

CASE NO.:
Appeal (crl.) 53 of 2004

PETITIONER:
A.C. Razia

RESPONDENT:
Government of Kerala & Ors.

DATE OF JUDGMENT: 12/01/2004

BENCH:
CJI. & P. VENKATARAMA REDDI.

JUDGMENT:
JUDGMENT

With

Writ Petition (Crl.) No. 6 of 2003
ARISING OUT OF

SPECIAL LEAVE PETITION (CRL.) NO. 153 OF 2003

P. Venkatarama Reddi, J.

Leave granted in S.L.P.(crl.) No. 153 of 2003. Questioning the detention of the petitioner's husband by name, P. Mohd. Kutty under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), Writ Petition (Crl.) No.6 of 2003 has been filed by her praying for the issuance of a writ of habeas corpus. The detention order was also challenged in the High Court of Kerala by way of a petition filed under Article 226. The Writ Petition was dismissed on 29.11.2002. The said judgment has been challenged in the Special Leave Petition. The Special Leave Petition came up for hearing before a bench consisting of Rajendra Babu, J. and G.P. Mathur, J. Rajendra Babu, J. allowed the writ petition by quashing the order of detention. However, Mathur, J. held that the writ petition and the SLP were liable to be dismissed. In view of this difference of opinion, the matter has been placed before this three Judge Bench.

On 24.12.2000 the baggage of one Anodiyil Mammu, who was waiting to take the flight to Dubai, was inspected at Trivandrum International Airport. He is related to the detenu. On such inspection, foreign currencies were found in a brief case and various other articles which he was carrying. Some of the foreign currency notes were concealed in a cardboard carton. The foreign currency was seized and the statement of Mr. Mammu was recorded under Section 108 of the Customs Act. He stated that the foreign currency was entrusted to him by P. Mohd. Kutty i.e. the detenu for conveying it to Dubai and handing it over to one Shafeek for which he was to be paid some remuneration. He gave various details as to how and from where he got the carton and foreign currency. On the same day and the next day, the statements of Mohd. Kutty, the detenu and various other persons, who were directly or indirectly involved in this operation, were recorded under Section 108 of the Customs Act and they were substantially in conformity with the version of A. Mammu. Initially, Mohd. Kutty confessed to his involvement. However, the statements were retracted later on. Anodiyil Mammu claimed the ownership of foreign

currency in his representation dated 15.01.2001 and thus retracted from earlier statement. On the basis of the information together with the supporting material received from the Directorate of Revenue (Intelligence), the order of detention was passed by the Government of Kerala (Home Department) on 19.4.2001. However, the detenu could only be arrested on 24.6.2002. The detenu was served with the order and grounds of detention together with the copies of various documents referred to in the grounds. The representation addressed to the detaining authority was sent by the detenu's wife on 13.7.2002 and the same was rejected by the State Government. The representation addressed to the Central Government was also rejected on 29.7.2002. The case of the detenu was referred to the Advisory Board and on the basis of the report received, the Government confirmed the detention order on 6.9.2002. At that stage the writ petition under Article 226 was filed in the Kerala High Court challenging the detention.

The only point raised in the course of the arguments in the High Court was that the documents furnished to the detenu were not translated into Malayalam on account of which he was unable to make proper representation against his detention. This contention was rejected by the Division Bench of the High Court, relying on the averments in the counter-affidavit filed by the State. The High Court referred to the fact that the documents duly translated into Malayalam were in fact furnished to the detenu and he acknowledged the same on 24.6.2002. The High Court also observed that the detenu was familiar with the English language. The contention, which was rejected by the High Court, has not been reiterated before this Court. However, the only contention urged is that the disposal of the representation by the Central Government was not proper. As many of the crucial documents were in Malayalam, the officials of the Central Government who dealt with the case being unacquainted with Malayalam language, should have called for translated copies of the documents. The authorities of Central Government would not have, therefore, perused the relevant documents and in this sense there was no proper application of mind. It is submitted that the improper disposal of the representation has vitiated the detention and the continued detention is violative of Articles 21 and 22 of the Constitution.

Rajendra Babu, J. was of the view that for a proper consideration by the Central Government, there shall be full and independent application of mind on the representation and on all the documents which formed the basis of detention order. The grounds of detention and the documents upon which it is based should be 'strictly scrutinized'. For this purpose, the necessary documents should be translated into the language which could be understood by the concerned official without which full and independent application of mind cannot be ensured. Since the detaining authority had not placed the representation and the alleged documents in a translated form before the Central Government, the appellant's representation was not properly evaluated and therefore the guarantee under Article 22(5) was violated.

G.P. Mathur, J. observed that the power under Section 11 to revoke the order of detention is some kind of a supervisory power. If so, while considering the representation, it is not necessary for the Central Government to look into and thoroughly examine all those documents which have been supplied to the detenu along with grounds of detention. The principle that the documents

which are not material and to which only casual reference was made in the grounds need not be supplied to the detenu will equally apply in the matter of consideration of representation by the Central Government. Basically, the Central Government is required to examine the pleas raised by the detenu in his representation and in the present case the detenu hardly raised any specific plea which would require perusal and examination of the document copies of which were supplied to the detenu. If the translation is to be insisted, it would often lead to delay and that itself may become a ground to invalidate the detention.

The only question on which the arguments have been addressed before us is whether there could be due application of mind on the part of the Central Government and proper disposal of the representation in the absence of English translated copies of documents relied on in the detention order? Though the answer to this question lies in a narrow compass, arguments on certain wider issues were addressed before us, keeping in view the differing view-points expressed by the two Hon'ble Judges. The questions debated relate to the ambit of the guarantee incorporated in Article 22(5) vis-à-vis the consideration of representation by the Central Government and the nature and extent of power under Section 11 of COFEPOSA Act. We have felt that it is desirable to marshal the thoughts on the subject and restate the principles with clarity. Hence, this wider discussion. The law of preventive detention is a drastic law as it authorizes detention without trial in a court of law and is an encroachment on the liberty of an individual which is a cherished freedom under our Constitution. At the same time, the need for such law in larger public or national interest has been recognized by the Constitution. In order to mitigate the rigour of the law, certain minimum safeguards have been provided in the Constitution in order to ensure that there is no unjustified detention and the detention should not continue unnecessarily. The preventive detention laws such as the COFEPOSA Act, with which we are concerned, apart from ensuring the minimum safeguards expressly mandated by the Constitution, have supplemented to these safeguards especially by making provisions enabling scrutiny and review of detention order by more than one authority on the representation of the detenu or otherwise. By judicial interpretation, some more ancillary safeguards to effectuate the constitutional guarantees flowing from Articles 21 and 22 have been carved out.

The twin constitutional safeguards related to preventive detention are enshrined in clauses (4) and (5) of Article 22. Clause (4) prescribes a ban on the law authorising preventive detention for a period longer than 3 months unless the Advisory Board reports before the expiration of a period of 3 months that in its opinion there is sufficient cause for such detention. This is however subject to the exception laid down in sub-Clause (a) of Article 22(7). The Advisory Board is composed of persons who are, or have been or are qualified to be Judges of the High Court. The proviso to Clause (4) further mandates that the detention cannot extend beyond the maximum period prescribed by a law made by the Parliament vide clause (7) of Article 22. We are concerned here with clause (5) of Article 22.

The dual rights under clause (5) are : (i) the right to be informed as soon as may be of the grounds on which the order has been made, that is to say, the grounds on which the subjective satisfaction has been formed by the detaining authority and (ii) the right to be afforded the earliest opportunity of making a representation against the order of

detention. By judicial craftsmanship certain ancillary and concomitant rights have been read into this Article so as to effectuate the guarantees/safeguards envisaged by the Constitution under Clause (5) of Article 22. For instance, it has been laid down by this Court that the grounds of detention together with the supporting documents should be made available to the detenu in a language known to the detenu. The duty to apprise the detenu of the right to make representation to one or more authorities who have power to reconsider or revoke the detention has been cast on the detaining authority. So also the duty to consider the representation filed by or on behalf of the detenu with reasonable expedition has been emphasized in more than one case and where there was inordinate delay in the disposal of representation, the detention was set aside on that very ground.

In COFEPOSA Act and cognate Acts, we find an array of statutory safeguards with regard to detention "in tune with the constitutional requirements". Sub-section (2) of Section 3 of COFEPOSA Act casts an obligation on the State Government to forward to the Central Government within 10 days the report in respect of the detention order. It is obvious that this provision is meant to enable the Central Government to address itself to the issue of detention at the earliest opportunity and to intervene in appropriate cases by exercising its power of revocation under Section 11. Section 3(3) of the Act provides that the grounds of detention shall be furnished ordinarily not later than 5 days after the detention. Section 8 provides for constitution of Advisory Board, the procedure to be followed by the Board and the action to be taken by the Government on receipt of the opinion of the Board. Section 10 prescribes the maximum period of detention which is one year or two years, depending on the applicability of Section 9. Section 11 empowers the State Government or the Central Government, as the case may be, to revoke the detention order without prejudice to the power of the detaining authority to rescind the same under Section 21 of the General Clauses Act.

The combined effect of the constitutional and statutory provisions from the point of view of the detenu's right to make the representation is to provide more than one forum to re-examine or review the case of the detenu and to afford him various means of redressal of his grievance. Thus, the matter could be examined by (i) the Advisory Board, (ii) the detaining authority and (iii) the State or Central Governments acting under Section 11 or on receipt of Advisory Board's opinion. This is apart from the power of the Central Government to examine the validity of detention acting suo motu on receipt of report under Section 3(2). Under Section 11 \026 which is of immediate relevance in the present case, the Central Government has the power to revoke the orders made by (i) the State Government, (ii) an officer specially empowered by the State Government and (iii) an officer specially empowered by the Central Government. The order passed by an officer specially empowered by a State Government can be revoked by the State Government as well. "The conferment of this power on the Central and the State Governments does not, however, detract from the power that is available to the authority that has made the order of detention to revoke it". This is ensured by the words "without prejudice to the provisions of Section 21 of the General Clauses Act" in sub-section (1) of Section 11 (vide observations of the Constitution Bench in paragraph 22 in the case of Kamlesh

Kumar vs. Union of India, [(1995) 4 SCC 51]. Whether the right to make a representation to the State or the Central Government under Section 11 becomes an integral part of Article 22(5) or it remains to be a statutory safeguard only is the next aspect which merits discussion. Clause (5) of Article 22 does not, in express terms, spell out the authority to whom the representation has to be made. Does it contemplate the representation being made to and considered by the detaining authority? Doubts in this respect have been cleared by the Constitution Bench in Kamlesh Kumar's case (supra) which is also a case arising under COFEPOSA Act. In that case, the stand taken by the Union of India speaking through Additional Solicitor General was that the use of the word 'a' in singular indicates that only one representation is to be made and that representation is meant to be placed before the Advisory Board which is the only authority contemplated under the Constitution to consider such a representation. This contention was unhesitatingly rejected by the Court and it was observed that if such a restricted interpretation is to be given to the expression "making a representation against the order", the guarantee under clause (5) of Article 22 may be rendered nugatory. The Constitution Bench, having noted that Article 22(5) does not specify the authority to whom the representation is to be made, ruled thus : "Since the object and purpose of the representation that is to be made by the person detained is to enable him to obtain relief at the earliest opportunity, the said representation has to be made to the authority which can grant such relief, i.e, the authority which can revoke the order of detention and set him at liberty. The authority that has made the order of detention can also revoke it. This right is inherent in the power to make the order. It is recognized by Section 21 of the General Clauses Act, 1897 though it does not flow from it. It can, therefore, be said that Article 22(5) postulates that the person detained has a right to make a representation against the order of detention to the authority making the order. In addition?, such a representation can be made to any other authority which is empowered by law to revoke the order of detention."

Adverting to the cases beginning with S.K.Abdul Karim [(1969) 1 SCC 433] in which it was held that the representation should be considered by the State Government it was explained that all those cases related to orders of detention made by the District Magistrate under the Preventive Detention Act which specifically provides in Section 7(1) that the authority making the order of detention shall afford to the person detained the earliest opportunity of making a representation against the order to the 'appropriate government'. It was observed that in those cases, the court was not required to consider whether the detaining authority should also consider the representation. However, it was noticed that in Pankaj Kumar Chakrabarty vs. State of W.B., (1969) 3 SCC 400, the Constitution Bench did say that the detaining authority must consider the representation when so made. Approving the majority view taken in Amir Shad Khan vs. L. Hmingliana, (1991) 4 SCC 39, the legal position as to the content of the right under Article 22(5) in the context of the opportunity to make representation has been succinctly stated thus in Kamlesh Kumar:

"Article 22(5) must, therefore, be construed to mean that the person detained has a right to make a representation against the order of detention which can be made not only to the Advisory Board but also to the detaining authority, i.e., the authority that has made the order of detention or the order for continuance of such detention, which is competent to give immediate relief by revoking the said order as well as to any other authority which is competent under law to revoke the order for detention and thereby give relief to the person detained. The right to make a representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such a representation."

We get even a clearer idea of the exposition of law in this regard by referring to the three Judge Bench decision in Amir Shad Khan's case (supra) which was approvingly cited by the Constitution Bench in Kamlesh Kumar's case (supra). The following passage makes the legal position clear:

"Thus on a conjoint reading of Section 21 of the General Clauses Act and Section 11 of the Act it becomes clear that the power of revocation can be exercised by three authorities, namely, the officer of the State Government or the Central Government, the State Government as well as the Central Government. The power of revocation conferred by Section 8(f) on the appropriate Government is clearly independent of this power. It is thus clear that Section 8(f) of the Act satisfies the requirement of Article 22(4) whereas Section 11 of the Act satisfies the requirement of the latter part of Article 22(5) of the Constitution. The statutory provisions, therefore, when read in the context of the relevant clauses of Article 22 make it clear that they are intended to satisfy the constitutional requirements and provide for enforcement of the right conferred on the detenu to represent against his detention order. Viewed in this perspective it cannot be said that the power conferred by Section 11 of the Act has no relation whatsoever with the constitutional obligation cast by Article 22(5)."

Again, after referring to the observations in Razia Umar Bakshi vs. Union of India, [(1980) 3 SCR 1398], Ahmadi J. (as he then was) speaking for the majority observed thus :-

"This observation would show that the power of revocation conferred by Section 11 of the Act has a nexus with the right of representation conferred on the detenu by Article 22(5) and, therefore, the State Government when requested to forward a copy of the representation to the Central Government is under an obligation to do so."

It is interesting to note that Punchi, J., though agreed with the conclusion of the majority, was not inclined to hold that Section 11 of COFEPOSA Act was part of the constitutional guarantee under Article 22(5). The learned

Judge made the following crucial remarks:-

"Have Section 11 of the Act repealed, it causes no affectation to the constitutional guarantee under Article 22(5) of the Constitution. Correspondingly, Section 11 of the Act derives no sustenance from the said article. Both operate in mutually exclusive fields, though not as combatants."

The reasoning of the Constitution Bench in Kamlesh Kumar's case (supra) proceeded on similar lines as the majority view in Amir Shad Khan's case (supra). The emerging result of the above discussion is that the additional remedy or safeguard provided by Section 11 has been projected into the fabric of Article 22(5) so as to be absorbed into the ambit of safeguard provided by the latter part of Article 22(5). A provision like Section 11 may or may not be necessary to give effect to that safeguard, but, once a provision like Section 11 finds its place in the detention law, the detenu's constitutional right to make representation gets amplified. His right extends to making representations to all those authorities who can grant him relief and the opportunity afforded to the detenu to submit such representations thus becomes a part of the guaranteed right under Article 22(5). That is how the ratio of the above decisions has to be understood. In fact, that is how it has been understood by the detaining authority in the instant case. We find at the end of the order a note to the effect that the detenu has the right to make representations to the detaining authority, the Central Government and COFEPOSA Advisory Board against the detention. The addresses of the said authorities were also mentioned. What then is the width and amplitude of the power exercisable under Section 11 by the Central/State Governments to revoke the order of detention? Are there inherent limitations in such power? This question assumes some relevance in resolving the controversy arising in the present case. The decisions of this Court starting from Pankaj Kumar Chakrabarty's case [(1969) 3 SCC 400] make it clear that there is qualitative difference between the manner of disposal of representation by the Government on the receipt of the report from the Advisory Board or otherwise and the manner of consideration by the Advisory Board. It was observed in the above case thus: "whereas the Government considers the representation to ascertain whether the order is in conformity with its power under the relevant law, the Board considers such representation from the point of view of arriving at its opinion whether there is sufficient cause for detention." These observations made in a series of cases were in the context of Preventive Detention Act where the order of detention is passed by the District Magistrate who in turn has to afford to the detenu the earliest opportunity of making representation to the appropriate Government. However, in K.M. Abdulla Kunhi vs. Union of India [(1991) 1 SCC 476] the Constitution Bench while dealing with the case under COFEPOSA adopted the same line of approach in regard to the powers of the Government in considering the representation. While pointing out that the obligation of the Government to afford to the detenu an opportunity to make representation and to consider such representation is distinct from the obligation to refer the case of detenu along with the representation to the Advisory Board, it was observed thus: "The Government considers the representation to ascertain essentially whether the order is in

conformity with the power under the law. The Board, on the other hand, considers the representation and the case of the detenu to examine whether there is sufficient cause for detention. The consideration by the Board is an additional safeguard and not a substitute for consideration of the representation by the Government. The right to have the representation considered by the Government is safeguarded by Clause (5) of Article 22 and it is independent of the consideration of the detenu's case and his representation by the Advisory Board under Clause (4) of Article 22 read with Section 8(c) of the Act."

Thus, the principle is well settled that the Government in exercise of the power under Section 11 does not consider the question of sufficiency or adequacy of the grounds but it would only see whether the detention order is within the parameters of the power conferred under the statute. In other words, it will not review the case as if it is an original or appellate authority. That is why the power under Section 11 has been described as supervisory in nature as pointed out by G.P. Mathur, J. taking support from the observations in *Sabir Ahmad vs. Union of India* [(1980) 3 SCC 295 and *Sat Pal vs. State of Punjab* [(1982) 1 SCC 12]. Obviously, this supervisory power cannot be equated to the subjective satisfaction of the detaining authority or the power of the Advisory Board to examine whether there is sufficient material for detention. The range of consideration by the Advisory Board is thus wider.

The proposition that the power conferred under Section 11 is supervisory does not however mean that the exercise of power is purely discretionary or that the process of consideration could be casual and superficial. No doubt, as laid down in *Abdulla Kunhi's case* (vide para 19), there need not be a speaking order in disposing of such representation. However, the Government has a duty to consider the representation in proper perspective in order to see whether the order of detention is in conformity with law. The Government, should, quite apart from the points raised in the representation, apply its mind broadly to the question whether the detention is in accordance with law. For instance, if the material relied upon by the detaining authority does not ex facie establish a nexus with the pre-conditions for the exercise of the power or the conclusions of the detaining authority are found to be wholly perverse or the prescribed procedure has not been followed by the detaining authority, the appropriate Government acting under Section 11 has a duty to interfere and revoke the order of detention. In order to achieve this end, the Central Government must necessarily have regard to the representation, the report received from the State Government, the detention order and the material relied upon in the detention order or referred to in the representation. The exercise of the power under Section 11 should not be a mere formality or a farce. Care and vigilance should inform the action of the Government while discharging its supervisory responsibility. As observed in *Haradhan Saha's case* [(1975) 3 SCC 198] and reiterated in *K.M. Abdulla Kunhi's case*, what is required is "real and proper consideration". The following observations in *Abdul Karim*, are quite apposite in this context :

"\005But it is a necessary implication of the language

of Article 22(5) that the State Government should consider the representation made by the detenu as soon as it is made, apply its mind to it and, if necessary, take appropriate action. In our opinion, the constitutional right to make a representation guaranteed by Article 22(5) must be taken to include by necessary implication the constitutional right to a proper consideration of the representation by the authority to whom it is made. The right of representation under Article 22(5) is a valuable constitutional right and is not a mere formality."

The same proposition has been highlighted by Rajendra Babu, J. by observing that "there should be full and independent application of mind". The next and most relevant point to be considered in the present case is whether in the absence of translated copies of the relevant documents referred to in the detention order, there could have been proper and effective consideration by the Central Government. To put it in other words, whether the decision making process under Section 11 of the Act is vitiated by non application of mind by reason of the fact that the translated copies of the documents were not available with the concerned officials of the Government who may be unacquainted with the particular language? In our view, the question whether any or all of the documents which formed the basis of the detention order should be before the Central Government or not, depends on the facts of each case. There can be no hard and fast rule that the appropriate Government called upon to take a decision under Section 11 should necessarily have copies of all the documents relied upon by the detaining authority with the translated version thereof. In the context of the guarantee under Article 22(5), it was laid down that "if the documents which form the basis of the order of detention were not served on the detenu along with the grounds of the detention, in the eye of law, there would be no service of the grounds of detention and that circumstance would vitiate the detention and make it void ab initio (vide observations in M. Ahmed Kutty Vs. U.O.I. [(1990) 2 SCC 1] and Shalini Soni Vs. U.O.I. [(1980) 4 SCC 544]). It was also clarified in a series of decisions that it is unnecessary to furnish copies of documents to which casual or passing reference is made and which are not relied upon by the detaining authority (vide LMS Ummu Saleema Vs. B.B. Gujaral [(1981) 3 SCC 317 etc). We are of the view that the proposition laid down by this Court that the copies of translated documents forming the basis of the detention order should be furnished to the detenu in order to give effect to the guarantee enshrined in Article 22(5) cannot be imported while dealing with the question in the context of exercise of power of revocation under Section 11 on the basis of representation or otherwise. The question whether there was due consideration of representation has to be judged by general principles of administrative law. There is no constitutional requirement\027express or necessarily implied that the authority considering the representation should have before it all the documents referred to in detention order with translated version thereof. But, the availability or non-availability of such documents with the empowered authority under Section 11 will only have bearing on the manner of consideration of representation, which in turn depends on the facts of a particular case. The endeavor of the Court in this regard is

only to assess whether there was fair and proper consideration by the Government by applying its mind to the crucial aspects warranting its attention. The necessity or otherwise of having copies of documents should be viewed in that light. The Court has to be satisfied that there was due application of mind to the crucial aspects. The points raised by the detenu in the representation would naturally assume importance, as pointed out by Mathur, J. though the Government ought not to confine itself to the points highlighted in the representation alone. If, for the purpose of appreciating the points in the representation, the documents are required to be seen, naturally, the Central Government will be failing in its duty if it does not call for the documents with translation. For instance, the detenu may say that a particular statement relied upon in the detention order is something different and it was misread. The document has to be necessarily seen to appreciate that point. That apart, the Government shall have a clear idea of the nature of incriminating material against the detenu. If the detention order does not spell out the details thereof, but only makes a bare reference, here again, the need to peruse the crucial documents or statements so as to judge the validity of detention does arise; otherwise the Central Government will not be fulfilling the supervisory responsibility cast on it in the manner expected of it. However, we hasten to add that there can be no rule similar to the one laid down in the context of detenu's right under the first part of Clause (5) of Article 22. The question whether there could have been due application of mind and proper consideration of representation by the Government in the absence of crucial documents/translated copies thereof has to be decided on case to case basis. The approach cannot be abstract and unrealistic. No inflexible rule of general application can be laid down. However, we would like to make it clear that if in a given case, the perusal of certain documents becomes necessary, it is no answer to say that the translation involves delay. It is trite to say that where there is reasonable explanation for delay, the detention does not get invalidated.

Now, let us examine the factual situation in the instant case.

A perusal of the detention order would reveal that the statements of Anodiyal Mammu, who was intercepted at the airport and that of the detenu and the statements of all others recorded under Section 108 of Customs Act as well as the subsequent letters retracting from the earlier statements were referred to in the detention order elaborately and exhaustively. The statements are almost verbatim extracted in the detention order. We find them at pages 29 to 49 of the Paper Book. The contents of the letters received from the Assistant Commissioner of Customs and the counsel for A. Mammu have also been referred to in paras 10 and 17. When the detention order itself makes an elaborate reference to the statements/letters of concerned persons which were either relied upon or rejected by the detaining authority in the detention order, the authority exercising the power under Section 11 would, in no way be handicapped in dealing with the issue in general and the representation in particular. In the representations made by the petitioner (detenu's wife) the English version of which were on the record of Central Government, the plea taken was that the statements were obtained under threat and coercion and that is why they retracted from the previous statements. Of course, certain other grounds were urged which are not relevant

for the purpose of examining the issue with which we are concerned. On the facts alleged or points raised, there was really no need to have access to any of the documents referred to in the detention order. Having regard to this factual situation, we do not think that the Central Government should necessarily have the translated copies of the documents referred to and relied upon in the detention order and that the absence of such documents has vitiated the consideration of the representation, nor can it be said that there was no application of mind on the part of the Central Government for the simple reason that the translated copies of the documents were not available before it. The physical availability of such documents or translated version thereof, would have made no difference as regards the disposal of representation or the consideration of the question whether the detention was in conformity with law. As already stated, the very perusal of the detention order would give a clear picture of the incriminating material relied upon by the detaining authority. In the circumstances, to insist on the perusal of original or true copies of statements and other documents referred to in the detention order would amount to insisting on an empty formality. The constitutional guarantee does not go to that extent.

Thus, the only contention raised before us touching on the validity of detention order has to be negatived. The writ petition and Criminal Appeal are therefore dismissed.