IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 446 OF 2009

Shahnawaz Siraj Shaikh)
Indian Inhabitant, Age 18 years,)
Residing at Room No.18, 2nd Floor,)
49, Ibrahim Mohammed Merchant)
Road, Khadak, Abba Jumma)
Building, Salim Mansion, Mumbai)
400 009. ... ...) ... Petitioner.
(Son of the detenue)

Versus

1) The State of Maharashtra)
through the Additional Chief)
Secretary to the Government of)
Maharashtra, Home Department,)
(Special), Mantralaya, Mumbai)
- 32.)

2) Anna Dani,)
The Principal Secretary to the)
Government of Maharashtra,)
Mantralaya, Mumbai-32.)

3) The Superintendent of Mumbai)
Central Prison, Arthur Road,)
Mumbai.)

4) The Superintendent of Prison,)
Nasik Road Central Prison,)
Nasik Road, Maharashtra.).. ... Respondents.

Mrs. A.M.Z.Ansari for the Petitioner.
Mrs. A. S. Pai, APP for the State.

CORAM : BILAL NAZKI and
A. R. JOSHI, JJ.

DATED : 24TH JULY, 2009.

ORAL JUDGMENT (Per Bilal Nazki, J.):

This petition has been filed by the son of the detenue challenging the order of detention passed on 27th July, 2007 under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, for short "COFEPOSA Act". The oder has been executed on 29th January, 2009. The detenue while reaching Airport at Mumbai along with another person was arrested on 14th March, 2007 on an information received by the Directorate of Revenue Intelligence, Mumbai that he was likely to import certain contraband goods. On 14th March, 2007 he was arrested and then released on bail on 23rd May, 2007. During the search on the person of the detenue number of goods were recovered

costing Rs.43 lacs and odd. Thereafter an order of detention was passed on 27th July, 2007 which could not be executed till 29th January, 2009. The order of detention has now been challenged. The counters have been filed by the Detaining Authority, by the Executing Authority an also by the Directorate of Revenue Intelligence, Mumbai. We have also perused the record.

2. Learned Counsel for the petitioner has taken mainly two grounds to attack the order of detention. One is that there was inordinate delay in executing the order of detention as it had taken the respondents more than 1 and 1/2 years to execute the order of detention and the live link between the alleged activity of smuggling had got snapped. The second ground on which the order of detention is challenged is that the detenue did not knew English language in which the grounds of detention and the bulky material was served on him when he was detained and as such he was deprived of making any effective representation within Article 22 of the Constitution of India. we will deal with the second ground first.

3. Before going to the law on the subject, it will be pertinent to note that in all statements, except one, there is an endorsement by the respondents that the statement was explained in Hindi to the detenue. But there is one statement which is first in point of time and is recorded under Section 108 of the Customs Act dated 15th March, 2007 in which the detenue had stated, "*I know to read, write and understand English, Hindi and Urdu language.*" The statement is signed, but at the end of it there is an endorsement in the hand writing allegedly made by the detenue himself which endorsement reads, "*The above statement running into 4 pages have been given voluntarily. This is my true and correct statement. No force, threat or coercion have been used on me*". But subsequently, the statement recorded on 27th March, 2007 by the same authority, in this statement he stated, "*In continuation of my earlier statement, I give my statement as under. The earlier statement dated 15th March, 2007 has been shown to me and read over and explained to me in simple Hindi. I state that the statement dated 15th March, 2007 given by me has been correctly recorded as stated by me*". We do not understand that if the detenue knew English language then what was the need for him to

say on 27th March, 2007 that the statement he had made on 15th March, 2007 was explained to him in simple Hindi. The 27th March, 2007 statement also endorses that this statement was explained to him in Hindi. Therefore, only logical conclusion is that when 15th March, 2007 statement was recorded, he was dictated the endorsement and he signed it. But when another statement was recorded, just after 12 days, the detenue asked the authority to explain to him in Hindi as to what had been recorded on 15th March, 2007and what had been recorded on 27th March, 2007. Subsequently, when the order of detention was served on the detenue along with the rounds of detention on 29th January, 2009, the record shows that the detenue had endorsed that the order of detention, grounds of detention and the material was explained to him in Hindi. If the detenue knew English and he had said so on the first day of arrest, then subsequently on number of occasions the respondents would not have explained to him the documents or the statements in Hindi. Therefore, we take it that may be the detenue had a working knowledge of English language where he could sign or he could copy or he could even write when dictated, but he did not have sufficient

knowledge of English by which he could understand the documents which were supplied to him and perhaps on the basis of such understanding he could not make a representation within Article 22 of the Constitution of India and as such the valuable right was defeated.

4. The law on communication of grounds of detention is very well settled and as a matter of fact the law laid down by the Constitution Bench of the Supreme Court in the case of **Harikisan v/s State of Maharashtra & Ors.,** *reported in AIR 1962 Supreme Court 911*still holds the field. There in paragraphs 7 and 8 the Supreme Court held as under:

> "7. It has not been found by the High Court that the appellant knew enough English to understand the grounds of his detention. The High Court has only stated that "he has studied upto 7th Hindi Standard which is equivalent to 3rd English Standard". The High Court negatived the contention raised on behalf of the appellant not on the ground that the appellant knew enough English, to understand the case against him, but on the ground, as already indicated, that the service upon him of the order and grounds of detention in English was enough communication to him to enable him to make his representation. We must therefore proceed on the assumption that the appellant did not know enough English to understand the grounds contained in many paragraphs as indicated above in order to be able to effectively to make his representation against the Order of Detention. The learned Attorney-General has tried to answer this contention in several ways. He has first

contended that when the Constitution speaks of communicating the grounds of detention to the detenue, it means communication in the official language, which continues to be English; secondly, the communication need not be in writing and the translation and explanation in Hindi offered by the Inspector of Police, while serving the order of detention and the grounds, would be enough compliance with the requirements of the law and the Constitution; and thirdly, that it was not necessary in the circumstances of the case to supply the grounds in Hindi. In our opinion, this was not sufficient compliance in this case with the requirements of the Constitution, as laid down in Cl. (5) of Art. 22. To a person, who is not conversant with the English language, service of the Order and the grounds of detention in English, with their oral translation or explanation by the police officer serving them does not fulfill the requirements of the law. As has been explained by this Court in the case of The State of Bombay v. Atma Ram Sridhar, 1951 SCR 167 : (AIR 1951 SC 157), cl. (5) of Art. 22 requires that the grounds of his detention should be made available to the detenue as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. In order that the detenue should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenue should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must therefore, mean imparting to the detenue sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given on by the police officer serving those on the detenue would not amount to communicating the grounds. Communication, in this context must mean bringing

> home to the detenue effective knowledge of the facts and circumstances on which the Order of Detention is based.
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> 8. We do not agree with the High Court in its conclusion that in every case communication of the grounds of detention in English, so long as it continues to be the official language of the State, is enough compliance with the requirements of the Constitution. If the detained person is conversant with the English language, he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language, in order to satisfy the requirements of the Constitution, the detenue must be given the grounds in a language which he can understand, and in a script which he can read, if he is a literate person."

There are number of judgments relied upon. Basically, all those judgments are the judgments which relied upon the judgemnt of the Constitution Bench of the Supreme Court above referred. By way of reference, the referred judgments are (1) **Raziya Umar Bakshi v/s Union of India & Ors.,** *reported in AIR 1980 SC 1751; (2)* **Nainman Pertapmal Shah v/s Union of India & Ors.**, *reported in AIR 1980 SC 2129*; (3) **Lallubhai Jogibhai Patel v/s Union of India**, *reported in AIR 1981 SC 728*; (4) **Kamal Khushalani v/s The state of Maharashtra**, *reported in AIR 1981 SC 814;* (5) **Shalini Soni v/s Union of India**, *reported in AIR 1981 SC 814*; and (6) **Mrs. Nafisa**

Khalifa Ghanem v/s Union of India & Ors, *reported in (1982) 1 SCC 422*.

The learned APP on the other hand relied on the unreported judgment of the Division Bench of the Bombay High Court in *Criminal Writ Petition No. 1496 of 2001* (**Shri Sanmogam Subhaye Mupanar @ Sunder v/s Shri M. N. Singh & Ors.**,) dated 22nd January, 2002. In this judgment the Court found that as a matter of fact the detenue knew English and it was only after thought of the detenue that he had complained that he did not know English. Therefore, this judgment would not have any application to the case at hand because we have found that the detenue did not have sufficient knowledge of English language to understand the gravamen of the allegations made in the grounds of detention.

5. On this ground alone the writ petition can be allowed. Therefore, we do not attempt to address ourselves to the second argument raised by the learned Counsel for the Petitioner.

6. In view of the above, the order of detention bearing No. PSA-

1207/CR-96/SPL-3(A) dated 27th July, 2007 detaining Mr. Shaikh Siraj Usman is hereby quashed and set aside and the respondents are directed to release the detenu Mr. Shaikh Siraj Usman forthwith, if not required in any other case.

7. Rule made absolute in the above terms.

8. Writ Petition is, accordingly, disposed of.

Sd/-

(BILAL NAZKI, J.)

Sd/-

(A. R. JOSHI, J.)