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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of decision: 18th February, 2022**

\+ **W.P.(CRL) 1388/2021 & CRL. M.A. No.11699/2021**

**JASVINDER KAUR** ..... Petitioner

Through: Mr. Arjun Dewan, Advocate with Mr. Shahryar Khan, Advocate.

versus

**UNION OF INDIA THROUGH ITS SECRETARY MINISTRY OF FINANCE DEPARTMENT OF REVENUE AND ORS.**

..... Respondents

Through: Mr. Dhruv Pande, Advocate for respondent Nos.1 to 3.
Mr. Satish Kumar, Sr. Government Standing Counsel for respondent No.6/ Customs.

**CORAM:**
**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**
**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**J U D G M E N T**

**ANUP JAIRAM BHAMBHANI J.**

The petitioner Jasvinder Kaur has filed the present writ petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (CrPC) seeking a direction in the nature of *habeas corpus* for the production of her son, Harmeet Singh, who the petitioner alleges, has been illegally detained by the respondents. After amendment of the array of party-respondents, the respondents in the proceedings

are the Union of India, Through Its Secretary, Ministry of Finance, Department of Revenue (Central Economic Intelligence Bureau); Joint Secretary (COFEPOSA); and The Commissioner of Customs, Terminal-3, IGI Airport, New Delhi, which parties are hereinafter collectively referred to as the 'Ministry' or the 'respondents'.

2. The petitioner further seeks quashing of detention order bearing No. PD-12002/05/2020-COFEPOSA dated 05.06.2020 issued under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) by the Joint Secretary COFEPOSA (the "impugned detention order") under which the petitioner's son is in preventive detention with The Superintendent, Tihar Jail, New Delhi, which detention order also stands confirmed by the Department of Revenue, Ministry of Finance *vidé* order dated 11.08.2021.

3. As per the record, the Ministry's case against the petitioner's son is this :

(i) A specific intelligence input is stated to have been received on 01/02.02.2019 by the Assistant Commissioner, Green Channel (Shift-D) at the Indira Gandhi International Airport (IGI Airport) about smuggling of drones, goods, cigarettes and certain other items in commercial quantity by six passengers on different flights. Pursuant to this intelligence input, customs officers along with officers of the Directorate of Revenue Intelligence (DRI) approached Exit Gate No. 5 of the Arrival Hall, IGI Airport to intercept eight passengers,

including the petitioner herself; and upon conducting search of their baggage, certain objectionable goods were found in the baggage of two persons, Gagan Jot Singh and Gurpreet Singh**.**

(ii) Subsequently, on information allegedly given by Gagan Jot Singh, on the intervening night of 01.02.2019 and 02.02.2019, at around 1:30 a.m. the petitioner's son, Harmeet Singh who arrived at IGI Airport from Dubai *via* Kuwait Airways- Flight No. KU381 was also apprehended for carrying contraband items and goods, along with three other persons, by name Sumit Verma, Sourabh Chopra and Amarjeet Singh.

(iii) Notice under section 102 of the Customs Act, 1962 (Customs Act) was served upon Harmeet Singh on 02.02.2019; officers of the Department of Revenue, Ministry of Finance recorded his statement under section 108 of the Customs Act, which is stated to have been self-incriminating in nature. Importantly, it is the case of the respondents that the statement of Harmeet Singh was typed in the English language and was stated to have been explained to him in the vernacular by an interpreter.

(iv) As per the impugned detention order, upon search of Harmeet Singh's bags the following items were found :

i. *238 dandas of Benson & Hedges Cigarettes;*
ii. *Boarding Pass dated 01.02.2019 for Flight No. KU381 (Kuwait to Delhi) with seat No. 2H;*
iii. *Indian Passport No. Z5317414 issued on 16.01.2019;*
iv. *One Vivo Y53 mobile with Vodafone Sim No. 8860253525;*
v. *UAE Dirham 300/-*
vi. *02 bottles of Chivas Regal 12-YO whiskey;*
vii. *Personal effects, old and used.*

(v) The Ministry says that several other articles and goods, including drones and cameras were recovered *from the other persons* apprehended along with Harmeet Singh; and that the total value of the goods seized and confiscated under sections 110 and 111 of the Customs Act is stated to be about Rs. 1,09,74,500/- (Rupees One Crore Nine Lacs Seventy-Four Thousand Five Hundred Only);

(vi) Harmeet Singh was arrested on 03.02.2019, whereupon he was produced before the learned Metropolitan Magistrate, Patiala House Courts on 04.02.2019 along with other co-accused persons;

(vii) Harmeet Singh is stated to have preferred a bail application before the learned Metropolitan Magistrate, Patiala House Courts on 04.02.2019, which was dismissed; and he was remanded to judicial custody till 05.02.2019 along with other co-accused persons. Harmeet Singh's judicial custody was

subsequently extended from time-to-time; and the last extension was granted till 06.04.2019 *vidé* order dated 02.04.2019 made by the learned Chief Metropolitan Magistrate;

(viii) In the meantime, on 05.02.2019 Harmeet Singh as well as other accused persons filed for retraction of their statements dated 02.02.2019 recorded under section 108 of the Customs Act on the ground that they were recorded under duress and coercion; and these statements are stated to have been retracted on 11.02.2019;

(ix) A second bail application was moved by Harmeet Singh on 14.02.2019 before the learned Chief Metropolitan Magistrate, Patiala House Courts. Another application was filed on 16.02.2019 to preserve the airport CCTV footage of the intervening night of 01.02.2019 and 02.02.2019 as also seeking transfer of investigation of the case to the CBI. The second bail application was dismissed on 20.02.2019and the application seeking to preserve the CCTV footage was dismissed on 16.02.2019. A similar representation seeking to preserve the CCTV footage and transfer investigation of the case, was also made on behalf of the detenu to the Finance Minister;

(x) On 25.02.2019 the Office of the Commissioner of Customs placed before the Joint Secretary (COFEPOSA) the (first) proposal for detention *inter-alia* of Harmeet Singh,

enclosing a brief of the evidence gathered by them, consequent to which Harmeet Singh was eventually detained on 24.05.2021 under detention order dated 05.06.2020;

(xi) Another bail application was preferred by Harmeet Singh before the learned Additional Sessions Judge, Patiala House Courts on 27.02.2019, which was also dismissed on 19.03.2019;

(xii) On yet another bail application being preferred before the learned Chief Metropolitan Magistrate, Patiala House Courts on 04.04.2019, Harmeet Singh was released on statutory bail on 06.04.2019since the investigating officer had failed to file the chargesheet/complaint within the prescribed period under section 167(2) CrPC;

(xiii) On 22.04.2019 Harmeet Singh was summonsed to appear before the Air Customs Superintendent to tender his statement under section 108 Customs Act and to seek the password of his cell-phone. He was summonsed again on 31.01.2020 under section 108 Customs Act again, to confront him with allegedly incriminating data recovered from his cell-phone in the course of its forensic examination;

(xiv) The impugned detention order came to be passed by the Detaining Authority on 05.06.2020;

(xv) On 10.07.2020 Harmeet Singh made a representation to the Secretary, Ministry of Finance; the Joint Secretary

(COFEPOSA) and to the Chairperson, COFEPOSA Advisory Board, Delhi High Court, at the pre-execution stage, for quashing the detention order, which representation was rejected by the Ministry on 05.10.2020;

(xvi) A challenge was made to the impugned detention order at the pre-execution stage *vidé* writ petition W.P.(CRL.) No.1166/2020, which writ petition was dismissed *vidé* judgment dated 16.02.2021. A Special Leave Petition preferred against the dismissal of that writ petition, was also dismissed by the Hon'ble Supreme Court *vidé* order dated 19.04.2021 made in SLP (Crl.) No. 3108/2021;

(xvii) Action under section 7(1)(b) of the COFEPOSA Act is stated to have been initiated against Harmeet Singh on 07.08.2020; and he was finally detained on 24.05.2021. The impugned detention order along with the grounds of detention *in the English language* are stated to have been served upon Harmeet Singh on 24/25.05.2021;

(xviii) On 24.06.2021 Harmeet Singh made a written request for being provided a copy of the detention order along with the grounds of detention *in either Hindi or Punjabi language*, since he said he was unable to understand English copies of the same. This request was forwarded by The Superintendent, Tihar Jail to the Deputy Secretary, Government of India on 26.06.2021. The said letter was treated as a representation; which was stated to have been

sent to the Joint Registrar (COFEPOSA), Delhi High Court, along with the Ministry's para-wise comments thereon, for being placed before the Central Advisory Board; which conducted its meeting on 30.07.2021 *via* video-conferencing, at which Harmeet Singh is also stated to have been present along with his legal representative. Harmeet Singh's request/representation was rejected by the Advisory Board *vidé* memorandum dated 12.08.2021, the Advisory Board having found that there existed sufficient grounds for Harmeet Singh's detention;

(xix) The impugned detention order dated 05.06.2020 was confirmed by the Ministry *vidé* order dated 11.08.2021.

**Grounds of Challenge to the Detention Order**

4. In the present proceedings, the impugned detention order is challenged principally on the following grounds, the details of which are discussed later in this judgment :

(i) That the impugned detention order violates Articles 21 and 22(5) of the Constitution of India, contending that the order is vitiated for non-compliance of the procedure established by law;

(ii) That the impugned detention order is vitiated since Article 22(5) of the Constitution requires the detaining authority to "communicate" the grounds of detention to a detenu, which has been interpreted by the Hon'ble Supreme Court to mean

that such communication must be in a language known to the detenu, which was not done in this case. For that reason, the detenu has been unable to make an effective representation against his detention, which he has a right to do under Article 22(5);

(iii) That the language used in the impugned detention order is "*.... hyper technical language which the Petitioners (sic) son is not able to understand ... ";*

(iv) That the detenu has only studied till class 10, after which he dropped-out of school. Besides, the detenu has studied at a Hindi medium school till class 5; and even in later classes in his second school, the medium of instruction was Hindi. The detenu therefore, barely understands English and could not make sense of the voluminous detention order comprising some 717 pages;

(v) That the detenu does not understand English is evident *inter-alia* from the fact that the statements he made on 22.04.2019 and 31.01.2020 under section 108 of the Customs Act were all in Hindi.

**Submissions of Counsel**

5. To make good the principal objection as regards the language of communication of the impugned detention order, Mr. Arjun Dewan, learned counsel appearing for the petitioner, has drawn the attention of this court to the following aspects and circumstances :

(i) Each time Harmeet Singh had to record a detailed statement, it was recorded entirely in Hindi. In this behalf attention is drawn to statements dated 22.04.2019 and 31.01.2020 recorded by Harmeet Singh under section 108 Customs Act, which have been recorded entirely in Hindi. This, counsel submits, is because the languages in which Harmeet Singh is proficient are only Hindi and Punjabi, notwithstanding the fact that he is able to write a few words or a short sentence in English or that he can sign in English;

(ii) The mere fact that Harmeet Singh recorded that "*I have no objection if my personal and baggage search is conducted by any customs officer*" in English on the notice served upon him under section 102 Customs Act on 02.02.2019 and also signed the same in English, is not evidence of the fact that Harmeet Singh knew English to any extent;

(iii) Though Harmeet Singh signed on *panchnama* dated 02.02.2019, on his seizure memo dated 02.02.2019 as also on statement dated 02.02.2019 recorded under section 108 Customs Act in English, again does not mean that he understands English with any level of proficiency. It is pointed-out that in statement dated 02.02.2019 recorded under section 108 Customs Act, Harmeet Singh specifically wrote that "*I can read, write and understand and speak Hindi/English and Punjabi languages*". By this, it is evident that the principal language with which Harmeet Singh is familiar is not English;

(iv) It will be seen from his *jamatalashi* dated 03.02.2019 that on 05.09.2019 Harmeet Singh subscribed a handwritten note upon it in Hindi, in acknowledgement of having received back certain personal effects and only signed it in English. Same was the position with *panchnama* dated 12.06.2019, in which Harmeet Singh made a noting in Hindi acknowledging receipt of a copy of that document and only appended his signatures in English;

(v) Merely because Harmeet Singh has submitted and signed his retraction statement in English, does not imply that he understands English well enough for him to be able to make a representation against the grounds of detention as he is entitled to do under Article 22(5) of the Constitution. The retraction statement was written in English by Gurpreet Singh and was explained to Harmeet Singh in the vernacular before he signed it;

(vi) In particular, in his communication dated 24.06.2021, Harmeet Singh specifically says that he had requested for a Hindi or Punjabi translation of the documents and was assured he would be given such translation, which however was not done; and that he later learned that he could make a written request in that behalf. It is submitted that especially since Harmeet Singh has no right to counsel at that stage, his ability to put-up a defence depended entirely on his properly understanding the grounds for his detention, which he was

unable to do since the grounds were not supplied to him in a language that he could understand.

6. On the other hand, Mr. Amit Mahajan, learned CGSC appearing for respondents Nos. 1 to 3; and Mr. Satish Kumar, learned Senior Government Standing Counsel appearing for respondent No. 6, have stressed only upon one aspect, namely that Harmeet Singh is *proficient enough* in English to be able to understand the grounds of detention. Counsel submit that, as is evident from his school leaving certificate dated 29.08.1998, issued by the Akali Baba Phoola Singh Khalsa Senior Secondary School, Harmeet Singh has studied upto class 10 (although he failed at that level) and since the school was affiliated to the Central Board of Secondary Education, he would have studied English as a language, even if the medium of instruction was not English. Furthermore, it is submitted that by the very acts for which Harmeet Singh has been detained, it is evident he was a frequent traveler abroad, which means he must necessarily have more than a working knowledge of the English language since otherwise, he could not have travelled abroad. In essence, the submission is that all that is required is a *working knowledge* of the English language, which is evident from all the foregoing factors; and especially from the fact that Harmeet Singh can write and also sign in English.

## Judicial Precedents Relied Upon by Parties

7. In support of her contentions, the petitioner has relied upon the following judicial precedents :

(i) ***Shri Lallubhai Jogibhai Patel vs. Union of India & Others*** [1] : for the proposition that the purpose of communicating the grounds of detention is not served by mere verbal explanation in the language that the detenu understands; and a written translation in that language must be provided;

(ii) ***Powanammal vs. State of T.N. & Another*** [2] : for the proposition that non-supply of the detention order in a language that the detenu understands impairs the detenu's right to make an effective representation;

(iii) ***Chaju Ram vs. The State of Jammu & Kashmir***[3]: for the proposition that handing over the grounds of detection to detenus in an alien language frustrates their right to make an effective representation;

(iv) ***Haribandhu Das vs. District Magistrate, Cuttack & Another***[4]: for the proposition that if a detenu is served with the order and grounds of detention in the English language, which language the detenu does not understand, it would constitute a violation of the guarantee under Article 22(5) of the Constitution;

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[1] (1981) 2 SCC 427; para 20

[2] (1999) 2 SCC 413; paras 4, 6, 7, 8, 10, 15 & 16

[3] (1970) 1 SCC 536; paras 9 & 10

[4] AIR 1969 SC 43; paras 5, 9, 10, 11 & 12

(v) ***Harikisan vs. State of Maharashtra***[5]: to emphasise that the meaning of the word 'communication' is to impart to the detenu all the grounds on which the detention order is passed;

8. The respondents on their part have relied upon the following judicial precedents :

(i) ***Prakash Chandra Mehta vs. Commissioner and Secretary, Government of Kerela & Ors***[6]: for the proposition that determination of whether grounds of detention have been adequately communicated, depends on the facts and circumstances of each case;

(ii) ***Kubic Darusz vs. Union of India & Ors***[7]: to emphasise that a working knowledge of the English language enabling the detenu to understand the grounds of detention would be enough for making a representation;

(iii) ***Sumita Dey Bhattacharya vs. Union of India &Anr.***[8]: for the proposition that if the detenu can sign and write an endorsement in the English language, he would have a workable knowledge of the language.

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[5] (1962) Supp 2 SCR 918; paras 3, 4, 5, 6, 7 8 & 9

[6] (1985) Supp SCC 144; paras 60, 61, 62, 63, 64 & 65

[7] (1990) 1 SCC 568; paras 10 & 13

[8] (2015) 219 DLT 536; paras 9-20

## Discussion

9. In our view, a discussion on the merits of the present case must begin by setting-out the constitutional provision from which the requirement of furnishing to a detenu the grounds for preventive detention are required to be communicated. Article 22 of the Constitution reads as under :

> "***22. Protection against arrest and detention in certain cases.—*** *(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.*
>
> *(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.*
>
> ***(3) Nothing in clauses (1) and (2) shall apply—***
>
> *(a) to any person who for the time being is an enemy alien; or*
>
> ***(b) to any person who is arrested or detained under any law providing for preventive detention.***
>
> *(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless —*
>
> *(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:*

*Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or*

*(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).*

***(5) <u>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.</u>***

*(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.*

*(7) Parliament may by law prescribe —*

*(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);*

*(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and*

*(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).”*

(emphasis supplied)

10. In the factual backdrop of the present case, the petitioner as well as the respondents have premised their contentions essentially on Article 22(5), namely the constitutional mandate for *communicating* the grounds of detention to a detenu and affording

him the opportunity of making a representation against a preventive detention order. While several judicial precedents have been cited by the petitioner on the law on communicating the grounds of detention as aforesaid, in our view, the legal position is best crystalized in the following decisions:

10.1 In *Harikisan* (supra) the Hon'ble Supreme Court took the view that since the High Court had *not returned a finding* that the detenu knew enough English, the High Court had committed an error in holding that only because English was the official language of the State of Maharashtra, supplying the grounds of detention in English language was sufficient compliance of the mandate of Article 22(5). The Hon'ble Supreme Court accordingly held as under :

> "*7. … To a person, who is not conversant with the English language, service of the Order and the grounds of detention in English, with their oral translation or explanation by the police officer serving them does not fulfil the requirements of the law. As has been explained by this Court in the case of State of Bombay v. Atma Ram Sridhar Vaidya clause (5) of Article 22 requires that the grounds of his detention should be made available to the detenue as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detenue should have that opportunity, it is* ***not sufficient*** *that he has been physically delivered the means of knowledge with which to make his representation.* ***In order that the detenue should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention****, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him.* ***Communication, in this context, must, therefore, mean imparting to the detenue sufficient knowledge of all the***

> ***grounds on which the Order of Detention is based****. In this case the grounds are several and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore,* ***any oral translation or explanation given by the police officer serving those on the detenue would not amount to communicating the grounds****. Communication, in this context, must mean bringing home to the detenue effective knowledge of the facts and circumstances on which the Order of Detention is based."*
>
> (emphasis supplied)

10.2 Relying upon the decision in *Harikisan* (supra) and in the context of Article 22(5), the Hon'ble Supreme Court further explained the meaning of the word 'communicate' in *Lallubhai* (supra) in the following words :

> *"20. 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 Gujrati 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 Harikisan v. State of*

*Maharashtra*[13] *and Hadibandhu Das v. District Magistrate*[9]*"*

(emphasis supplied)

10.3 In fact, in a subsequent decision in *Powanammal* (supra), the Hon'ble Supreme Court went further to draw a distinction between a document *relied-upon* by a detaining authority in the grounds of detention as contra-distinct from a document that finds a *mere reference* in such grounds. Explaining the aspect of prejudice caused to a detenu, the Hon'ble Supreme Court said this :

> *"9. However, this Court has maintained a distinction between a document which has been relied-upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas 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****."*
>
> (emphasis supplied)

10.4. A very important aspect that came-up in the course of submissions in this matter, is as to what would be the legal position if a detenu happened to be illiterate. It transpires

that this issue has also been dealt with by the Hon'ble Supreme Court in *Chaju Ram* (supra), in which the position of law has been explained as under :

> *"9. ... The detenu is an **illiterate person** and it is absolutely necessary that when we are dealing with a detenu who cannot read or understand English language or any language at all that the grounds of detention should be explained to him as early as possible **in the language he understands** so that he can avail himself of the statutory right of making a representation. To hand over to him the document written in English and to obtain his thumb-impression on it in token of his having received the same does not comply with the requirements of the law which gives a very valuable right to the detenu to make a representation which right is frustrated by handing over to him the grounds of detention in an alien language. We are therefore compelled to hold in this case that the requirement of explaining the grounds to the detenu in his own language was not complied with."*
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> (emphasis supplied)

10.5. Another contention raised on behalf of the Ministry was that since Harmeet Singh could write a few sentences in English and could sign in English, that showed he had *sufficient knowledge* of the language to be able to understand the grounds of detention furnished to him in that language. This aspect was considered by the Hon'ble Supreme Court in its decision in ***Nainmal Partap Mal Shah vs. Union Of India And Ors***[9] ,where an Hon'ble Single Judge of the

[9] (1980) 4 SCC 427

Hon'ble Supreme Court sitting as Vacation Bench had this to say:

> *"2. Controverting this allegation, the Under-Secretary to the Government of India stated that the grounds were explained to the detenu by the prison authorities. In the affidavit the name of the authority concerned or the designation is not mentioned. Nor is there any affidavit by the person who is stated to have explained the contents of the grounds to the detenu. The Under-Secretary further suggested that as the detenu had signed number of documents in English, it must be presumed that he was fully conversant with English.* ***This is an argument which is based on pure speculation when the detenu has expressly stated that he did not know English****.* ***Merely because he may have signed some documents it cannot be presumed, in absence of cogent material, that he had a working knowledge of English****. It is also not in dispute that a translated script of the grounds were (sic, not) supplied to the detenu at the time when the grounds were served on him. This is undoubtedly an essential requirement, as held by this Court in Hadibandhu Das v. District Magistrate [AIR 1969 SC 43 : (1969) 1 SCR 227 : 1969 Cri LJ 274]. In these circumstances, therefore, there has been a clear violation of the constitutional provisions of Article 22(5) so as to vitiate the order of detention. The petition is, therefore, allowed, the continued detention of the detenu being invalid, he is directed to be released forthwith."*
>
> (emphasis supplied)

10.6 A view taken by a Coordinate Bench of the Hon'ble Madras High Court in ***Daku Devi vs. State of Tamil***

***Nadu***[10] is also, in our opinion, the correct perspective as regards a person who has some sketchy knowledge of a certain language, when it holds that :

> *"7. From the grounds of detention itself, it is apparent that the detenu was not conversant in English.* ***As a matter of fact, the statement of the detenu, on the basis of which the grounds of detention was passed, was in Hindi****. Such statement also indicates that the detenu does not know how to write English.* ***The detenu himself had made a representation indicating that he does not know English and Hindi translation of several documents relied upon by the detaining authority should be furnished****."*
>
> * * * * *
>
> *"13. In the present case, as already indicated, the materials on record indicate that the detenu was not conversant in English, even though he could sign in English.* ***Even if a person is able to sign in English or write few letters in English, that does not mean that such person is "conversant with the language"****.* ***Even if a person may read something and he is in a position to write something, yet he may not be in a position to effectively understand the contents of documents written****. In the present case, the detenu has specifically asked for translation of English documents in Hindi. It is not disputed that the documents were relied upon by the detaining authority to come to a conclusion that there is necessity to detain the person under preventive detention. The authorities have rejected the request of the detenu on the pretext that those documents were in standardised form."*
>
> (emphasis supplied)

10.7. Therefore, the Hon'ble Supreme Court has consistently emphasised the *absolute necessity of furnishing grounds of detention in a language the detenu understands*, holding that

[10] Judgment dated 21.09.2004 in H.C.P. No. 590 of 2004 (Madras HC)

it is purely speculative and no answer to say that merely because a detenu has signed some documents in English, he had *working knowledge* of the language to answer the requirements of Article 22(5).

11. Insofar as the contentions raised by the Ministry are concerned, these must be looked at in the context of the judicial precedents cited by them, which are briefly discussed below :

11.1. The Ministry has drawn the attention of this court to the decision of the Hon'ble Supreme Court in *Prakash Chandra Mehta* (supra). In that case, the Hon'ble Supreme Court held that the detenu was feigning lack of knowledge of the English language *since* the detenu was constantly accompanied by his son and daughter, who knew English very well, and *since* the detenu had filed a mercy petition in English. This is what the Hon'ble Supreme Court said :

> *"63. It will be appropriate to deal with the first ground. Whether the grounds should have been communicated in the language understood by the detenus ? The Constitution requires that the grounds must be communicated. Therefore* ***it must follow as an imperative*** *that the grounds must be communicated in a* ***language understood by the person concerned*** *so that he can make effective representation. Here the definite case of the petitioner's father is that he does not understand English or Hindi or Malayalam and does understand only Gujarati language. The facts revealed that the detenu Venilal was constantly accompanied and was in the company of his daughter as well as son — both of them knew English very well. The father signed a document in Gujarati which was written in English which is his mercy petition in which he completely accepted the guilt of the*

*involvement in smuggling. That document dated June 30, 1984 contained, inter alia, a statement "I myself am surprised to understand what prompted me to involve in such activity as dealing in imported gold". He further asked for mercy. There is no rule of law that commonsense should be put in cold storage while considering constitutional provisions for safeguards against misuse of powers by authorities though these constitutional provisions should be strictly construed. Bearing this salutary principle in mind and having regard to the conduct of the detenu — Venilal Mehta specially in the mercy petition and other communications, the version of the detenu Venilal is feigning lack of any knowledge of English must be judged in the proper perspective. He was, however, in any event given by June 30, 1984 the Hindi translation of the grounds of which he claimed ignorance. The gist of the annexures which were given in Malayalam language had been stated in the grounds. That he does not know anything except Gujarati is merely the ipse dixit of Venilal Mehta and is not the last word and the Court is not denuded of its powers to examine the truth. He goes to the extent that he signed the mercy petition not knowing the contents, not understanding the same merely because his wife sent it though he was sixty years old and he was in business and he was writing at a time when he was under arrest, his room had been searched, gold biscuits had been recovered from him. Court is not the place where one can sell all tales. The detaining authority came to the conclusion that he knew both Hindi and English. It has been stated so in the affidavit filed on behalf of the respondent. We are of the opinion that the detenu Venilal Mehta was merely feigning ignorance of English."*

* * * * *

*"65. The principle is well settled. But in this case it has to be borne in mind that the grounds were given on June 25, 1984 following the search and seizure of gold biscuits from his room in the hotel in his presence and in the background of the mercy petition as we have indicated and he was in constant touch with his daughter and sons and there is no evidence that these people did not know Hindi or English. Indeed they knew English as well as Hindi. It is difficult to accept the position that* ***in the peculiar facts of this case****, the grounds were not communicated in the sense the grounds of detention were*

> *not conveyed to the detenu Venilal*. ***Whether grounds were communicated or not depends upon the facts and circumstances of each case***.*"*
>
> (emphasis supplied)

11.2. The Ministry has also relied upon the decision of the Hon'ble Supreme Court in *Kubic Darusz* (supra), where the detenu was a Polish national and had challenged the detention order furnished to him on the ground that he did not know English :

> *"9. 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 is it 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 ground 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 supplied)

## Conclusions

12. From the foregoing discussion, the legal position as regards the detaining authority's obligation to communicate to a detenu the grounds of detention, may be crystallised as follows :

(i) A detenu has a *fundamental right* under Article 22(5) that the grounds on which a detention order has been made against him, be communicated to him as soon as may be; and that he be afforded an opportunity of making a representation against the detention order at the earliest;

(ii) Interpreting the scope and operation of this fundamental right, the Hon'ble Supreme Court has laid down that 'communication', within the meaning of Article 22(5), means imparting to the detenu sufficient knowledge of the grounds on which a detention order has been made; so that the detenu is in a position to effectively make a representation against the order. More specifically, the Hon'ble Supreme Court has said that oral explanation or oral translation of the grounds of detention would not amount to communicating the grounds to a detenu[11];

[11] *Harikisan* (supra); para 7

(iii) The purpose of Article 22(5) is not served if the grounds of detention are only verbally explained and nothing in writing is left with the detenu in a language which he understands[12];

(iv) Communicating the grounds of detention *effectively and fully* to a detenu implies that the grounds must be *furnished to him in a language which* ***the detenu*** *understands*; and if that entails translation of the grounds to such language, then that is part of the Constitutional mandate. In fact, the Hon'ble Supreme Court goes further to say, that it is incumbent that even the documents '*relied-upon*' in the grounds of detention must be supplied to the detenu, translated into a language the detenu understands; and it is not necessary for the detenu to even demonstrate prejudice to obtain translated version of the 'relied-upon' documents. However, insofar as documents that are only '*referred-to*' in a detention order are concerned, *if* the detenu complains of non-supply of those documents or their translations, the detenu must show what prejudice is caused to him by such non-supply in making an effective representation[13];

(v) For completeness, where a detenu is illiterate, it has been held by the Hon'ble Supreme Court that the mandate of Article 22(5) would be served if the grounds of detention are *explained* to

[12] *Lallubhai* (supra); para 20

[13] *Powanammal* (supra); paras 8 and 9

the detenu *in a language that he understands*, so as to enable him to avail the fundamental right of making a representation[14];

(vi) Merely because a detenu is able to sign or write a few words in English or any other language, does not mean that the detenu is 'conversant with the language', since the detenu may yet not be able to effectively understand the contents of the grounds of detention and the relied-upon documents, to be able to make an effective representation against the detention order[15];

(vii) Whether a detenu is conversant with a given language; or is merely feigning ignorance; or has sufficient working knowledge to understand the grounds of detention and the contents of documents relied-upon, *would depend upon the facts and circumstances of each case*, which a court may reasonably ascertain[16];

(viii) It would *always* be the *safer course* to furnish translations of the grounds of detention and the documents relied-upon in the language that a detenu understands.[17]

13. Applying the foregoing principles to the facts of the present case, we are persuaded to accept that :

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[14] *Chaju Ram* (supra); para 9

[15] *Nainmal Partap* (supra); para 2 and *Daku Devi* (supra); para 13

[16] *Prakash Chandra Mehta* (supra); para 65 and *Kubic Darusz* (supra); para 9

[17] *Kubic Darusz* (supra); para 9

(i) Merely because Harmeet Singh signed several documents in English and was able to string a few words into sentences, evidently on the urging of the concerned officers, *is no basis to impute to him sufficient working knowledge of the English language*. We may add, that the record shows that Harmeet Singh is a Class X drop-out and that he last attended a Hindi Medium school, which is not controverted by the Ministry. Although, out of his three statements recorded under section 108 of the Customs Act, the first statement dated 02.02.2019 was recorded in English and two statements dated 22.04.2019 and 31.01.2020 were recorded in Hindi. Notably, in statement dated 02.02.2019, the following notation appears:

> *"This statement of mine is typed on the computer system available in the Customs Preventive Room on my own request* ***and explained to me in vernacular by an Interpreter*** *Shri Varun Kumar, arrange (sic) by Customs Officers on my request, who is a working as a CSA at IGI Airport, New Delhi. My statement is running into 03 pages. The behavior of the officers was good and no harm was done either to me or my belongings /property or my religious belief."*
>
> (emphasis supplied)

What this notation implies is *firstly*, that there was need for this statement recorded in English to be explained to the detenu in the vernacular by an interpreter, which was necessary, obviously because English is not a language that Harmeet Singh sufficiently understood; and *secondly*, the defensive wording of the notation leaves no doubt that it was made at the behest and instance of customs officials.

(ii) All else apart, *vidé* his communication dated 24.06.2021, Harmeet Singh *specifically requested* that a translation of the grounds of detention be made available to him. He wrote : " .... *मै आप लोगो से विनती करता हूँ। कि मुझे ये सारे कागज जेल मे दिलवांए जाए हिन्दी या पंजाबी मे दिए जाए। ...* ", since he said, he was unable to understand English copies of the same. In view of such *express request*, we are unable to understand as to why the detaining authority did not furnish to Harmeet Singh the requested documents in a language that he understood; and stood obstinately on ceremony on the assertion that Harmeet Singh understood sufficient English to be able to defend himself against his preventive detention.

(iii) A tail-end argument advanced by the Ministry, to say that since Harmeet Singh had travelled abroad on multiple occasions, that was proof positive that he understood sufficient English, is to be heard only to be rejected.

(iv) In fact, in our opinion, to *also* best serve the legal interests *of the detaining authority*, it should be the preferred course of action *in all cases*, that on the mere asking of a detenu, a complete set of detention order along with the grounds of detention as also all relied-upon documents, should be furnished to a detenu in the language in which the detenu requests. It would be preferable that the detaining authority should take such request in writing from a detenu and must formally serve upon the detenu the translated papers as requested expeditiously, against acknowledgement, to

obviate challenges such as the present one, which we find are frequently made.

(v) In our view, the above course of action would place the *communication* of the detention order on firmer footing; and would avoid unnecessary legal challenges to it.

14. In view of the foregoing, we hold, that in the present case, detention order bearing No. PD-12002/05/2020-COFEPOSA dated 05.06.2020 was *not* served upon the petitioner's son, detenu Harmeet Singh, in a language that he understands. Accordingly, the impugned detention order falls foul of the constitutional mandate contained in Article 22(5) of the Constitution as interpreted by the Hon'ble Supreme Court in the various decisions referred to above.

15. Detention order bearing No. PD-12002/05/2020-COFEPOSA dated 05.06.2020 is accordingly quashed.

16. As a *sequitur*, detenu Harmeet Singh, son of the petitioner Ms. Jasvinder Kaur, is directed to be released from preventive detention *forthwith*, unless required in any other case.

17. The present *habeas corpus* petition is allowed and disposed of with the above directions.

18. Other pending applications, if any, also stand disposed of.

19. A copy of this judgment be communicated to the detaining authority as well as to the Jail Superintendent, Central Jail, Tihar, New Delhi by electronic mail.

20. A copy of the judgment be made available to learned counsel appearing for the parties by electronic mail; and be also uploaded on the website of this court forthwith.

**SIDDHARTH MRIDUL, J**

**ANUP JAIRAM BHAMBHANI, J**

**FEBRUARY 18, 2022**
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