petitioner on 7th July, 1982. Urdu translations of the bulk of the statements and documents referred to and relied upon in the grounds were supplied to the petitioner on 15th July, 1982, though such supply did not include translations of all the statements and documents relied upon by the detaining authority. The petitioner's representation made through his Advocate on 5th of August 1982 having been rejected on 13th of August, 1982, the petitioner has filed this writ petition under Art. 32 of the Constitution challenging his detention on several grounds.

Though counsel for the petitioner indicated three or four grounds on the basis of which he desired to challenge the impugned order, he pressed into service only one pertaining to the breach of

A the constitutional safeguards contained in Art. 22 (5), which according to him, was sufficient to quash the impugned order. According to counsel in the matter of supply of Urdu translations of documents and statements referred to and relied upon in the grounds by the detaining authority for the purpose of arriving at the requisite subjective satisfaction, the detaining authority (respondent No. 1 has committed breach of Art. 22 (5) read with section 3 (3) of the COFEPOSA resulting in non-observance of the constitutional safeguards conferred on the detenu and therefore, the impugned order was liable to be set aside. He pointed out that the grounds together with all the documents and statements incorporated in the grounds by reference are required to be 'communicated' to the detenu, that is to say, are required to be brought home to him in the language he understands, ordinarily within 5 days of his detention and only in exceptional circumstances and for reasons to be recorded in writing within 15 days from the date of his detention under s. 3 (3) of the COFEPOSA, in other words, the delay beyond 5 days is justifiable only in exceptional circumstances and for reasons to be recorded in writing, but in the instant case Urdu translations of the bulk of documents and statements incorporated in the ground and relied upon by the detaining authority in reaching the requisite subjective satisfaction were not supplied to the detenu within the normal period of 5 days but the supply thereof was delayed upto 13 days without any exceptional circumstances obtaining in the case and without recording any reasons, as neither the existence of exceptional circumstances nor the fact whether the reasons had been recorded in writing was communicated to the detenu. Counsel urged that the petitioner was deprived of an opportunity to make effective representation to satisfy the Advisory Board that no exceptional circumstances existed or that the delay in supply of Urdu translations that were given to him was neither reasonable nor justified. Counsel further urged that the explanation trotted out now at the hearing, namely, that due to Ramzan month translators in Urdu were not available earlier is no justification whatever for the delay has occurred and hence the duty to communicate the grounds together with documents and statements in support thereof within prescribed time has been breached. In any case, Urdu translations of all the documents and statements referred to and relied upon in the grounds for reaching the subjective satisfaction have not been supplied to the petitioner at all and quite a few of such documents and statements, Urdu translations whereof have not been supplied at all, are rele-

vant and material and such as have influenced the mind of the detaining authority in reaching its conclusion about the necessity to detain the petitioner. 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 7th July is no sufficient compliance of the duty to communicate contemplated by Art. 22 (5) according to counsel and he insisted that only on 15th July, 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 Art. 22 (5) read with s. 3 (3) of the COFEPOSA have been denied to him and, therefore, the continued detention of the petitioner is illegal.

On the other hand, counsel for the respondents have contended that no breach of Art. 22 (5) read with s. 3 (3) of the COFEPOSA has been committed as alleged. Counsel for the respondents pointed out that after the earlier detention order was revoked by the detaining authority under s. 8 (f) of the COFEPOSA, the petitioner was actually detained on 2nd July 1982 under the impugned order dt. 1st July, 1982 and within 5 days of his detention the grounds in English language as well as in Urdu together with copies of all documents and statements referred to in the grounds in their regional language were served on the petitioner and what is more translations of the bulk of the documents and statements so referred in the grounds were supplied to him on 15th July, 1982 i. e. within 13 days of his detention, and, according to counsel, this delay in supply of the Urdu translations beyond the normal period of 5 days was due to exceptional circumstances and reasons therefor have been recorded in writing as stated by Shri P. M. Shah, Deputy Secretary of the respondent No. 1 in his affidavit filed on 10th of September, 1982. Shri Shah has stated in his affidavit that "time was taken as large number of documents were to be translated", while an office noting approved and signed by the Home Minister (copy whereof was produced at the time of hearing) indicates that on account of the month of Ramzan handful Urdu translators were available to do the work

A from 12 noon to 4.00 p. m. and, therefore, as a special case Urdu translations were decided to be furnished to the detenu within 15 days as prescribed by the COFEPOSA and accordingly Urdu translations of bulk of documents and statements were furnished within 13 days of the detention. Counsel further contended that neither Art. 22 (5) nor s. 3 (3) of the COFEPOSA casts an obligation upon the detaining authority to inform the detenu anything about the exceptional circumstances due to which delay might occur or about the fact whether the reasons have been recorded in writing or not and these are matters for the Court's satisfaction when any issue in that behalf is raised before it. As regard the non-supply of Urdu translations of some of the documents and statements referred to in the grounds it was contended that most of these documents comprised statements of account, which were in English figures and some of them contained English words in capital letters, and words in Hindi and Gujarati and the material on record clearly shows that the petitioner knows English figures, understands English words in capital letters and can also converse in Hindi and Gujarati and as such no prejudice was caused to him in the matter of making representation against his detention. In these circumstances, counsel for the respondents contended that the impugned order could not be quashed on the ground suggested by the petitioner.

E Since breach of constitutional safeguards contained in Art. 22(5) and s. 3(3) of the COFEPOSA has been the main ground for attacking the continued detention of the detenu as illegal, it will be desirable to consider the true meaning and import of these two provisions. Art. 22(5) of the Constitution runs thus :

F "When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

G Section 3(3) of the COFEPOSA provides as under :

H "For the purposes of clause (5) of Art. 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but 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 real import of cl. (5) of Art. 22 including the true meaning of the expression "as soon as may be" occurring therein was explained by this Court in *Abdul Jabar Butt v. State of Jammu & Kashmir*⁽¹⁾ After noting that s. 8(1) of the Jammu & Kashmir Preventive Detention Act was nothing but a reproduction in substance of the provisions of cl. (5) of Art. 22 of the Constitution, this Court pointed out that the said provision imposes upon the detaining authority two duties, namely, (i) the duty of communicating to the detenu the grounds on which the order has been made and (ii) the duty of affording him the earliest opportunity of making a representation against the detention order and that the first duty is to be performed "as soon as may be", meaning thereby "within a reasonable time with an understanding to do it within the shortest possible time" the Court, however, pointed out that what could be regarded as 'reasonable time' or the 'shortest possible time' would depend upon the facts and circumstances of the case in which the question arises for decision, but the time predicated by the expression 'as soon as may be, was what was 'reasonably convenient' or 'reasonably requisite'. In s. 3(3) of the COFEPOSA the concept of "reasonable time" or the "shortest possible time" or "reasonably requisite time" predicated by the expression "as soon as may be" has been retained but as explained in *A.K. Roy's*⁽²⁾ case it is only with a view to meet the practical exigencies of administrative affairs that the detaining authority is permitted to communicate the grounds of detention not later than 5 days ordinarily and not later than 15 days if there are exceptional circumstances and that too with a safeguard of reasons being recorded in writing. In other words s. 3(3) provides for the outer limits and the grounds of detention must, therefore, be furnished to the detenu ordinarily within 5 days from the date of detention but in exceptional circumstances and for reasons to be recorded in writing the time for furnishing the grounds may stand extended but in any event it cannot be later than 15 days from the date of detention. It is also clear that unless the first duty imposed upon the detaining authority under Art. 22(5) is discharged within the

(1) [1957] SCR 51.

(2) [1982] 1 S.C.C. 271.

A prescribed time it would not be possible for the detenu to exercise his right of making a representation against his detention—a corresponding right arising from the second duty cast on the detaining authority, namely, to afford the detenu the earliest opportunity of making such representation against his detention.

B In *Khudi Ram's*⁽¹⁾ case this Court has explained what is meant by “grounds on which the order is made” in the context of the
C aforesaid duties cast upon the detaining authority and the corresponding rights accruing to the detenu under Art. 22(5). The Court has ruled that in that context the expression ‘grounds’ does not
D merely mean a recital or reproduction of a ground of satisfaction of the authority in the language of s. 3 nor is its connotation restricted to a bare statement of conclusion of fact but “nothing less than all
E the basic facts and materials which influenced the detaining authority in making the order of detention must be communicated to the detenu” and “that is the plain requirement of the first safeguard in
F Art. 22(5)”. Again, what would be comprised in “all the basic facts and materials” has been elaborated by this Court in *Smt. Iechu Devi's*⁽²⁾ case where this Court has taken the view that documents, statements and other materials referred to or relied upon in the
G grounds of detention by the detaining authority in arriving at its subjective satisfaction get incorporated and become part of the grounds of detention by reference and the right of the detenu to be
H supplied copies of such documents, statements and other materials flows directly as a necessary corollary from the right conferred on the detenu to be afforded the earliest opportunity of making a representation against the detention, because unless the former right is available the latter cannot be meaningfully exercised and in that
F behalf the court has gone on to observe that “on a proper construction of cl. (5) of Article 22 read with section 3, sub-section (3) of the COFEPOSA Act, it is necessary for the valid continuance of detention that, subject to clause (6) of Article 22, copies of the documents, statements and other materials relied upon in the grounds of detention should be furnished to the detenu alongwith the grounds of detention or in any event not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than 15 days from the date of detention. If this requirement of clause (5) of Article 22 read with section 3, sub-section (3) is not

(1) [1975] 2 S.C.R. 832.

(2) [980] 4 S.C.C. 531.

satisfied the continued detention of detenu would be illegal and void." It may be stated that in *Shalini Soni's*⁽¹⁾ case this Court has taken the view that *Smt. Icchu Devi's* case (supra) is a further development and elaboration of what was said earlier in *Khudi Ram's* case (supra) and the Court confirmed the position that the grounds communicated to the detenu must reveal the whole of the factual material considered by the detaining authority and not merely the inferences of facts arrived at by the detaining authority and that copies of documents to which reference is made in the 'grounds' must be supplied to the detenu as a part of the 'grounds'.

Counsel for the respondents, however, referred to three decisions of this Court, namely, *Ramchandra Kamat's*⁽²⁾ case, *Hansmukh's* case⁽³⁾ and *Mst. Ummu Saleema's*⁽⁴⁾ case, but in our view, none of these decisions detracts from or affects the validity of the principle clearly enunciated in *Smt. Icchu Devi's* case (supra) and confirmed in *Shalini Soni's* case (supra). In the first case the detaining authority had raised a contention that it was not incumbent upon it to supply copies of all the documents relied upon in the grounds of detention alongwith the grounds within five days of the detention because the grounds were sufficiently detailed so as to enable the petitioner to make an effective representation against the detention and it was in that context that this Court made observations to the effect that "it may not be necessary for the detaining authority to supply copies of all the documents relied upon in the grounds of detention at the time when the grounds are furnished to the detenu but once the detenu states that for effective representation it is necessary that he should have copies of statements and document referred to in the grounds of detention it is the duty of the detaining authority to furnish them with reasonable expedition; the detaining authority cannot decline to furnish the copies of the documents on the ground that the grounds were sufficiently detailed to enable the petitioner to make an effective representation." In fact, the real point decided was that once a demand was made by the detenu for copies of statements and documents relied upon in the grounds of detention for making an effective representation the detaining authority was bound to supply

(1) [1980] 4 SCC 544.

(2) [1980] 2 SCC 270.

(3) [1981] 2 SCC 175.

(4) [1981] 3 SCC 317.

A the same with reasonable expedition and could not deny the same on the ground that sufficient details had been furnished in the grounds of detention. The earlier observation cannot be regarded as a ratio of the case. In the second case this Court made a distinction between 'basic facts' and 'subsidiary facts' or 'further particulars of basic facts' and held that a little delay in supplying the latter category of facts was not fatal to the detention. In the third case all that this Court decided was that failure to supply the documents and materials casually or passingly referred to in the course of narration of facts in the grounds of detention and which are not relied upon by the detaining authority in making the detention order would not render the detention illegal. Nobody has suggested that documents and materials to which casual or passing reference is made in the grounds and which have not influenced the mind of the detaining authority in making the order of detention should also be supplied to the detenu. The principle clearly enunciated in *Smt. Icchu Devi's* case (supra) is that copies of all documents, statements and materials referred to or relied upon in the grounds of detention (meaning thereby which have influenced the mind of the detaining authority in arriving at its subjective satisfaction about the necessity to detain the detenu) must be communicated to the detenu within the time prescribed under s. 3(3) of the COFEPOSA and that without this the right to make representation cannot be meaningfully exercised.

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Apropos the true connotation of the expression 'communicate' the latest decision of this Court in *Lallubhai Jogibhai Patel's* ⁽¹⁾ case is significant. In that case the detenu did not know English while the grounds of detention were drawn up in English and an affidavit filed on behalf of the detaining authority stated that the Police Inspector while serving the grounds of detention fully explained the grounds in Gujarati to the detenu but the Court held that that was not a sufficient compliance with the mandate of Art. 22(5), which requires that the grounds of detention must be communicated to the detenu. The Court observed: "Communicate" 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 whole purpose of communicating the 'grounds' to the detenu is to enable him to

(1) [1981] 2 SCC 427.

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 Art. 22(5) is infringed." In taking this view the Court relied upon its three earlier decisions, namely, *Harikishan's* ⁽¹⁾ case, *Hadibandhu Das's* ⁽²⁾ case and *Smt. Raziya Umar Bakshi's* ⁽³⁾ case. In *Hadibandhu's* case (supra) this Court specifically held that mere oral explanation of the detention order which ran into 14 typed pages, without supplying the detenu a translation in a script or language which he understood, amounted to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order. It would thus follow that if the grounds together with copies of all documents, statements and other materials incorporated in the grounds by reference on which the detaining authority has relied are required to be communicated to the detenu under Art. 22(5) read with s. 3(3) of COFEPOSA within the prescribed time then not merely the grounds of detention but also the copies of all incorporated documents, statements and other materials must be supplied to the detenu in a script or language which he understands and failure to do so would amount to a breach of the mandate contained in Art. 22(5) read with s. 3(3) of the COFEPOSA.

Two more decisions of this Court in the context of the obligation to supply documents, statements and other materials referred to in the grounds of detention may be noted. In *Kamla Kanyalal Khushalani's* ⁽⁴⁾ case and *Sunil Dutt's* ⁽⁵⁾ case this Court has taken the view that all the documents, statements and other materials referred to or relied upon either in the order of detention or in the grounds of detention must be served upon the detenu alongwith the grounds. The Court has held that where the documents and materials in support of the grounds on the basis of which the detention order has been made, the same being *ex-hypothesi* in existence at the time of the issuance of the detention order and framing of the grounds, were not supplied to the detenu alongwith the grounds and consequently the detenu was prevented from making effective representation against his detention, the continued detention of the detenu would

(1) [1962] Suppl. 2 SCR 918.

(2) [1969] 1 SCR 227.

(3) [1980] Suppl. SCC 195.

(4) [1981] 1 SCC 748.

(5) A.I.R. 1982 S.C. 53.

A be illegal inasmuch as such non-supply of documents, statements and materials alongwith the grounds of detention amounted to a violation of the safeguard available to the detenu under Art. 22(5).

B Two propositions having a bearing on the points at issue in the case before us, clearly emerge from the aforesaid resume of decided cases : (a) all documents, statements and other materials incorporated in the grounds by reference and which have influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detenu along with the grounds or in any event not later than five days ordinarily and in the exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of his detention and (b) all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of the two duties cast on the detaining authority under Art. 22 (5) of the Constitution. Relying upon this legal position counsel for the petitioner urged before us that in the instant case a breach of the mandate contained in Art. 22 (5) read with s. 3 (3) of the COFEPOSA is clearly involved because of three things that have happened, namely, (i) supply of Urdu translations of the bulk of documents and statements incorporated in the grounds and relied upon by the detaining authority was delayed beyond the normal period of 5 days without any exceptional circumstances obtaining in the matter, (ii) the alleged exceptional circumstances purporting to justify the delay and the fact that the reasons had been recorded in writing were not communicated to the detenu which has prevented him from making effective representation against his continued detention and (iii) Urdu translations of quite a few documents and statements incorporated in the grounds and relied upon by the detaining authority have not been supplied to him at all. As regards the first two aspects counsel relied upon two decisions of the Patna High Court, namely, *Bishwa Mohan Kumar Sinha v. State of Bihar and Ors.*⁽¹⁾ and *Bishwanath Prasad Keshari v. State of Bihar & Ors.*⁽²⁾ where the Patna High Court has taken the view that not merely should the exceptional circumstances exist justifying the delayed supply of the grounds of detention but these should be communicated to the detenu to enable him to make an effective representation. Counsel urged that because of the aforesaid failure the continued

H (1) ILR (1974) 53 Pat. 884.

(2) ILR (1975) 54 Pat. 72.

detention of the petitioner must be held to be illegal. We find considerable force in these submissions made by the counsel for the petitioner.

As regards the first aspect pressed into service by counsel for the petitioner the undisputed facts are that the impugned order of detention was issued on 1st of July, 1982, that the same was served on the detenu on 2nd July, 1982; and immediately thereafter he was put under detention in Ahmedabad Central Prison; the grounds of detention drawn up in English and translated in Urdu together with copies of all documents and statements incorporated in the grounds in original language (English and Hindi) were served upon the detenu on 7th July, 1982 i. e. within 5 days of his detention. Obviously, serving copies of all the documents and statements in English and Hindi on him on 7th July, 1982 was of no use and it was only on 15th of July, 1982 that Urdu translations of the bulk of such documents and statements were supplied to him. In other words effectively the grounds of detention together with bulk of documents and statements incorporated in the grounds in the script or language understood by him were served or supplied on 15th July, 1982 which was beyond the normal period of five days. In any event supply of bulk of documents and statements incorporated in the grounds in the script or language understood by the detenu was delayed beyond the normal period of 5 days. The question is whether such delay was justified by existence of any exceptional circumstances as required by s. 3 (3) of the COFEPOSA for in the absence of exceptional circumstances delay beyond normal period of five days would be a breach of the constitutional as well as the legislative mandate. Counsel for the respondents invited our attention to the affidavit of Shri P. M. Shah Deputy Secretary (Home Department), Government of Gujarat filed on 10th September, 1982 and an office noting approved and signed by the Home Minister which have set out the circumstances occasioning the delay. In his affidavit all that Shri Shah has stated is "time was taken as a large number of documents were to be translated" while in the office noting dated 2-7-82 it has been stated :

"It may be mentioned here on account of Holy month of Ramzan, Urdu translators are not available. Handful translators who are available have expressed that they would work from 12 noon to 4 p. m. because of Ramzan fasts

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they observe. Under the circumstances it is proposed as under :

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(3) The Urdu translations of documents and other materials referred to at (2) above may be furnished to the detenu as soon as they are prepared by a batch of Urdu translators engaged for the purpose but not later than 15 days as prescribed in the Act, as a special case on account of the utmost difficulties pointed out above."

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Below this noting the Home Minister has made his endorsement approving the proposal under the date 2-7-1982. In other words, according to the respondents there were a large number of documents requiring translation and on account of the Holy month of Ramzan Urdu translators were not available and those handful translators who were available and were put on the job were prepared to work only from 12 noon to 4 p. m. because of Ramzan fasts they observed. Preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and therefore in preventive detention jurisprudence whatever little safeguards the constitution and the enactment authorising such detention provide assume utmost importance and must be strictly adhered to and one of such safeguards is that unless exceptional circumstances really obtain the delay in supply of grounds of detention as also the documents and statements incorporated therein by reference beyond the normal period of five days would be fatal. Looked at from this angle the aforesaid explanation given by the detaining authority cannot, in our view, be regarded as constituting exceptional circumstances justifying the delay in the supply of bulk of documents and statements to the detenu in the script or language he understood. In the first place, on admitted facts in the case upon revocation of the earlier detention order on 1st July, 1982 there was no urgency to issue the impugned order of detention on the same day or serve it on the detenu on the following day, the detenu was in judicial custody then in other two cases, one under the Arms Act and the other under the Foreigners Act and no bail having been granted

to him there was no fear of his absconding from Ahmedabad, there being no urgency the detaining authority could have kept all the material ready in Urdu and supplied the same to him immediately after detaining him second time. Secondly, the office noting does not give particulars of how many Urdu translators were put on the job except vaguely stating 'handful translators' were available. Thirdly the office noting clearly suggests that the translation job was entrusted to Urdu translators belonging to a particular community who observed Ramzan fast, instead of restricting the choice in this manner additional Urdu translators who had nothing to do with the observance of Ramzan fasts could have been put on the job, but nothing is indicated whether and if so what efforts were made in that behalf. It is difficult to swallow the proposition that the State Government (which is detaining authority here) with all its power and resources could not find requisite number of qualified persons to do that job so as to make Urdu translations of the concerned documents and statements available to the detenu within the normal period of five days. With the previous detention order having been vitiated on the very ground, greater vigilance and expedition was expected from the detaining authority. In all the facts and circumstances it is impossible to hold that exceptional circumstances obtained in the case justifying the delay and as such the same constitutes a breach of the constitutional as well as the legislative mandate.

On the second aspect the contention of counsel for the petitioner has been that the detaining authority while supplying the Urdu translations of the bulk documents and statements beyond the normal period of 5 days ought to have given indication to the detenu that the delay was caused due to exceptional circumstances and what the exceptional circumstances were, as also of the fact that reasons for the delay had been recorded in writing but this was not done and this failure prevented the detenu from making effective representation against his detention. Counsel for the respondents, however, contended that neither Art. 22(5) nor s. 3(3) of the COFEPOSA casts any obligation or duty on the detaining authority to inform the detenu anything about the exceptional circumstances due to which delay might occur nor about the fact whether reasons have been recorded in writing or not and, according to counsel, these are matters for the Court's satisfaction when any issue in that behalf is raised before it. It is true that neither Art. 22(5) nor does the COFEPOSA contain any provision which casts such a duty upon

A the detaining authority in express terms; it is also true that the Court will of course go into and satisfy itself about these matters when any issue in that behalf is raised before it. But the question is whether such a duty is cast on the detaining authority by necessary implication? Does it or does it not flow from the right conferred upon the

B the detenu to make representation against his detention? In this behalf it cannot be disputed that under the scheme of the COFE-POSA against his detention the detenu has a right to make a representation to an authority which is superior to the detaining authority (e.g. to the State Government when the detaining authority happens to be an officer of that Government or to the Central Government where the detaining authority happens to be the State Government)

C as well as to the Advisory Board and such representation against his detention can be on merits of the grounds of detention as also for failure on the part of the detaining authority to observe strictly the requisite safeguards and on satisfying the superior authority or the Advisory Board on either count he is entitled to have his detention revoked or quashed. We have already indicated above that one of such safeguards is that unless exceptional circumstances really obtain in a case the delay in supply of grounds of detention and/or the documents and statements incorporated therein by reference beyond the normal period of five days would be fatal to the continued detention of the detenu. In other words, the detenu is entitled to satisfy

D either the superior authority or the Advisory Board that the delay that has occurred in the supply of requisite material to him was not justified because exceptional circumstances did not exist or those put forward were unreal or invalid. Obviously, the detenu will not be in a position to do so if the alleged exceptional circumstances are not communicated to him. In our view, therefore, a duty to inform

E the detenu about the existence of exceptional circumstances and what they were for delay in supplying grounds of detention and/or documents and statements incorporated therein arises by necessary implication and flow from the right which is conferred upon the detenu to make representation against his detention. In the instant case, for instance, if the alleged exceptional circumstances were communicated

F to the detenu at the time of the delayed supply of the concerned documents and statements in Urdu language he could have satisfied the superior authority or the Advisory Board that the exceptional circumstances did not really obtain in the case and the delay had vitiated his detention. In other words, what he has done before the Court now,

G he could have done before the superior authorities or the Advisory

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Board. For these reasons we approve of the view ultimately taken by the Patna High Court in the two decisions cited above, particularly the decision in *Bishwa Mohan Kumar Sinha's* case (supra) where both the aspects have been dealt with. In our view, therefore, the impugned failure in this case constitutes another breach of the safeguard contained in Art. 22(5) read with s. 3(3) of the COFEPOSA and vitiates the continued detention of the petitioner.

Lastly, Urdu translations of quite a few documents and statements referred to in the grounds of detention and relied upon by the detaining authority were admittedly not supplied to the detenu at all and the only explanation given by the counsel for the respondents at the hearing has been that most of these documents (Urdu translations whereof were not supplied) comprised statements of accounts which had figures in English with some English words written in capital letters and some documents were in Hindi and Gujarati and the record (statements of Rekha, her sister Indu and one Jayantilal Soni, all co-conspirators of the detenu, recorded during the investigation) clearly shows that the petitioner knows English figures, understands English words written in capital letters and can also converse or talk in Hindi and Gujarati and as such the non-supply of Urdu translations of these documents cannot be said to have caused any prejudice to the petitioner in the matter of making a representation against his detention. In our view, the explanation is hardly satisfactory and cannot condone the non-supply of Urdu translations of these documents. Admittedly, the petitioner is a Pakistani national and Urdu seems to be his mother tongue and a little knowledge of English figures, ability to read English words written in capital letters and a smattering knowledge of Hindi or Gujarati would not justify the denial of Urdu translations to him of the material documents and statements referred to as incriminating documents in the grounds and relied upon by the detaining authority in arriving at its subjective satisfaction. In fact, the claim made before us on behalf of the detenu that he only knows Urdu cannot be brushed aside as false especially in view of the fact that the same was accepted on the earlier occasion by the Advisory Board who had actually opined that failure to supply Urdu translations of grounds of detention and documents had vitiated the earlier order of detention and following this opinion respondent No. 1 had revoked the said order. Moreover, with the assistance of counsel on either side we have ourselves gone through many of these documents and statements and it is not possible to say that most of them

A are merely statements of account containing figures in English with English words written in capital letters. These documents recovered from three flats in three different societies, include, for instance, documents like bills and vouchers showing purchases made from some shops, while a large number of documents are in Hindi and Gujarati and relate to transactions in contraband articles like gold, silver, watches, etc., and comprise accounts of such transactions, the figures as well as recitals pertaining to which are entirely in Gujarati. All these, in our view, are material documents which have obviously influenced the mind of the detaining authority in arriving at its subjective satisfaction and these are all in a script or language not understood by detenu, and, therefore, the non-supply of Urdu translations of these documents has clearly prejudiced the petitioner in the exercise of his right to make an effective representation against his detention and hence the safeguard contained in Art. 22(5) is clearly violated.

D Having regard to the above discussion it is clear to us that the continued detention of the petitioner would be illegal and we accordingly quash the same and direct him to be released forthwith.

S.R.

Petition allowed.