



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL WRIT PETITION NO.3231 OF 2013**

Sandip Suresh Ghag,  
Age 26 years, residing at  
Suresh Patel Chawl, Saibaba Nagar,  
Satya Nagar, Borivali (West),  
Mumbai – 400 092  
(At present in Nashik Road Central Prison  
at Nashik)

...Petitioner/  
Detenu

Versus

1. The Commissioner of Police,  
Mumbai;
2. The State of Maharashtra;
3. The Superintendent,  
Nashik Road Central Prison,  
Nashik.

...Respondents

.....

Mr. U. N. Tripathi for Petitioner/Detenu

Mr. J. P. Yagnik, A.P.P. for Respondents

.....

**CORAM:- A. S. OKA AND  
REVATI MOHITE DERE, JJ.  
DATED:- OCTOBER 23, 2013**

**JUDGMENT (Per Revati Mohite Dere, J. ) :**

1. This petition takes exception to the order of detention bearing No.11/PCB/DP/Zone-XI/2013 dated 19<sup>th</sup> July, 2013 passed under Section

3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 by the Commissioner of Police, Mumbai as against the petitioner/detenu.

2. The petitioner has raised several grounds for seeking quashing and setting aside of the order of detention. However, in our opinion, it is not necessary to advert to all the grounds, except ground 3(h) of the petition.

3. In ground 3(h), in short, it is stated that the Detaining Authority has communicated the grounds of detention and all other relied on documents in a compilation, the original of which is in English along with the Marathi translation. It is stated that the detenu being a Maharashtraian, is able to read, write and understand Marathi language only. According to the petitioner, an injury report of Shri Anant Balu Kapre, which is a medico-legal document at page 125 of the compilation has been supplied to the petitioner/detenu in English along with the Marathi translation thereof. According to the petitioner/detenu, the Marathi translation of the injury report, is not true and correct. It is stated that in the second column under

the caption “nature of injury”, item No.4 is not the true translation and there is some addition found in the Marathi translation, which is not there in the original English document. Similarly, in column 2 of the injury report, item No.4, the size of the injury which is shown as 2 cm diameter, is not found to be correctly translated. Thirdly, the last column of the report i.e. the ‘remark column’, has not been translated at all in the Marathi translated report. Therefore, according to the petitioner, non-furnishing of true and faithful translation of the injury report, a relied on and vital document, has impaired his right to make an effective representation under Article 22(5) of the Constitution of India.

4. In response to the aforesaid ground at 3(h), the Detaining Authority has filed its reply and countered the same. It is stated in the reply that the detenu had been furnished with the true, correct and faithful translation of the documents in order to enable him to make effective and purposeful representation. It is stated that the medico-legal document at page 125, in the compilation of documents, pertains to a C.R., being C.R. No. 62 of 2013 of the Borivali Police Station. It is stated that the detenu has been partly furnished with the Marathi translation of the said document

and that in the last column i.e. “remarks column”, the medical details of the treatment given to the complainant have not been furnished to the detenu. However, the material details as to the type of injury/details of injury, on which part of the body the said injury is caused and whether the injury is simple, grievous or dangerous to life, have been furnished to the detenu so as to enable him to make an effective representation. It is stated that the necessary details of the medico-legal certificate have been furnished to the detenu and hence, mere non-furnishing of the remarks will not affect the detenu’s right to make an effective and purposeful representation. It is further stated that the second column of the medico-legal certificate, which pertains to the nature of injury has been correctly translated and furnished to the detenu. It is also stated that the size of the injury in item No.3 which pertains to abrasion and contusion, the size of injury 1.5 x 0.1 cm has been translated and furnished to the detenu. However, inadvertently, the 2 cm diameter injury has not been translated and given to the detenu. It is stated that non-furnishing of the size of the injury will not, in any way, affect the detenu’s right to make an effective representation, as the other material facts have been furnished to the detenu to enable him to make an effective representation.

5. We have heard Shri U. N. Tripathi for the petitioner/detenu and Shri J. P. Yagnik, learned A.P.P. for the respondent i.e. the Detaining Authority.

6. The principal ground which is urged before us by the learned Counsel for the petitioner, is that non-furnishing of the true and correct translation of a vital document, which is the 'injury report' in the present case, has impaired the petitioner's right to make an effective representation as mandated under Article 22(5) of the Constitution of India. Shri U. N. Tripathi in support of his contention, relied on a Judgment of this Court delivered in **Mohammed Rafique Abdul Majid v. R. H. Mendonca & Ors.**<sup>1</sup>, wherein, on similar grounds, the order of detention was quashed. According to the learned A.P.P., the said discrepancies in the Marathi translation of the injury report, which is in English, are not fatal nor do they cause any prejudice to the petitioner/detenu in making an effective representation.

---

1 1999 All MR (Cri.) 1633

7. The law relating to variance in translation of documents from English language to any other language with which the petitioner/detenu is conversant, is no longer res integra. We have perused the injury report, in English and its Marathi translation. As far as the 1<sup>st</sup> column with regard to the 'nature of injury' is concerned at Serial No.4, it is stated as 'Blunt trauma'. According to us, there is no discrepancy/addition as alleged in the Marathi translation, inasmuch as it is correctly translated as 'बाथट जखम काळी निळी पडलेली'. As far as the column with respect to the size of each injury, i.e. column 2 at Serial No.3, reference to '2 cm diameter' injury is amiss in the Marathi translation thereof. Similarly, in the last column of the English injury report i.e. 'Remarks column' all the entries therein are not found in the Marathi translation thereof. It is pertinent to note that the aforesaid discrepancies, have been stated by the Detaining Authority to be 'inadvertent mistakes'. According to the Detaining Authority, 'no prejudice' is caused to the detenu on account of the same. The Detaining Authority has also stated in its reply that the material **relied upon** by him for issuing the order of detention has been furnished to the detenu. We may therefore note, that the injury report which forms part of the compilation of the documents accompanying the grounds of detention served on the detenu,

were *relied upon* by the Detaining Authority to form his subjective satisfaction. There is nothing in the affidavit filed by the Detaining Authority to even remotely suggest that the Detaining Authority had selectively relied upon some of the documents included in the compilation of documents furnished to the petitioner, much less, excluded the injury report from consideration while forming his subjective satisfaction. Therefore, the concomitant of this finding is that the document i.e. injury report was a vital document and would have to be considered as 'ground' within the meaning of the 'grounds of detention'. It is pertinent to note that the Apex Court has expounded the meaning of the expression "grounds", within the expansive meaning of the expression "grounds of detention", in the case of **Khudiram Das vs. The State of West Bengal & Ors.**<sup>2</sup>. It was held in the said case that the expression 'grounds' means all the basic facts and "materials which have been taken into account" by the Detaining Authority in making the order of detention and on which the detention order is based. We are therefore of the opinion, that the variance in the Marathi translation of the original injury report which is in English, with regard to the size of the injuries and the blanks in the remarks column,

---

2 (1975) 2 SCC 81

impinges the right of the petitioner/detenu to make an effective representation under Article 22(5) of the Constitution of India. In cases relating to preventive detention, the question of 'prejudice' does not arise, inasmuch as the law relating to preventive detention is visited with stringent consequences and more particularly when the documents are *relied upon* by the Detaining Authority for forming its subjective satisfaction.

8. In *Mohammed Rafique Abdul Majid (supra)* relied upon by the learned Counsel for the petitioner, this Court was dealing with a similar case, where the injury report was not a true and faithful translation of the original injury report in English. This Court in para 4 observed thus :

“4. .... Mr. Deshmukh learned counsel for the respondents urged that this would make no difference because the detenu knew Hindi and invited our attention to the Hindi translation of the injury report contained in the original file, a copy of which was given to the detenu. From its perusal it appears that the said translation is legible but it is not true and faithful. In the original Injury report which is in English one of the injuries mentioned is superficial CLW (L) frontal region above hair line, about 1 cm. x 2 cm. x 5 cm. deep. In the Hindi translation of the said Injury report as contained in the original file the following things are missing:

(a) Superficial; (b) C.L.W. and (c) 1 cm. x 2 cm. x 5 c.m. deep.

Since admittedly the copy of the Injury report supplied to

the detenu in Hindi, was a copy of the Hindi translation of the injury contained in the original file the detenu, who only knew Hindi, could have been misled and his right to make an effective representation under Article 22 (5) of the Constitution of India, could have been impaired.”

9. Therefore, according to us, the petitioner/detenu is justified in contending that his right to make effective representation has been impinged within the meaning of Article 22(5) of the Constitution of India, as has been expounded by the Apex Court in a catena of decisions. In view of the affidavit of the Detaining Authority, we have no hesitation in taking the view, that the `injury report', was a *relied upon* document for forming the subjective satisfaction, which is imperative in detaining the detenu to prevent him from indulging in prejudicial activities in future. As the translation of the injury report was not a complete and faithful translation of the original report in English, the petitioner/detenu's right to make an effective representation could have been impaired. Thus, the detention order deserves to be quashed and set-aside on the said ground and the petition ought to succeed. Accordingly, we pass the following order :

**ORDER**

Rule is made absolute in terms of prayer clause (b), which reads thus:

“(b) That the order of detention being No.11/PCB/DP/Zone-XI/2013 dated 19.07.2013 issued under Section 3(1) of M.P.D.A. Act, 1981 by the Commissioner of Police, Mumbai against the detenu, be quashed and set aside and on quashing the order of detention the detenu be released forthwith.”

**(REVATI MOHITE DERE, J.)**

**(A. S. OKA, J.)**