(2006) 11 GAU CK 0049

Gauhati High Court

Case No: None

Md. Abdul Kader Mian	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision: Nov. 9, 2006

Acts Referred:

- Constitution of India, 1950 - Article 22, 226
- National Security Act, 1980 - Section 3
- Penal Code, 1860 (IPC) - Section 120B, 121, 121A, 122, 124A

Citation: (2007) 2 GLR 165 : (2007) 1 GLT 311

Hon'ble Judges: B. Sudershan Reddy, C.J; U.B. Saha, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Petitioner, the elder brother of a detenue under the National Security Act, 1980 (''Act'' for short), in this application under Article 226 of the Constitution of India, assails the order of detention and accordingly, prays for issuance of a writ of habeas corpus directing the release of the detenue forthwith. The order of detention dated 1.6.2006 was made by the District Magistrate, Kamrup (Metropolitan) under Sub-section (2) of Section 3 of the Act. The order directed his detention in Central Jail, Guwahati for a period of three months from the date of issue of the order. The detenue at the relevant time, was in judicial custody in Central Jail, Guwahati in connection with S.O.U. P.S. Case No. 1/2001 u/s 120(B)/121/121(A)/122/124A/153(A), IPC and Chhaygaon P. S. No. 6/06 u/s 120(B)/121/122/427 IPC read with Section 3 of E.S. Act & 10/13 UA (P) Act.

2. The detenue, on receiving the detention order, made a representation (undated) through the Superintendent of Central Jail, Guwahati, addressed for the Commissioner and Secretary to the Govt. of Assam, Home & Political Department and the said representation was received by the Government on 20.6.2006. The

State Government rejected the said representation vide order dated 6.7.2006 and the same was served upon the detenu on 10.7.2006 through the Superintendent of the Central Jail. The State Government, further, vide its letter dated 27.6.2006 forwarded the representation to the Central Government along with the relevant materials. The Central Government vide its communication dated 2.8.2006 rejected the representation of the detenue. The message received from the Central Government has been conveyed to the detenue on 8.8.2006 duly informing him about the rejection of his representation by the Central Government.

3. Though the detention order has been impugned and challenged on various grounds, only two points have been raised by Sri B.K. Mahajan, learned counsel, appearing for the petitioner in support of his stand that the detenu''s detention is bad : (i) the detenu''s representation against detention order was admittedly received by the Government on 20.6.2006 through the Superintendent of Central Jail. It, however, was not disposed of till 6.7.2006. The delay vitiated the detention and the detenue became entitled to be set at liberty by quashing of the order. The unexplained delay on the part of the Central Government in considering the representation made by the detenu is yet another reason for quashing the detention order, (ii) the order of detention is liable to be set aside inasmuch as it has been made without proper, application of mind. Subjective satisfaction of the detaining authority is impaired for the reason of non-application of mind. The detenue was directed to be released on bail by order dated 31.5.2006 passed by a competent court of criminal jurisdiction about which there is no mention in the grounds of detention. The detaining authority at the time of passing of the order did not take into consideration the bail applications and as well as the orders passed thereon which is one of the relevant consideration. Further, the detenue was directed to be released in connection with S.O.U. P. S. Case No. 1/01 and this fact was not taken into consideration by the detaining authority. It was contended that the detaining authority ought to have taken into consideration both the bail applications and the orders passed directing the release of the detenue from prison. The sponsoring authority was bound to place the bail applications and as well as the orders passed thereon for the consideration of the detaining authority and if they were not placed the same would amount to suppression of relevant facts from the detaining authority. In the absence of the bail applications and the orders passed thereon the detaining authority possibly could not have arrived at any decision and thereby the subjective satisfaction is impaired. It was also urged, that the copies of the bail application and as well as the orders passed by the court ought to have been communicated. Non-communication of the said documents infringed the constitutional rights of the detenue guaranteed under Article 22(5) of the Constitution of India. The consultative effect of the irregularities according to the learned counsel had vitiated the subjective satisfaction of the detaining authority.

4. Before we proceed further, it is just and necessary to notice the allegations made in the writ petition in this, regard in sub-para of paragraph 29 of the writ petition.

The writ petitioner alleged "Moreover, it is also emphasized that if the detenue is already in jail, the grounds of detention are to show the awareness of that fact on the part of the detaining authority, otherwise there would be non application of mind and detention order vitiated thereby and as such on that count also, the detention order is liable to be set aside and quashed".

5. We shall first take up the contention urged before us regarding the alleged inordinate delay on the part of the authorities in considering the representation made by the detenue. The representation made by the detenue addressed to the Commissioner and Secretary to the Govt. of Assam is an undated one. The plea taken in the writ petition, in this regard, is to the following effect:

...that the inordinate delay in consideration and subsequent disposal of the presentation of the detenu by the detaining authority. State Government and/or the Central Government vitiated the continued detention of the detenue and on that count alone the detenue is entitled to be released forthwith. Moreover, the petitioner would also like to rely on other points which may not have been specifically stated in the writ petition.

6. In reply thereto, the Joint Secretary to the Government of Assam stated "the order of detention, grounds of detention and representation were forwarded to the State Government for placing the same before the Advisory Board within the stipulated time as envisaged under the Act".

7. The detaining authority, while adverting to this aspect of the matter in its affidavit stated "the detenue submitted his representation on 17.6.2006 through the Superintendent of the Central Jail which was forwarded to the State Government on 19.6.2006. The State Government received the representation on 20.6.2006. The said representation was rejected by the State Government vide order dated 6.7.2006 and the said order of rejection was served upon the detenue on 10.7.2006 through Superintendent of Central Jail. Subsequently the State Government vide order dated 19.7.2006 was pleased to confirm the order of detention".

8. During the course of hearing of this writ petition, the learned Government Advocate submitted that the records disclosed the manner in which the representation of the detenue received attention of the State Government and consideration thereof. The contention was that there is no inordinate delay in considering the representation made by the detenue.

9. Having regard to the nature of controversy, we have directed the State Government to file a better affidavit with reference to the materials available on record as regards the disposal of the representation made by the detenue. The Joint Secretary to the Government of Assam Political Department, accordingly, filed further affidavit on 20.9.2006, which is to the following effect:

That the deponent humbly begs to state that as already stated in the earlier affidavit the Government on 20.6.2006 received the representation of the detenue dated nil submitted through the Superintendent of the Central Jail. The State Government after going through the materials on record as well as the representation filed by the detenue rejected the said representation vide order dated 6.7.2006 and the said order of rejection was served upon the detenue on 10.7.2,006 through the Superintendent of Central Jail. Subsequently, the State Government vide order dated 19.7.2006 was pleased to confirm the order of detention and further directing to detain the detenue for as period of 12 months w.e.f, the initial date of detention. The State Government vide its letter dated 27.6.2006 forwarded the representation of the detenue to the Central Government along with the relevant materials. Subsequently the State Government received a W.T. Message as well as letter dated 2.8.2006 from the Central Government conveying that the representation of the detenue has been rejected. Accordingly, the said message has been conveyed to the detenue on 8.8.2006 about the rejection of his representation by the Central Government.

The deponent further humbly states that the representation of the detenue received due attention of the Government and the same after-receipt was dealt with and considered with due promptness and was after consideration of all relevant factors including all relevant materials and after proper application of mind was disposed of vide order dated 6.7.2006; There was no inordinate delay as alleged and the deponent states that the same was disposed of within a reasonable time and there was laches, negligence or any lethargy in disposing of the representation and, therefore, the time taken to dispose of the representation cannot be construed as having caused any delay or for that matter an inordinate delay as alleged by the petitioner.

The deponent humbly begs to state that the representation of the detenu was received in the late hours of 20.6.2006 and was collected with all other dak and checked on 21.6.2006. On 22.6.2006 the representation was marked to the dealing Assistant. 23.6.2006 was a Sunday. Thereafter, it was placed before the Secretary for consideration. The Secretary after going through the same and other materials on record applied, its mind scrutinizing all relevant particulars and thereafter considered calling for the comments of the concerned District Magistrate as well for effective and proper consideration of the Representation. This was one between 24.6.2006 and 27.6.2006, which took its due and reasonable time. On receiving the request of the Secretary, the District Magistrate on 28.6.2006 forwarded its para wise comments, which was received by the Secretary on 29.6.2006. Accordingly, after due consideration of the comments of the District Magistrate as well, order of rejection of the representation was made. In the late hours of 29.6.2006 the file was put up before the Commissioner, Political Department, Additional Chief Secretary and the Chief Minister for consideration. Accordingly, the same was placed before them on 30.6.2006. They in their turn took 5 days time to go through the

representation, scrutinize the entire records and after due consideration which took its due and reasonable time. On 5.7.2006 the Chief Minister approved the order of rejection. On 6.7.2006 the order of rejection was passed. Thus, there was no delay or for that matter any inordinate delay in disposing of the representation of the detenue. The time taken was due to the fact that the representation was not disposed of as a mere formality but each and every relevant fact for the purpose of disposing of the representation, received its due attention and due consideration and it was only thereafter that the Government rejected the representation of the detenue.

10. So far as the Central Government is concerned, the Under Secretary, Ministry of Home Affairs, Government of India, New Delhi stated in affidavit that a representation dated nil from the detenue alongwith the para wise comments of the detaining authority was received by the Central Government in the concerned desk of Ministry of Home Affairs on 11.7.2006 through State Government of Assam vide letter No. PLA.273/2006/114 dated 27.6.2006. That from the existing staff few had been on leave, during the period on different occasions, as such it took considerable time to process and prepare "necessary summaries, consider various issues involved in determination of the correctness of the detention order and for judicious examination of various points raised in the representation and comments filed by the State Government thereon". The representation was immediately processed for consideration on 21.7.2006 and the case of the detenue was put up before the Under Secretary, Ministry of Home Affairs on 25.7.2006. The Under Secretary carefully considered the case and placed the same before the OSD (Security)/ Ministry of Home Affairs along with his comments on 27.7.2006. The OSD (Security), in turn, with his own comments place the same before Joint Secretary, Ministry of Home Affairs on 27.7.2006. The Joint Secretary considered the case and put up the same before the Additional Secretary, Ministry of Home Affairs on 28.7.2006. The Additional Secretary having considered the case placed the same before the Union Home Secretary on 28.7.2006 itself. The Union Home Secretary having considered the entire materials available on record rejected the representation of the detenue on 31.7.2006. The file was received back in the section on 2.8.2006. That a final decision to reject the said representation was taken by the Central Government in the Ministry of Home Affairs within 15 days excluding Saturdays and Sundays being holidays. There was no delay in taking the decision on the representation of the detenue and much less any inordinate delay as alleged. The decision of the Central Government was sent through quickest modes of communication available, viz., a crash wireless message dated 2.8.2006 through the Home Secretary, Government of Assam and Superintendent of Central Jail, Guwahati. The sum and substance of the contention is that the representation from the detenue was considered most expeditiously by the Central Government and there has been no delay at any stage on the part of the Central Government in the consideration of the representation and in communicating the final decision taken thereon to the detenue.

11. The learned counsel for the petitioner relying on Vijay Kumar Vs. State of Jammu and Kashmir and Others, contended that the State and Central Governments were under an obligation to consider the representation with utmost expedition and in the absence of such expeditious consideration the whole of the detention order gets vitiated. In the said decision it is observed:

the earliest opportunity to be afforded for making representation inheres the corresponding duty of the Government to consider the representation so received expeditiously. When power to detain without trial, is exercised, the authority exercising the power must afford an opportunity to the detenue to convince the government/detaining authority that the power was not justifiably, exercised or no occasion arose for exercise of the power. In a punitive detention which is the end product of a trial in which the convict participates and has full opportunity to present his side of the case while preventive detention ordinarily described as jurisdiction based on suspicion does not afford any opportunity to the detenue to explain his side of the matter before he is deprived of the liberty and, therefore, so soon after the detenue is deprived of his personal liberty the statute makes it obligatory on the authorities concerned to afford him earliest opportunity to represent his side of the case and which inheres the corresponding obligation on the authority to consider the same. The corresponding obligation of the State to consider the representation cannot be whittled down by merely saying that much time was lost in the transit. Any slackness in this behalf not properly explained would be denial of the protection conferred by the statute and would result in invalidation of the order....
In that case there were two time lags, which was noticed by the court. A time lag of l4 days in transmitting the representation to the appropriate authority and the time lag of 19 days in considering the representation after its receipt by the State Government. The explanation offered in that behalf the court held was far from convincing.

12. In Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and Others, Upon which reliance has been placed by the learned counsel for the petitioner the order of detention has been quashed on the ground that there has been supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant''s representation by the government which received the representation 11 days after it was handed over to the Jail Superintendent by the detenu. The avoidable and unexplained delay has resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible.

13. In Frances Coralie Mullin Vs. W.C. Khambra and Others, the Supreme Court while referring to four principles enunciated by the court in Jayanarayan Sukul Vs. State of West Bengal, and in other cases, and as well as other principles enunciated

observed:

an analysis will show, are aimed at shielding personal freedom against indifference, insensibility, routine and red tape and, thus, to secure to the detenue the right to make an effective representation. We agree : (1) the detaining authority must provide the detenue a very early opportunity to make a representation, (2) the detaining authority must consider the representation as soon as possible and this, preferably, must be before the representation is forwarded to the Advisory Board, (3) the representation must be forwarded to the Advisory Board before the Board makes its report, and (4) the consideration by the detaining authority of the representation must be entirely independent of the hearing by the Board or its report, expedition being essential at every stage. We, however, hasten to add that the time imperative can never be absolute or obsessive. The court''s observations are not to be so understood. There has to be lee-way, depending on the necessities (we refrain from using the word ''circumstances'') of the case....Several such situations may arise compelling departure from the time-imperative. But no allowance can be made for lethargic indifference. No allowance can be made for needless procrastination. But, allowance must surely be made for necessary consultation, where legal intricacies and factual ramifications are involved. The burden of explaining the necessity for the slightest departure from the time-imperative is on the detaining authority.
(emphasis supplied)

14. It would be apt to reproduce a very classical observation made by Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr,

we do not doubt that the representation made by the detenue has to be considered by the detaining authority with the utmost expedition but as observed by one of us in Frances Coralie Mullin Vs. W.C. Khambra and Others, the time imperative can never be absolute or obsessive....Law deals with the facts of life. In law, as in life, there are no invariable absolutes. Neither life nor law can be reduced to mere but despotic formulae.

(emphasis ours)

15. In K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, a Constitutional Bench of the Supreme Court approving the ratio of Frances Coralie Mullin v. W.C. Khambra and Mst. L.M.S. Ummu Saleema v. Shri B.B. Gujaral and Anr. and while highlighting the nature of Constitutional mandate commanding the concerned authority to consider the representation and disposed of the same as expeditiously as possible observed:

However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation

should be dealt with. The requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.

In that case, the detenue''s representation dated 17.4.1989 was rejected by the State Government on 7th May, 1989 and likewise the Central Government rejected the representation on May 23, 1989. The delay in considering the representation, if any, was not held to be unreasonable one.

16. In D. Anuradha Vs. Jt. Secretary and Another, the Supreme Court after referring to its earlier decisions observed "on a survey of the various authorities, it is clear that the representation, if any, submitted on behalf of the detenue shall receive immediate attention and that the same shall be considered by the appropriate authorities as expeditiously as possible. Any delay would naturally cause prejudice to the detenue". In the said case the representation filed by the wife of the detenue was disposed of "only with a delay of 119 days". The delay was caused mainly due to non-availability of the translated copy of the representation. The representation was made in "Tamil" and it was submitted by the Union Government that it took about three months to get a proper translation of the representation and as soon as the translation was received, the authorities took urgent steps and it was disposed of within a short period. In the facts and circumstances of the case, the court observed "we do not think that there was inordinate delay in disposing of the representation....The delay has been satisfactorily explained and the failure to get the translated copy of the representation was an unavoidable delay." The delay of 119 days in considering and disposing of the representation made on behalf of the detenue was not considered to be an inordinate delay. We do not propose to burden this brief order of ours with other decisions upon which reliance has been placed by the learned counsel for the petitioner.

17. We have already noticed the explanation offered by the State and as well as Central Government. In order to consider as to whether the explanation offered by them is acceptable we are required to notice the background facts leading to the detention of the detenue as they are disclosed in the grounds of detention. The detenue is alleged to have joined voluntarily in Harkat-Ul-Muzahidin (HUM) outfit in the month of March 2001 sponsored by the Inter-Service Intelligence (I.S.I.) of Pakistan which has been spreading its network all over Assam by enticing Muslim youths in the name of ''Zehad'' and recruiting them in ''HUM'' and has been sending them to Bangladesh and Pakistan for training in handling of explosive device and different arms with a view to disrupt communal harmony among the people through their subversive activities. After induction the detenue is alleged to have visited Bangladesh along with others for training with a view to waging war against the Union of India to disrupt communal harmony and to turn Assam into a Muslim

sovereign country. It is alleged that the detenue planned to recruit and to impart training to a large section of Muslim youths in State for carrying out ''Zehad'' by resorting to terrorist and disruptive activities to create large scale disturbances in the State by instigating the innocent law abiding Muslim population of the State and to develop a situation of hatred and communal disharmony between Muslim and non-Muslim population with a view to waging war to establish the country. In this connection in the year 2001, a case vide SOU PS. Case No. 1/2001 u/s 120(B)/121/121(A)/122/124A/153(A), IPC was registered which is under investigation. It is further alleged that the detenue was arrested in connection with Chhaygaon P.S. Case No. 6/2006 was registered u/s 120(B)/121/122/427 IPC read with Section 3 of E.S. Act and 10/13 UA(P) Act on the ground that ULFA activist Monoj Rava revealed that ULFA group leader Prabal Dutta handed over a bomb to him "to cause an explosion and as per instruction he caused the explosion of the bomb on 24.1.2006 at 11.55 P.M at Chhaygaon and he revealed that one Samser Ali Sarkar ''the detenu'' is a cadre of Zehadi outfit he used to meet ULFA leader Prabal Dutta and Rubul Ali and the detenue supplied some arms and explosives to Prabal Dutta and further stated that the bomb was given to him on 13.1.2006 by Prabal Dutta and he strongly suspected to be the bomb supplied by the detenue.

18. In the grounds of detention it is further stated that the detenue is a hardcore militant as well as a devoted organizer of Harkat-UI-Muzahidin (HUM) and Inter-Service Intelligence (I.S.I.) involved in many activities prejudicial to the security of country and maintenance of public peace and order.

19. The representation made by the detenue was required to be considered by both the State and as well as Central Government in the background of the statements made in the grounds of detention.

20. The facts are undoubtedly complex since the allegations against the detenue revealed an involvement with terrorist agencies engaged in subversive activities prejudicial to the security of the country and maintenance of public peace and order. The representation made by the detenue obviously was required to be considered after consulting with various agencies and to be processed at various stages. Can it be said that the delay was due to want of care? Whether there was any supine indifference, slackness, and callous attitude on the part of the authorities in considering the representation of the detenue ?

On consideration of the facts and the explanations offered by both State and as well as Central Government, we are of the opinion that the representation made on behalf of the detenue received its due and proper attention and there is no unexplained delay on the part of both the Governments. The delay, if any, is properly explained. Mere delay in considering the representation itself is not a ground to quash the detention order unless there has been unreasonable and unexplained delay on the part of the authorities in considering the representation. We accordingly reject the first contention.

21. We shall now take up the second contention. The learned counsel for the petitioner strongly relied upon the decision rendered by a Division Bench of this court in Monisur Islam v. Union of India and Ors. (2002) 3 GLT 249 in support of his submission that non-supply of bail applications and the orders passed thereon vitiated the order of detention. This aspect of the matter has not been raised in the writ petition. But, however, we have permitted the learned counsel for the petitioner to make the submission.

The order of detention and the grounds do not refer to the bail applications and the orders passed thereon. The learned counsel for the petitioner stated at the bar that in Chhayagaon P.S. Case No. 6/06 the detenue was directed to be released on bail by a competent court of criminal jurisdiction, vide order dated 31.5.2006. In SOU P.S. Case No. 1/2001 also the detenue is stated to have been directed to be released on bail (the date of which is not mentioned). The fact remains that the detenue continues to be in judicial custody and for, whatever reasons the orders directing his release on bail were not given effect to. The detaining authority states "I am satisfied that his (detenue) detention is necessary since once he comes out of the judicial custody, there is every possibility that he may indulge in activities prejudicial to the maintenance of public order and security of the country and, hence, the overwhelming compelling necessity to keep him under continued detention". The detention order also takes note of the fact that the detenue is presently detained in Central Jail, Guwahati.

22. The detaining authority is acutely conscious of the fact that the detenue has been arrested on 23.2.2006 in connection with SOU P.S. Case No. 1/2001 and on the same day in connection with Chhayagaon P.S. Case No. 6/2006 and remained in judicial custody even on the date of passing of the orders. The detaining authority did not rely upon the bail applications and the orders passed thereon in arriving at satisfaction as is required in law in passing the detention order. The learned counsel for the petitioner placed strong reliance upon the decision of the Supreme Court in Abdul Sathar Ibrahim Manik Vs. Union of India and others, in support of his submission that the bail applications and the orders were vital materials, for consideration and non-consideration thereof vitiates the detention order.

23. In M. Ahamedkutty Vs. Union of India (UOI) and Another, , the Supreme Court observed that if the detenue was already in jail the grounds of detention are to show the awareness of that fact on the part of the detaining authority, otherwise there would be non-application of mind and detention order vitiated thereby. In that case, the bail application and the bail order were furnished to the detaining authority on his enquiry. In one of the grounds, it was stated "you were remanded to judicial custody and you were subsequently released on bail". The bail applications contained the grounds for bail including that he had been falsely implicated as an accused in the case at the instance of persons who were inimical disposed towards him, and the bail orders contained the conditions subject to which

the bail was granted including that the accused, after released on bail, would report before the Superintendent (Intelligence) Air Customs. Trivandrum on every Wednesday until further orders, etc. Under those circumstances, the court held non-supply of the bail applications and the bail orders having been apparent, the legal consequence is bound to follow. The court found the bail application and the bail orders were vital materials for consideration. If those were not considered "the satisfaction of the detaining authority itself would have been impaired, and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenue with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenue''s right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenue illegal and entitling the detenue to be set at liberty...."

24. In Abdul Sathar Ibrahim Manik v. Union of India and Ors. (supra) it was urged that there are suppression of vital documents, namely, bail application and the orders refusing the bail, which are relevant documents and had those documents been placed before the detaining authority they might have influenced the mind of the detaining authority one way or the other. Alternatively it was also contended that irrespective of the fact whether they were placed before the authority or not the copies thereof ought to have been supplied to the petitioner parri passu the grounds of detention and their failure to supply the same infringed the constitutional rights guaranteed under Article 22(5) of the Constitution of India. In the light of the submissions the Supreme Court framed question for its consideration as to whether ''the failure to supply those documents to the detenue or alternatively whether the failure to place the bail application and the order before the detaining authority in any way affected the detention order ?'' The court after referring to the decision in M. Ahmedkutty v. Union of India and Ors. (supra) held that the observations made therein were altogether in a different fact situation. The court found the bail application and the orders passed thereon were in fact placed before the detaining authority and were relied upon by it and, therefore, non-supply of those documents to the detenue disabled him to make an effective representation. After an elaborate consideration of the matter and having regards to various decisions on the points often raised the court found it appropriate to set down the conclusions as under:

(1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenue was already in custody.

(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher court.

(3) If the detenue has moved for bail and the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenue was in actual custody.

(4) Accordingly the non-supply of the copies of bail application or the order refusing bail to the detenue cannot affect the detenue''s right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear, that the authority has not relied or referred to the same.

(5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them failure to supply bail application and order refusing bail will not cause any prejudice to the detenue in making an effective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the court.

(6) In a case where detenue is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenue.

25. It is, thus, clear that even in cases where a detenue obtains the bail and the same is not placed before the detaining authority it does not amount to suppression of relevant materials. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenue was in actual custody though there was an order directing his release on bail. It would be entirely a different case altogether where the detenue obtains bail and also released from the custody and yet the detaining authority proceeds on

the assumption as if the detenue continues to be in custody and proceeds to pass detention order in such case the detention order gets vitiated on the ground of non-application of mind. In the instant case the detaining authority did not rely upon the bail applications and the orders passed thereon. Accordingly, the non-supply of the copies thereof cannot affect the detenue''s right of being afforded a reasonable opportunity guaranteed under Article 22(5) of the Constitution of India.

26. We are not impressed by the submissions that in the absence of the bail applications and the orders passed thereon the detaining authority could not have arrived at any conclusion about the possibility of the detenue "coming out of judicial custody". In our considered opinion coming out of the judicial custody not necessarily depends upon the order of bail to be granted or granted by as competent court of jurisdiction. A person involved in a criminal case and kept in judicial custody may be released and could be released from the judicial custody on various grounds. There could be variety of circumstances for a person coming out of the judicial custody. It may depend upon the very nature of the case, non-filing of the police report within the statutory period, etc. We do not propose to delineate all those possible grounds on which a person may come out of the judicial custody. The detaining authority did not say that there was a possibility of detenue being released on bail to arrive at a conclusion that once the detenue "comes out of the judicial custody" there is every possibility that he may indulge activities prejudicial to the maintenance of public order and security of the country. The point urged in this regard is not well founded.

27. The ratio of the decision in Monisur Islam v. Union of India and Ors. (supra) which is nothing but reiteration of the law laid down by the Supreme Court in M. Ahmedkutty v. Union of India and Ors. (supra) is required to be understood in the light of law declared by the Supreme Court in Abdul Sathar Ibrahim Manik (supra). We are bound by the decision in Abdul Sathar Ibrahim Manik wherein the legal position has been clarified. The same principles are reiterated in Union of India (UOI) Vs. Paul Manickam and Another, We do not consider it necessary to refer to various other decisions relied upon by the learned counsel since the principles stated in Abdul Sathar (supra) are not varied by any of subsequent decisions. We accordingly reject the second contention also.

28. Yet another subsidiary contention urged by the learned counsel for the petitioner was that the detaining authority did not independently applied his mind but indulged in parrot like repetition of the averments made in the dossier prepared by the sponsoring authority and this factor alone impaired the subjective satisfaction and the opinion found by the detaining authority. We do not find any merit in this submission. It is no doubt true that the detaining authority heavily relied upon the dossier prepared by the sponsoring authority and referred to them in the grounds of detention and accordingly communicated the copies of the dossier

prepared by the sponsoring authority to the detenue. The detaining authority having referred to the contents of the dossier is bound in law to communicate the copies of the dossier upon which reliance has been placed. The records disclose that the detaining authority having meticulously gone through the materials available for his consideration arrived at his own satisfaction before passing the detention order. The records disclose intense application of mind by the detaining authority.

Epilogue

29. We are not unaware of the fact that Article 22(5) of the Constitution of India commands and imposes obligation on the appropriate Government or the detaining authority to provide the detenue the earliest opportunity to make an effective representation and to consider that representation as expeditiously as possible and to communicate the decision thereof to the detenue. The right of the detenue to be served with all the documents referred and relied upon by the detaining authority and all the grounds on which the orders have been made. The representation of the detenue is required to be considered objectively in a fair and reasonable manner. Non-compliance with any of the requirement results in infringement of the constitutional right guaranteed under Article 22(5) of the Constitution of India and invalidates the detention order. We are equally conscious of the fact that the interest of the society is not less important than that of the individual. The constitutional provisions balance the liberty of the individuals with social interest. The preventive detention laws curtail the liberty in the interest of State''s security, public order, disruption of national economic discipline and they are perceived as necessary evil. Onerous duty is cast upon the court to balance the competing interest and that exercise involves assessment of facts and evaluation of circumstances in each case.

Conclusion

30. On consideration of the facts and entire materials available on record and settled legal position we find that the detention order is not vitiated for any reason whatsoever requiring our interference. Writ petition fails and shall accordingly stand dismissed. We make no order as to costs.