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

Reserved on: 24.03.2022

Pronounced on: 02.09.2022

\+ **W.P.(CRL) 1213/2021**

SHARAFAT SHEIKH @ MD. AYUB ..... Petitioner

Through: Mr. Tanmaya Mehta, Ms. Shreya Gupta, Mr. Anurag Sahay and Ms. Mallika Bhatia, Advocates.

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Ajay Digpaul, CGSC with Mr. Soumava Karmakar, Mr. Kamal Digpaul with Mr. Rakesh Duhan, Inspector, Narcotics Cell, Crime Branch.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

J U D G M E N T

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RAJNISH BHATNAGAR, J

1. The present writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, has been instituted for quashing; 1) the impugned detention order dated 01.04.2021 passed by the Joint Secretary, Govt. of India u/s 3(1) of the Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988 (PITNDPS) and 2) the impugned Order dated

15.06.2021 passed by the Deputy Secretary, Govt. of India u/s 9(f) of the PITNDPS confirming the detention order for a period of one year along with supporting affidavit.

2. Briefly stated, the facts of the case are that, on 23.07.2020, on the basis of specific information, the IGIS Crime Branch, Dwarka intercepted a vehicle bearing registration No. DL 14 CE 7993 and two persons namely Md. Nasir Hussain S/o Taj Mohd. R/o H. No. 175, Nizam Nagar, Hazrat Nizamuddin, Delhi and Md. Rafiq @ Ibrahim @ Peerji (hereinafter "Rafiq"), S/o Md. Hanif, R/o Village Botal Ganj, PS-Pipiya Mandi, Tehsil, Malharagh, Dist. Mandsaur, Madhya Pradesh were apprehended and 3 kg Heroin was recovered from the bag from their possessions. Both the accused persons were arrested and the recovered heroin was seized under the NDPS Act, 1985. At the time of arrest accused Rafiq disclosed that the said contraband i.e. Heroin was procured by him from Village Baba Kheri, Distt. Mandsaur, M.P at the behest of Sharafat Sheikh (hereinafter "the detenue"), S/o Sheikh Janul R/o G-13, 2nd Floor, Nizamuddin West, New Delhi. He further disclosed that the contraband was to be delivered by him to the detenue. On 21.08.2020 and 24.08.2020 statements of the detenue was recorded wherein he inter-alia, stated that he has completed his studies till the 8th standard and that, he is a permanent resident of Kishan Ganj. He had come to Delhi from his village in the year 1975 and after coming to Delhi, he has stated to have worked as a scrap dealer in the Nizamuddin area; and that, thereafter he started dealing in Smack and started earning huge amount of money. The detenue further stated that**,** till date in the cases of smack/theft, in the jurisdiction police station Nizamuddin and

other police stations of Delhi, he has been arrested in 70-80 cases; and has taken many properties in the area of Kishan Ganj (Bihar), Delhi and Mumbai. In the past he was also caught by the police with Heroin and was subsequently imprisoned. In the year 2005, he was arrested under the provisions of the Maharashtra Control of Organised Crime Act, 1999 and his properties were seized by the Court.

3. After his release from the Maharashtra Control of Organised Crime Act, 1999 case, he was in the jail for a period of two months and after being released out from jail he again started the work of Smack, for which he contacted his old dealers of heroin and started to sell in the area of Nizamuddin. He also contacted his old supplier/known, namely, Rafiq, who is a R/o Village Botalganj, Police station Pipliya Mandi District Mandsaur, Madhya Pradesh, the detenue also met with his son namely, Washim Sheikh, and his cousin brother namely, Feroz Alam. In a period of one year, the detenue demanded heroine 30-40 times from the said Rafiq and purchased the heroin for an amount of Rs. l0 Lakhs per kilogram. Rafiq used to come to Delhi 3-4 times in a month and the detenue also took the heroin for Rafiq from Madhya Pradesh and during the said period, the detenue had talked with Rafiq on his mobile no. 8878047444 from his two different mobile numbers. The detenue took the supply of the heroin on 4th July, 8th July and 17th July from Rafiq at Dhuna Mazar in the Dhuna Guest House in the presence of his son Washim and brother Feroz. During the period of the lockdown, the detenue arranged an emergency pass of Ertiga Car No. DL-14CE-7993 for passing of car during the lockdown for continuing the supply, he also arranged the COVID Emergency Pass of Nasir Hussain and Rafiq

amounting to Rs.15,300/- from one Chotu, resident of Nizamuddin. When a raid was conducted at their places, the detenue with the said Rafiq along with his son, namely, Washim ran away to Mumbai and the detenue stayed in the house of his friend, namely, Shamim at Bungalow no. 24 SVP Road, Mahada, Varsova, Andheri, Mumbai.

4. Further, when a raid was conducted in Mumbai on 05.08.2020, the detenue ran away from there and thereafter he stayed in Hotel Balwasa at Balwasa Road, Mumbai for 2-3 days. Further, for his safety the detenue left the hotel Balwasa and stayed in hotel Lakhnawi Kalaba, Mumbai. On 21.08.2020, the detenue along with his son went to the Hill Road Bandra Mumbai, for some purchase and meeting with his friend, when he was caught with his son namely Washim. Thereafter, on the basis of voluntary statements and considering their involvement in trafficking of narcotics and psychotropic substances, the detenue and Washim Sheikh were arrested in Mumbai by the Delhi Police on 21.08.2020 and were produced before the Additional Metropolitan Magistrate, Bandra, Mumbai. On 22.08.2020 they were transit remanded to Delhi. On 23.08.2020 they were produced before the Special Judge (NDPS), Dwarka Court, and police remand of both the accused persons for 7 days was allowed and they were produced again before the Court on 31.08.2020 whereby they were remanded to judicial custody for a period of 14 days, which was extended from time to time.

5. The detenue filed an application for grant of interim bail on 06.11.2020 before the Special Judge (NDPS), Dwarka Court. The Delhi Police filed counter reply on 11.11.2020 and 17.11.2020 and the Court

vide order dated 18.11.2020 rejected the application for bail of the detenue. An order of proclamation dated 17.02.2021 against Md. Nizam of village Bandakheri, District Mandsaur was issued by the Special Judge (NDPS), Dwarka Court, New Delhi from whom the contraband 'heroin' was procured by Rafiq and also against Feroz Alam who was managing the business of smack in the detenue's absence. The Delhi Police sent a sample of the seized drug, i.e. 'heroin' for testing to the Forensic Science Laboratory, Rohini, New Delhi on 27.07.2020. A report dated 13.11.2020 was received from the Forensic Science Laboratory, Rohini, New Delhi confirming the positive test for 'heroin' (Diacetylmorphine).

6. The detenue has assailed the Detention Order dated 01.04.2021 passed by Joint Secretary, Government of India, whereby, the detenue was directed to be kept in Central Jail Tihar, New Delhi and order dated 15.06.2021 passed by Deputy Secretary, Government of India, by virtue of which the detention of detenue was confirmed for a period of one year.

7. We have heard the learned counsel for the detenue, learned Standing Counsel for the respondent no.1/Union of India, learned ASG for respondent no.2/Joint Secretary, Government of India, and carefully perused the records of this case.

Submissions on behalf of the Detenue

8. It is submitted by the learned counsel for the detenue that there was no need to detain the detenue under PITNDPS as he is already in custody in a case under the stringent provisions of NDPS Act and

there is no likelihood of his release from custody in the near future. It is further submitted that on bare perusal of the grounds on which the impugned detention order dated 01.04.2021 was passed, it is found that, it has not been stated anywhere that there was a possibility of imminent release of the detenue from custody. It is further submitted that if the prosecution's case was so strong, there would be no occasion for the Detaining Authority to keep the detenue under preventive detention and if the prosecution's case is bad then they cannot be allowed to cover up their own failure by keeping the detenue under preventive detention under PITNDPS.

9. It is further submitted that the detaining authority did not consider the representation of the detenue independently of the opinion of the Hon'ble Central Advisory Board and the same amounts to violation of Article 22 (5) of the Constitution of India. It is submitted that there is no requirement of giving separate representation to the Detention Authority; even one representation addressed to the Advisory board calls for consideration by the detaining authority. It is submitted that, it is a mandate of Article 22(4) & 22(5) of the Constitution of India and that it is a fundamental right of the detenue to make a representation to the Detaining Authority as well as to the appropriate Government. It is further submitted that the said fundamental right of the detenue cannot be truncated merely on the premise that the representation by the detenue was only made before the Hon’ble Central Advisory Board.

10. It is further submitted that the detenue being an illiterate person, the order of detention was not properly communicated to detenue as the

same is in English language. It is submitted that the order of detention along with Grounds (only in English language) was served upon the detenue on 02.04.2021 while he was already in custody in case FIR No. 96/2020. It is submitted that it is the Constitutional duty of the State to serve the order of detention upon the detenue in a language that he understands. It is further submitted that the detenue can neither read nor understand and comprehend as to what was served upon him and the detenue has been apprehended solely on the basis of disclosure statement of the co-accused and no recovery was effected from the detenue. It is further submitted that subjective satisfaction of the detaining authority cannot be made out merely on the basis of material relied upon and further, on the basis of evidence which is inadmissible in law.

11. In support of the contentions raised by learned counsel for the detenue has placed reliance upon the following judgments:

- ***Binod Singh vs. District Magistrate, Dhanbad, [1986 AIR 2090]***
- ***Amrit Lal vs. Union Government, Crl. Appeal Nos. 838-841 of 1999***
- ***Rekha vs. State of Tamil Nadu, Crl Appeal No. 755 of 2011***
- ***Sama Aruna vs. State of Telangana, [(2018) 12 SCC 150]***
- ***Ram Lal Ratan Lal Anjana vs. Union of India, [2003 CrlJ 1976]***
- ***Kehar Singh vs. Union of India, [1998 CrlJ 301]***

- ***Shakil Ahmad Ansari vs. Union of India, [1996 (38) DRJ (DB) 385]***
- ***Abdul Razak Nannekhan Pathan vs. Police Commissioner, [1989 (4) SCC 43]***
- ***Dr. Ram Krishan Bhardwaj vs. The State of Delhi, [AIR 1953 SC 318]***
- ***Mohd. Yousuf Rather vs. State of Jammu & Kashmir,[(1979) 4 SCC 370]***
- ***Dharmendra Sugan Chand Chelawat vs. Union of India & Ors., [1990 AIR 1196]***
- ***Bachan Singh vs. Union of India & Ors., [1991 (31) ECC 16]***
- ***Chaju Ram vs. State of Jammu & Kashmir, [1971 AIR 263]***
- ***Sainaba vs. State of Kerala, [O.P. No. 9623/ 02]***
- ***Lallubhai Jogibhai Patel vs. Union of India & Ors., [AIR 1981 SC 728]***
- ***Nasir Ahmad Mir vs. Union Territory of Jammu & Kashmir & Anr., W.P (crl.) No. 674/2019***
- ***Yumman Ongbi Lembi Leima vs. State of Manipur & Ors., Crl. Appeal No. 26/2012***

- ***Mahesh Kr. Chauhan @ Bunty vs. Union of India, [1990 AIR 1455]***

- ***Tofan Singh vs. State of Tamil Nadu, Crl. Appeal No. 152/2013***

Submissions on behalf of the respondents

12. On the other hand, the Learned ASG along with the learned standing counsel while vehemently opposing the present petition submits that, this petition is misconceived and devoid of any merits. It is further submitted that the detention order dated 01.04.2021 has been issued by respondent no. 2, only after arriving at subjective satisfaction on the basis of relevant and sufficient material placed before it. It is further submitted that on the basis of documents and considering the individual role of the detenue, the detaining authority satisfied itself before passing the said order. It is further submitted that the detenue is involved in illegal drugs trafficking and is a habitual offender. It is further submitted that the detenue was duly approached in Tihar Jail and the detention order alongwith the requisite documents were served upon him under his dated signatures wherein, the detenue has acknowledged that he has seen, read and understood the contents of the grounds of the detention.

13. It is further submitted that preventive detention is devised to afford protection to society and the object is not to punish a man for having done something but to intercept such act, before it is committed; and to prevent him from doing so, an order of preventative detention is aimed at prevention of acts against society.

14. It is further submitted that proper representation was provided to the detenue who stated that "CD and CDR would be seen by his advocate" which goes to show that he understood everything, having the assistance of his advocate. It is further submitted that all the documents have been signed by the detenue in 'English' which clearly shows that the detenue understood the contents of the documents supplied; and made the representation signed by his advocate. It is further submitted that the detenue after seeing and having understood the contents and grounds of detention as well as the relied upon documents has signed the acknowledgment of having received the same, that too in English. It is submitted that keeping in view the above facts and circumstances, the preventive detention of Sharafat Seikh @ Md. Ayub S/o Sheikh Jamul R/o G-13, Second Floor, Hajrat Nizamuddin, Delhi age 53 years be continued and approved in the interest of justice.

15. Learned counsels for the respondents have placed reliance upon the following judgments:

- ***Union of India vs. Dimple Happy Dhakad, [AIR 2019 SC 3428]***
- ***Naresh Kr. Goyal vs. Union of India & Ors, [(2005) 8 SCC 276]***
- ***State of Maharashtra & Ors. vs. Bhaurao Punjabrao Gawande, [(2008) 3 SCC 613]***
- ***Huidrom Komungjao Singh vs. State of Manipur, [(2012) 7 SCC 181]***
- ***Union of India vs. Ankit Ashok Jalan, [(2020) 16 SCC 185]***

- ***Haradhan Saha vs. State of West Bengal, [(1975) 3 SCC 198]***
- ***State of Tamil Nadu vs. Nabila, [(2015) 12 SCC 127]***

Discussion & Conclusion

16. The discussion on the merits of the present case must begin by setting out the constitutional provision that stipulates that the Detention Authority furnish to a detenue, the grounds for preventive detention. Article 22 of the Constitution of India 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 subclause (b) of clause (7); or

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

(5) 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.

(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)

17. During the course of the arguments much emphasis was laid by the counsel for the detenue essentially on Article 22(5), namely the constitutional mandate for communicating the grounds of detention to a detenue and affording him the opportunity of making a representation against a preventive detention order in a language which the detenue understands.

18. On the other hand, the stand of the respondents in this regard is that the detenue has clearly understood the contents of the documents supplied to him and the contents of the detention order as he has signed the same in English and has even stated that his advocate would see the CD & CDR which clearly shows that he has sufficient knowledge of English and now he cannot feign ignorance to the grounds of detention and the contents of the documents relied upon.

19. Though the detenue has raised other grounds seeking quashing of impugned detention order dated 01.04.2021 passed by the Joint Secretary, Govt. of India and the impugned order dated 15.06.2021 passed by the Deputy Secretary, Govt. of India, however, in our opinion, the present petition can be disposed of keeping in view the mandate of Article 22(5) of the Constitution of India as according to the detenue the grounds of detention and relied upon documents were not communicated to him in the language known to him and the said non-communication goes to the very root of the detention, and is in itself sufficient to quash the impugned orders.

20. The Hon'ble Supreme Court in ***Harikisan vs. State of Maharashtra, [(1962) Supp 2 SCR 918]***, has adjudicated upon the present question of law, particularly in paragraph 7, it was 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 Ordershould 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."***

21. In ***Lallubhai Jogibhai Patel vs. Union of India & Ors., [AIR 1981 SC 728]***, in paragraph 20, it is observed and held as under:

"*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 istrue 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 ofdetention in Gujrati to the detenu. But, that is not asufficient 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 and Hadibandhu Das v. DistrictMagistrate."*

22. In ***Chaju Ram vs. State of Jammu & Kashmir, [1971 AIR 263],*** in paragraph 9, it is observed and held 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."*

23. In ***Nainmal Partap Mal Shah vs. Union Of India And Ors (1980) 4 SCC 427***, in paragraph 2, it is observed and held as under:

> "*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…"***

24. Similarly, in ***Haribandhu Dass Vs. District Magistrate, Cuttack & Another, AIR 1969 SC 43*** it is observed and held as under:

> ***"For the proposition that if a detenu is served with the order and grounds of detention in the English language, which language the detenue does not understand, it would constitute a violation of the guarantee under Article 22 (5) of the Constitution."***

25. On the other hand, the judgment, relied upon by the respondents are mainly to the effect that (a) the detention order can be validly passed against a person in custody**;** (b) that the order of detention is preventive action with an object to prevent antisocial and subversive elements from

imperilling the welfare of the country or the security of the nation**;** (c) that the liberty of an individual has to be subordinated, within reasonable bounds, to the good of people**;** (d) that it is not the number of acts but the impact of the act which determines the question as to whether the detention is warranted or not. The respondents have relied upon the decision of the Hon'ble Supreme Court in ***Kubic Darusz vs Union Of India & Ors, 1990 1 SCC 568*** to emphasise that a working knowledge of the English language enabling the detenue to understand the grounds of detention would be enough for making an effective representation. This judicial precedent does not come to the aid of the respondents as they have not been able to establish that the detenue had a working knowledge of English.

26. The respondents had served upon the detenue the following documents:

(a) Panchnama

(b) Order dated 01.04.2021

(c) Grounds of detention dated 01.04.2021

(d) List of relied upon documents dated 01.04.2021

27. All the above-mentioned documents bear the signatures of the detenue in 'English', it has been resultantly argued by the Ld. Standing Counsel for the respondent that since the detenue has put his signatures in English, while receiving these documents, he knew English, and now it does not lie in his mouth to say that the documents/orders were not supplied/communicated to him in the language which he understood or the contents of the documents were not explained to him in the language

known to him. We find force in the contention of the detenue that he has studied up to 8th class, to which there is no rebuttal from the side of the respondents. Therefore, in this backdrop the case as set up by the respondents has to be appreciated. It is pertinent to mention here that in the order dated 01.04.2021 the detenue while receiving the same has written in Hindi as "मैंने कॉपी रिसीव किया" and underneath this acknowledgment, the signatures are in 'English', similarly, on the grounds of detention, the signatures of the detenue on each page are in English.

28. The acknowledgment on the list of 'relied documents' supplied by the respondents to the detenue also makes for an interesting reading. There is a stamp with the following inscription on each page of the relied upon documents on which the signatures of the detenue have been obtained and the same reads as follows :

> *"I have seen, read and Understood the contents of the Grounds of Detention as well as Relied upon Documents/Detention order issued under F.No. 11011/07/2021 PITNDPS 01.04.2021. All these Documents are Clear and Legible."*

29. One glance on these stamped acknowledgments leaves us in no manner of doubt that the signatures have been obtained in a very casual, routine and mechanical manner. There is not even a whisper in these acknowledgments obtained that the detention order/relied upon documents have been understood by the detenue in the language known to him i.e Hindi or explained to him in vernacular. Simply because the detenue has put his signatures in English does not by any stretch of imagination go to show that he understands English and as a consequence understood the grounds of detention and relied upon documents.

30. Therefore, the manner in which the signatures of the detenue are obtained on the above mentioned documents, leaves no shadow of doubt that the contents of any of the documents/detention order were explained to the detenue in vernacular, the language that the detenue understands, i.e., Hindi and simply because he had put his signatures in English, does not mean that he is proficient in English or could understand the contents of the documents which are in English, which are too technical in nature, and makes a difficult reading.

31. The arguments of the respondents that the detenue has stated that the CD, CDR and the papers would be seen by his advocate does show that the detenue knew English too, has no force in it. Under the given circumstances, the detenue could have only said that the documents, CD and CDR, would be seen by his advocate and his saying this does not mean that he understands English and had he understood the same, nothing in our opinion, would have stopped him from mentioning that he has understood the grounds of detention/relied documents, but he choose to write that his advocate would see the same which fortifies our view that he did not understand anything and left it all for his advocate to understand and take further action. The detenue has written in hand in 'Hindi' that his advocate would see CD and CDR but underneath he has signed in English. In our view, if the detenue knew or understood English then nothing would prevent him from giving acknowledgment in English, rather he gave acknowledgment in Hindi and signed in English. Signing in English and writing and understanding English are two different things and it cannot be said that if one signs in English, therefore he has full understanding of the language. In other order, the ability to write one's

signature in English does not translate to having a working understanding of the language.

32. Therefore, in view of the discussion hereinabove, the detaining authority was under an obligation to communicate to the detenue the grounds of detention effectively and fully in a language in the present case 'Hindi', which the detenue understood even if that entails the translation of the grounds to the language known to the detenue; only would it form part of the Constitutional Mandate. In fact, the Hon'ble Supreme Court, as a matter of settled law has observed, that it is incumbent that even the documents "relied upon" in the grounds of detention must be supplied to the detenue, translated into a language the detenue understands.

33. Where a detenue is illiterate, it has been held by the Hon'ble Supreme Court that the mandate of Article 22(5) would be served only if the grounds of detention are explained to the detenue in a language that he understands, so as to enable him to avail the fundamental right of making an effective representation.

34. In our considered view, keeping in mind the constitutional mandate of Article 22(5) as well as a plethora of the Hon'ble Supreme Court decisions as also the decision of this Court in ***Jasvinder Kaur Vs. Union of India (W.P.(Crl) 1388/2021 decided on 18.02.2022,*** emphasizing the necessity of furnishing the grounds of detention to the detenue in a language he understands. It is pointed out that the mere signing of documents in English does not automatically translate to the detenue having a working knowledge of English so as to fulfill the mandate of Article 22(5).

35. In the instant case, the respondents have miserably failed to show that the grounds of detention and relied upon documents were "communicated" to the detenue in Hindi, i.e., the language known to him. Accordingly, the impugned detention order dated 01.04.2021 falls foul of the constitutional mandate contained in Article 22 (5) of the Constitution of India as interpreted by the Hon'ble Supreme Court in various decisions referred hereinabove.

36. Detention order dated 01.04.2021 passed by the Joint Secretary, Govt. of India and the order dated 15.06.2021 passed by the Deputy Secretary, Govt. of India confirming the detention order for a period of one year, are accordingly quashed.

37. The present petition is allowed and the 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 and the copy of the judgment be also made available to the learned counsel appearing for the parties by electronic mail; and be also uploaded on the website of this Court forthwith.

RAJNISH BHATNAGAR, J.

SIDDHARTH MRIDUL, J.

September 2, 2022/ib

Click here to check corrigendum, if any