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

None

Court: Gauhati High Court

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 detainee 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

detainee 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 detainee 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 detainee, 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 detainee. The message received from the Central Government has been conveyed to the detainee 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 detainee 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 detainee 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 detainee 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 detainee 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 detainee 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

vitiating 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 done 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 detainee. 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 detainee.

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 detainee 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 detainee 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 detainee 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 detainee 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 detainee 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 detainee.

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

detainee 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 detainee to explain his

side of the matter before he is deprived of the liberty and, therefore, so soon after the detainee 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 14 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 detainee'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 detainee 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 detainee"". In the said case

the representation filed by the wife of the detainee 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 detainee

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 detainee as they are

disclosed in the grounds of detention. The detainee is alleged to have joined voluntarily in Harkat-ul-Mujahideen (HUM) outfit in the month of

March 2001 sponsored by the Inter-Services 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 detainee 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 detainee 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 detainee 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 detainee 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 detainee.

18. In the grounds of detention it is further stated that the detainee 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 detainee 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 detainee 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 detainee

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 detainee ?

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 detainee 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 detainee 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 detainee'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 detainee illegal and entitling the detainee 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

detainee 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. Ahmedkutti 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 detainee 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 detainee 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 detainee 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 detainee was in actual custody.

(4) Accordingly the non-supply of the copies of bail application or the order refusing bail to the detainee cannot affect the detainee'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 detainee 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 detainee 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 detainee.

25. It is, thus, clear that even in cases where a detainee 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. Ahmedkuty 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 detainee. 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 detainee 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 detainee. The right of the detainee 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 detainee 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.