CASE NO.:
Appeal (crl.) 245 of 2006

PETITIONER:
Sunila Jain

RESPONDENT:
Union of India & Anr

DATE OF JUDGMENT: 24/02/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T
[Arising out of SLP (Crl) No. 1860 of 2004]

S.B. SINHA, J :

Leave granted.

Whether a copy of the bail application is required to be taken into consideration for the purpose of passing an order of preventive detention in terms of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'COFEPOSA') is the question involved in this appeal which arises out of a judgment and order dated 30th March, 2004 passed by the High Court of Karnataka in Writ Petition No. 92/2003 whereby and whereunder the writ of habeas corpus filed by the appellant was dismissed.

The appellant's husband D.K. Jain was a licensee under Foreign Trade (Development and Regulation) Act, 1992. He was carrying on business under the name and style of M/s. Amisha International. On or about 9.6.1997 the said firm obtained a letter of permission for manufacturing powder grade silk yarn under the 100% Export Oriented Unit Scheme and Importer Exporter Code issued by the Development Commissioner, Cochin Special Economic zone (CEPZ). In terms of the said letter of permission the firm was required to fulfill export obligations specified therein and to achieve the value addition. Having obtained an information that the said firm was diverting duty free mulberry raw silk yarn imported under the said scheme to the domestic market for undue monetary gains instead of using the same for manufacturing purpose wherefor the said permission had been granted and in place of exporting powder grade silk yarn, had been exporting bricks and other waste material, raids were conducted at Bangalore and at Cochin Port on 29.1.2003. Several incriminating documents and properties were seized.

The statement of the husband of the appellant (the detenu) in terms of Section 108 of the Customs Act was recorded. Another statement of his was recorded under the said provision on 30th January, 2003. He was also arrested on the said date. An application for bail was moved by him before the Special Economic Offences Court on the said date itself, the contents whereof are as under:

"Application U/S 436 of the Criminal Procedure Code.

1. The above complainant customs have registered a case against accused for or an offence punishable under section 135 of the Customs Act.

2. The said offence is bailable in nature and

accused is an innocent of the said alleged offence.

3. The accused is a permanent residence of Bangalore and peace loving citizen of Bangalore.

4. The accused is willing to pay security to this Hon'ble Court for release of the accused."

On the premise that offence under Section 108 of the Customs Act is bailable, he was granted bail on the same day.

The detaining authority passed an order of detention against the detenu on 12.6.2003. Questioning the said order of detention, a writ petition praying for issuance of habeas corpus was moved before the High Court of Karnataka at Bangalore. By reason of the impugned judgment the said writ petition has been dismissed. Before the High Court principally two contentions were raised on behalf of the detenu. (1) A copy of the application for bail having not been supplied by the detaining authority, the impugned order of detention is vitiated in law; and (2) In view of the fact that the licence granted in favour of the said firm was suspended, the question of passing an order of detention for preventing the detenu from carrying out the activities which could be detrimental to the provisions of the Customs Act did not arise. Both the contentions have been rejected by the High Court by reason of the impugned judgment.

Before us, however, Mr. K.K. Mani, learned counsel appearing on behalf of the appellant pressed only the first contention, in support whereof the learned counsel relied upon the decisions of this Court in M. Ahamedkutty v. Union of India & Ors. [1990 (2) SCC 1], P.U. Abdul Rahiman v. Union of India & Ors. [1991 supp.(2) SCC 274] and Abdul Sathar Ibrahim Manik v. Union of India & Ors. [1992 (1) SCC 1]. It was submitted that a distinction must be made in the matter of supply of a copy of the bail application in a case where the detenu is in custody and in a case where he was free on the date of passing of the order of detention. The learned counsel would submit that whereas in the former case neither a copy of the bail application nor an order of bail is required to be placed before the detaining authority by the sponsoring authority, in the latter case, the same is imperative in nature. It was urged that in the instant case it is evident from the records that neither the copy of the bail application nor the order of the court granting bail to the detenu had been placed before the detaining authority. It was furthermore argued that the High Court committed a manifest error in rejecting the said contention of the appellant stating that he must have been aware of the contents of the bail application and, thus, was not prejudiced in any manner whatsoever. The constitutional mandate contained in Article 22 of the Constitution of India, Mr. Mani would argue, must be complied with wherefor supply of relevant material is imperative. In support of the said contention reliance was placed in Mrs. Tsering Dolkar v. Administrator, Union Territory of Delhi & Ors. [1987 (2) SCC 69], Johney D'Couto v. State of Tamil Nadu [1988 (1) SCC 116] and Smt. Icchu Devi Choraria v. Union of ndia & Ors. [1980(4) SCC 531].

Mr. Gopal Subramanium, learned Additional Solicitor General appearing on behalf of the respondents, on the other hand, submitted that in the instant case a copy of the bail application was not required to be placed before the detaining authority. It was urged that the order of detention dated 12.6.2003 shows that the fact, that the detenu had been released on bail, was within the knowledge of the detaining authority and such vital fact having been taken into consideration the order of detention cannot be said to be vitiated for non-placement of the application for bail before him.

It is not disputed before us and furthermore it would appear from the impugned judgment of the High Court that the order of bail passed by the learned magistrate as also the order of remand were furnished to the detenu.

It is not doubt true that clause (5) of the Article 22 of the Constitution of India mandates that all procedural requirements contemplated thereby as also the relevant provisions of COFEPOSA are required to be strictly complied with in a case of preventive detention.

Apart from the fact, that a copy of the application for bail was available with the detenu, a bare perusal thereof would show that save and except the submission that the offence is bailable in nature, no other contention which was required to be brought to the notice of the detaining authority was put forward.

The question as to whether an offence is bailable or not is not a vital fact whereupon an order of bail can be passed. Application of mind to the averments made in a bail application may be relevant where the grounds stated therein reveal certain facts which are vital for passing an order of detention. In a case of such nature, it may be said the application for bail was necessary to be placed before the detaining authority and non-furnishing a copy thereof to the detenu would vitiate the order of detention.

In Abdul Sathar Ibrahim Manik v. Union of India & Ors. [1992 (1) SCC 1] this court inter alia held:

"\005.(3) If the detenu has moved for bail then 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 detenu was in actual custody."

It was, however, observed:

"(6) In a case where detenu 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 detenu."

We do not think that the aforementioned enunciation of law is of universal application. We would deal with this aspect of this matter a little later.

In M. Ahamedkutty (supra) this Court was dealing with a case where an order of bail was passed on the condition that he would report before the Customs Authority on every Wednesday and would not change his residence without prior permission of court. This Court in the aforementioned fact situation opined that non-consideration of the order passed on the said petition for bail would amount to non-application of mind on the part of the detaining authority holding:

"Considering the facts in the instant case, the bail application and the bail order 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 detenu 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 detenu'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 detenu illegal and entitling the detenu to be set at liberty in this case."

The said decision has no application to the present case.

In P.U. Abdul Rahiman (supra) this Court held:

"The appellant had been arrested on June 4, 1988 under the Narcotic Drugs and Psychotropic Substances Act, 1985. On June 9, 1988 he had moved an application before the Judicial First Class Magistrate, Kasargod for bail. That application was rejected. On June 10, 1988 the appellant moved an application for bail, as C.M.P. No. 104 of 1988, before the District Sessions Judge, Kasargod. On June 17, 1988 the appellant was released on bail subject to certain conditions. In the two applications for bail the appellant had specifically stated that he had retracted from the statement made by him. The co-accused, who had also made a statement, had retracted from his statement."

The bail petition filed by the detenu therein contained material facts which were required to be taken into consideration by the detaining authority. Such is not the case here.

The decisions of this Court referred to herein before must be read in their entirety. It is no doubt true that whether a detenu on the date of the passing of the order of detention was in custody or not, would be a relevant fact. It would also be a relevant fact that whether he is free on that date and if he is, whether he is subjected to certain conditions in pursuance of and in furtherance of the order of bail. If pursuant to or in furtherance of such conditions he may not be able to flee from justice, that may be held to be relevant consideration for the purpose of passing an order of detention but the converse is not true. Some such other grounds raised in the application for bail and forming the basis of passing an order of bail may also be held to be relevant. It would, however, not be correct to contend that irrespective of the nature of the application for bail or irrespective of the nature of the restrictions, if any, placed by the court of competent jurisdiction in releasing the detenu on bail, the same must invariably and mandatorily be placed before the detaining authority and the copies thereof supplied to the detenu.

The decisions relied upon by Mr. Mani in our opinion do not lay down as universal rule that irrespective of the facts and circumstances of the case it would be imperative to place all applications for bail as also the orders passed thereupon before the detaining authority and copies thereof supplied to the detenu. On the petitioner's own showing, only that part of the application for grant of bail that the offence in question is a bailable, was relevant. No other submission had been raised at the bar. Whether a provision of law is bailable or not is a question of law. The same is presumed to be known to courts and/or the detaining authority. It may not be necessary even to be stated in the application for bail. If a person had been released on bail on the ground that the offence is bailable, it would not be necessary to bring the said fact before the detaining authority. The detaining authority will have to satisfy himself on the basis of the materials placed on record, as to whether the order of preventive detention should be passed against the detenu or not. The constitutional mandate can be said to be violated provided : (1) the impairment has been caused to the subjective

satisfaction to be arrived at by the detaining authority; and (2) if relevant facts had not been considered or the relevant or vital documents have not been placed before the detaining authority.

In the instant case the order of detention has been taken note of the fact that the detenu had already been released on bail in the following terms:

"You were arrested on 30.1.2003 and released on bail by the Hon'ble Judge, Special Court of Economic Offences, Bangalore, upon executing a personal Bond for an amount of Rs. 10,000/- and Security in the form of cash for the like sum."

It is also not in dispute that a copy of the order granting bail and order of remand has been furnished to the detenu. In this view of the matter we are of the opinion that non-furnishing of a copy of the application of bail cannot be said to be a ground which impaired the subjective satisfaction of the detaining authority or the same was a relevant fact which was required to be taken into consideration by him and the application for bail was required to be supplied to the detenu. It is now well settled that all the documents placed before the detaining authority are not required to be supplied; only relevant and vital documents are required to be supplied.

As in the fact of this case, we are satisfied that the application for bail was not a vital document copy whereof was required to be supplied to the detenu, in our opinion, the order of detention is not vitiated. A Division Bench of this Court in K. Varadharaj v. State of T.N. & Anr. [2002 (6) SCC 735] upon noticing some of the decisions relied upon by Mr. Mani inter alia held:

"From the above observations, it is clear that placing of the application for bail and the order made thereon are not always mandatory and such requirement would depend upon the facts of each case."

In Radhakrishnan Prabhakaran v. State of T.N. and Others [(2000) 9 SCC 170], this Court clearly held that only such documents are required to be supplied which are relevant stating :

"8. We may make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him. It is admitted by the learned counsel for the petitioner that the order granting bail has been supplied to him. Application for bail has been submitted by the detenu himself when the order of detention was passed which was subsequent to the order granting bail. We cannot comprehend as to how a prior order rejecting bail would be of any relevance in the matter when it was later succeeded by the order granting bail\005"

In Smt. Icchu Devi Choraria (supra) , this Court emphasized that the right to be supplied copies of the documents, statements and other materials relied upon in the grounds of detention without any undue delay is a part of constitutional right under Article 22(5) as also statutory right under Section 3(3) of the COFEPOSA Act. We have held hereinbefore that the copy of the bail application, in the facts and circumstances of the case, was not a document supplied by the detaining authority was imperative in character.

The said decision has, therefore, no application to the facts of the present case.

The question as to whether the detenu was prejudiced by non-supply of a copy of the application for bail or not, in the facts and circumstances of this case, does not arise. The decisions relied upon by Mr. Mani in this behalf are clearly distinguishable.

Johney D'Couto (supra) relates to a case wherein the grounds of detention were not supplied in the language known to the detenu. In case of that nature only, it was held that the question as to whether the detenu had knowledge or prejudice could be irrelevant.

For the foregoing reasons, we are of the opinion that there is no merit in the present appeal and it is accordingly dismissed. In the facts and circumstances of the case, the parties shall bear their own costs.