

2022 LiveLaw (SC) 862

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
AJAY RASTOGI; J., C.T. RAVIKUMAR; J.**

OCTOBER 19, 2022

THE STATE OF MANIPUR & ORS. *versus* BUYAMAYUM ABDUL HANAN @ ANAND & ANR.

Constitution of India, 1950; Article 22(5) - Right to make representation is a fundamental right of the detenu under Article 22(5) - Refusal to supply the documents requested by the detenu or supply of illegible or blurred copies of the documents relied upon by the detaining authority amounts to violation of Article 22(5) of the Constitution - Whether an opportunity has been afforded to make an effective representation always depends on the facts and circumstances of each case. (Para 17-21)

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 - Supply of the illegible copy of documents which has been relied upon by the detaining authority indeed has deprived him in making an effective representation and denial thereof will hold the order of detention illegal and not in accordance with the procedure contemplated under law. (Para 21)

CRIMINAL APPEAL NO(s). 1819 OF 2022 (Arising out of Special Leave Petition (Crl.) No.2420 of 2022)
WITH CRIMINAL APPEAL NO(s). OF 2022 (Arising out of Special Leave Petition (Crl.) No.2603 of 2022)

(Arising out of impugned final judgment and order dated 28-10- 2021 in WPCRL No. 20/2021 passed by the High Court of Manipur At Imphal)

For Appellant(s) Mr. Pukhrambam Ramesh Kumar, AOR Mr. Karun Sharma, Adv. Mr. Anupam Ngangom, Adv. Mr. Wahengbam Immanuel Meitei, Adv.

For Respondent(s) Ms. Prerna Singh , AOR Mr. K.K. Natraj, ASG Mr. Shailesh Madiyal, Adv. Mr. Sanjay Nuli, Adv. Mr. Vinayak Sharma, Adv. Mr. Nakul Chengappa K.K., Adv. Mr. Mukesh Kumar Maroria, AOR

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The instant appeals are directed against the decision of the High Court of Manipur dated 28th October, 2021 and 16th September, 2021 setting aside the order of detention passed under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as “the Act 1988”) on the premise that the appellants failed to supply the legible copies of documents which were relied upon by the appellants while passing the order of detention under the provisions of the Act 1988.
3. Respondent no. 1, in both the appeals, was released pursuant to the order impugned dated 28th October, 2021 passed by the High Court and the period of detention of one year also expired.
4. Notice was issued by this Court on 18th April, 2022, but no one appeared on behalf of respondent no. 1 despite service of notice.
5. On the last date of hearing, i.e., 1st September 2022, this Court requested Ms. Prerna Singh, learned Advocate to appear as *Amicus Curiae* on behalf of respondent no.1 in both the appeals which she voluntarily accepted and assisted the Court.

6. We have heard learned counsel for the appellants, Ms. Prerna Singh, *Amicus Curiae* on behalf of the respondent no. 1 in both the appeals as well as learned counsel for respondent no. 2 and with their assistance perused the material on record.

7. The challenge in the writ petition originally filed on behalf of respondent no.1 was the order of detention dated 17th May, 2021 and the grounds of detention dated 22nd May, 2021 passed by the Special Secretary (Home), Government of Manipur, whereby respondent no.1 was subjected to preventive detention under the provisions of the Act 1988.

8. The main thrust on which the writ petition was filed under Article 226 of the Constitution assailing the order of detention was that respondent no.1 was not supplied with legible copies of the documents relied upon by the detaining authority while passing the order of detention and that has taken away the valuable right of respondent no.1 in making an effective representation. The right to make a representation is a fundamental right and non-supply of the legible copies of the documents relied upon by the authorities in passing the order of detention is in violation of Article 22(5) of the Constitution and placed reliance on the judgments of this Court in ***Smt. Dharmista Bhagat v. State of Karnataka & Another***¹, ***Manjit Singh Grewal @ Gogi v. Union of India & Ors.***², ***Mehrunissa v. State of Maharashtra***³ and ***Bhupinder Singh v. Union of India & Others***⁴.

9. The Division Bench of the High Court placed reliance on the aforesaid judgments of this Court and set aside the order of detention dated 17th May, 2021 passed by the Special Secretary (Home), Government of Manipur.

10. Respondent no.1 in his writ petition, para 9 and ground (e) in particular, has stated that the documents which formed the basis of the grounds of detention at pages 31, 33, 35, 37, 38 are illegible and all blurred and not readable and as such respondent no.1 could not make an effective representation before the detaining authority and enclosed the grounds of detention dated 22nd May, 2021 along with the petition. Para 9 of the writ petition and ground (e) are extracted hereinbelow:

“9. That, it is pertinent to mention herein that the documents which form the basis of the grounds of detention at page no.31, 33, 35, 37, 38 enclosed herewith are all blurred and not readable and as such the detenu could not make an effective representation before the detaining authority, therefore, the impugned order and subsequent orders are liable to be set aside. The blurred and unreadable original documents furnished to the detenu while he was under detention have been filed along with the writ petition. A true copy of the documents which are not readable enclosed in the grounds of detention dated 22.05.2021 is enclosed herewith and marked as Annexure-A/3.”

“e. For, that the documents which form the basis of the grounds of detention and enclosed herewith are not readable and could not make an effective representation and as such the detention order is liable to be set aside.”

11. In the counter affidavit filed by the appellants before the High Court, the only justification tendered was that all the relevant documents relied upon by the detaining authority were supplied to respondent no.1 and he did not make any such request in his representation of the documents relied upon by the detaining authority either being blurred or illegible at any stage during pendency of the proceedings until the final order of detention

¹ 1989 Supp (2) SCC 155

² 1990 (Supp.) SCC 59

³ (1981) 2 SCC 709

⁴ (1987) 2 SCC 234

came to be passed by the detaining authority. The extract of relevant para no.10 of counter affidavit is reproduced hereunder:

“10. That, with reference to Para Nos.9 and 15(e) of the Writ Petition, the deponent begs to submit that all legible documents which form the basis of the grounds of detention were furnished to the detenu. Moreover, the detenu while submitting his representation could have sought any relevant document from the Detaining Authority as done in other cases. However, the petitioner did not mention any such request in his representation submitted to the detaining authority. Original acknowledgement receipt annexed hereto and marked as A.”

12. Likewise, in Writ Petition (Crl.) No.15 of 2021 before the High Court, similar averments were made. Extracts of para 9 and ground (e) are reproduced hereunder:

“9. That, it is pertinent to mention herein that the documents which form the basis of the grounds of detention at page nos.79, 81, 83, 85, 87, 89, 93, 95 enclosed herewith are all blurred and not readable and even then the respondent No.1 furnished incomplete documents while furnishing the documents of ground of detention to the petitioner (left behind most of the pages of documents annexed in ground of detention). The petitioner has filed the documents in original before the Hon'ble Court, furnished by the respondent no.1 and as such the detenu could not make an effective representation before the detaining authority, therefore, the impugned order are liable to be set aside.

A true copy of the documents which are not readable enclosed in the grounds of detention dated 22.05.2021 is enclosed herewith and marked as Annexure-A/3.”

“e. For, that the documents which form the basis of the grounds of detention and enclosed herewith are not readable and could not make an effective representation and as such the detention order is liable to be set aside.”

13. In the counter affidavit filed by the appellants to the aforesaid writ petition before the High Court, in para 9, the appellants replied as under:

“9. That with reference to Para No.9 of the criminal petition, it is submitted that while serving grounds of detention all relevant documents were enclosed. Moreover, the detenu while submitting her representation done in other cases. However, the petitioner did not mention any such request in her representation submitted to the detaining authority. Annexure R/4 is the true copy of the Ground of detention.”

14. Learned counsel for the appellants has not disputed the proposition settled by this Court that supply of legible copies of the documents relied upon by the detaining authority is a *sine qua non* for making an effective representation which is the fundamental right of detenu guaranteed under Article 22(5) of the Constitution. The only submission made by learned counsel for the appellants is that respondent no.1, at no stage, raised any objection that the pages of the documents relied upon by the detaining authority in the grounds of detention were illegible or blurred which, in any manner, has denied him the opportunity of making representation and the objection was raised, for the first time, before the High Court and not at any stage before the detaining authority. In the given facts and circumstances, learned counsel submits that the interference made by the High Court in setting aside the order of detention is not legally sustainable and deserves to be interfered with by this Court.

15. Learned *Amicus Curiae* appearing on behalf of respondent no. 1 supported the order of the High Court and submitted that once it is settled that the supply of legible copies of documents relied upon by the detaining authority is a *sine qua non* for making an effective representation to be a part of his fundamental right under Article 22(5) of the Constitution and once this specific allegation was made by respondent no. 1 in the writ petition with facts and particulars and also the pages which, according to him, were illegible and blurred and

that has deprived respondent no.1 in making an effective representation, denial thereof was indeed in violation of Article 22(5) of the Constitution and once the fundamental right has been infringed, even if it was not raised before the detaining authority, that will not take away the fundamental right conferred by law to respondent no.1 in assailing order of detention as permissible to him under the law and once this fact remains uncontroverted, no error has been committed by the High Court in setting aside the order of detention.

16. Article 22(5) of the Constitution confers two rights on the detenu, firstly, the right to be informed of the grounds on which the order of detention has been made and, secondly, to be afforded an earliest opportunity to make a representation against the order of detention.

17. It is well settled that right to make a representation implies that the detenu should have all the information that will enable him to make an effective representation. No doubt, this right is again subject to the right or privilege given by clause (6). At the same time, refusal to supply the documents requested by the detenu or supply of illegible or blurred copies of the documents relied upon by the detaining authority amounts to violation of Article 22(5) of the Constitution. Although it is true that whether an opportunity has been afforded to make an effective representation always depends on the facts and circumstances of each case.

18. What will be the effect when the detenu is deprived of effective representation or denial of supply of relied upon documents by the detaining authority has been considered by this Court in ***Ramchandra A. Kamat v. Union of India and Others***⁵ as under:

“6. The right to make a representation is a fundamental right. The representation thus made should be considered expeditiously by the government. In order to make an effective representation, the detenu is entitled to obtain information relating to the grounds of detention. When the grounds of detention are served on the detenu, he is entitled to ask for copies of the statements and documents referred to in the grounds of detention to enable him to make an effective representation. When the detenu makes a request for such documents, they should be supplied to him expeditiously. The detaining authority in preparing the grounds would have referred to the statements and documents relied on in the grounds of detention and would be ordinarily available with him — when copies of such documents are asked for by the detenu the detaining authority should be in a position to supply them with reasonable expedition. What is reasonable expedition will depend on the facts of each case.”

19. What will be the effect of non-supply of legible copies of the documents relied upon by the detaining authority has been considered by this Court in ***Bhupinder Singh*** (*supra*) as under:

“1. On 3-10-1985 the officers of the Enforcement Directorate searched House No. B.20, Gujranwala Town, Part II, Delhi and recovered certain quantity of foreign exchange. It appears that the petitioner was not immediately available. He was called and interrogated. He made a statement which was recorded by the officers of the Enforcement Directorate. On 19-3-1986 an order for detention of the petitioner was made by Shri M.L. Wadhawan, Additional Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi. The petitioner was arrested on 16-4-1986 and served with a copy of the order of detention. Grounds of detention were served on him four days later. On 12-5-1986 he was produced before the Advisory Board. He made a complaint before the Advisory Board that the copies of documents which were supplied to him along with the grounds of detention were not legible and he also placed before the Advisory Board a copy of a representation said to have been made by him for supply of legible copies of documents. There is a controversy whether this representation was made on 8-5-1986 or 12-5-1986. From the original files produced before us we find that the representation was typed on 8-5-1986, but actually signed by the detenu

⁵ (1980) 2 SCC 270

on 12-5-1986. But that would not make any difference for the purposes of this case. On 19-5-1986 the Under-Secretary to the Government of India conceded the demand of the detenu for legible copies of documents and directed the Directorate of Enforcement to supply a duplicate set of documents to the petitioner. A copy of this letter was also sent to the detenu and was acknowledged by him on 21-5-1986. There is a controversy as regards the date on which the legible copies of documents were actually given to the detenu. According to the detenu they were served on him on 1-7-1986, whereas according to the counter-affidavit of Shri S.K. Chowdhry, Under-Secretary in the Ministry of Finance, the documents were supplied on 21-6-1986. It does not make any difference whether the documents were supplied on 21-6-1986 or on 1-7-1986 since we find that even before legible copies of documents were supplied to the detenu, the detention order was confirmed on 14-6-1986. The detenu was thus clearly denied the opportunity of making a representation and there was therefore a clear contravention of the right guaranteed by Article 22 of the Constitution. The detenu is entitled to be set at liberty. We are told that the detenu is now on parole. He need not surrender.” and later in **Manjit Singh Grewal** (supra) as under:

“3. It appears that the appellant had asked for certain copies of the documents which admittedly were there with the respondent – Union of India. Copies of the documents were supplied, but the same were not legible. This position is also apparent. It is not necessary in the facts of this case to go into the question whether these documents were relevant or material.”

20. Learned counsel also relied upon the judgment of this Court in **Union of India v. Ranu Bhandari**⁶ wherein it was held in paras 27 and 31 as under:

“**27.** It has also been the consistent view that when a detention order is passed all the material relied upon by the detaining authority in making such an order, must be supplied to the detenu to enable him to make an effective representation against the detention order in compliance with Article 22(5) of the Constitution, irrespective of whether he had knowledge of the same or not. These have been recognised by this Court as the minimum safeguards to ensure that preventive detention laws, which are an evil necessity, do not become instruments of oppression in the hands of the authorities concerned or to avoid criminal proceedings which would entail a proper investigation.

28-30. xxx xxx xxx

31. Of course, in *Radhakrishnan Prabhakaran case* [(2000) 9 SCC 170] it was also made clear that there is no legal requirement that a copy of every document mentioned in the order has to be supplied to the detenu. What is, therefore, imperative is that copies of such documents which had been relied upon by the detaining authority for reaching the satisfaction that in the interest of the State and its citizens the preventive detention of the detenu is necessary, have to be supplied to him. Furthermore, if in this case, the detenu's representation and writ petition had been placed before the detaining authority, which according to the detenu contained his entire defence to the allegations made against him, the same may have weighed with the detaining authority as to the necessity of issuing the order of detention at all.”

21. Thus, the legal position has been settled by this Court that the right to make representation is a fundamental right of the detenu under Article 22(5) of the Constitution and supply of the illegible copy of documents which has been relied upon by the detaining authority indeed has deprived him in making an effective representation and denial thereof will hold the order of detention illegal and not in accordance with the procedure contemplated under law.

22. It is the admitted case of the parties that respondent no.1 has failed to question before the detaining authority that illegible or blurred copies were supplied to him which were relied upon while passing the order of detention, but the right to make representation being a fundamental right under Article 22(5) of the Constitution in order to make effective

⁶ (2008) 17 SCC 348

representation, the detenu is always entitled to be supplied with the legible copies of the documents relied upon by the detaining authority and such information made in the grounds of detention enables him to make an effective representation.

23. Proceeding on the principles which have now been settled by this Court, it was specifically raised by the respondents in their writ petition and the reference has been made in para 9 of the petition referred to (supra) and in the pleadings on record, there was no denial in the counter filed by the appellants before the High Court that the documents which were supplied and relied upon by the detaining authority were legible and that has not denied respondent no.1 in making effective representation while questioning the order of detention and once this fact remain uncontroverted from the records as being placed before the High Court in writ petition filed under Article 226 of the Constitution and the legal principles being settled, we find no substance in the submissions made by learned counsel for the appellants that merely because respondent no.1 has failed to raise this question before the detaining authority which go into root of the matter to take away the right vested in the appellant/detenu in assailing the order of detention while availing the remedy available to him under Article 226 of the Constitution of India.

24. In other words, the right of personal liberty and individual freedom which is probably the most cherished is not, in any manner, arbitrarily to be taken away from him even temporarily without following the procedure prescribed by law and once the detenu was able to satisfy while assailing the order of detention before the High Court in exercise of jurisdiction Article 226 of the Constitution holding that the grounds of detention did not satisfy the rigors of proof as a foundational effect which has enabled him in making effective representation in assailing the order of detention in view of the protection provided under Article 22(5) of the Constitution, the same renders the order of detention illegal and we find no error being committed by the High Court in setting aside the order of preventive detention under the impugned judgment.

25. Consequently, the appeals fail and are hereby dismissed.

26. Pending application(s), if any, stand disposed of.

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