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Narayan Ganpat Wadekar Vs M.N. Singh, Commissioner of Police, Greater Bombay and Others

Criminal Writ Petition No. 1479 of 2000

Court: Bombay High Court

Date of Decision: March 21, 2001

Acts Referred:
Constitution of India, 1950 â€" Article 22(5), 226#Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 â€" Section 3(1)#Penal Code, 1860 (IPC) â€" Section 34, 387

Citation: (2001) 3 BOMLR 323 : (2001) CriLJ 4810 : (2001) 2 MhLj 846

Hon'ble Judges: Vishnu Sahai, J; Pratibha Upasani, J

Bench: Division Bench

Advocate: Mr. U.N. Tripathi, for the Appellant; Mrs. V.K. Tahilramani P.P., for the Respondent

Final Decision: Dismissed

Judgement

Vishnu Sahai, J.
Through this writ Petition preferred under Article 226 of the Constitution of India the Petitioner who describes himself as

the brother-in-law of the detenu Vishwa alias Vishwanath Balkrishna Pujari has impugned the detention order dated 29.7.2000, passed by the 1st

Respondent Mr. M. N. Singh, Commissioner of Police, Brihan Mumbai, detaining the detenu under Sub-section 1 of Section 3 of Maharashtra

Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act. 1981 (No. LV of 1981)

(Amendment-1996), hereinafter referred to as ""the M.P.D.A. Act"").

The detention order along with the grounds of detention, which are also dated 29.7.2000, was served on the detenu on 7.8.2000 and their true

copies are annexed as Annexures A and B respectively to this petition.

2. A perusal of the grounds of detention shows that the impugned order is founded on one C. R. viz. C. R. No. 59/2000 under Sections 387, 34

of the I.P.C. read with Sections 3, 25 of the Arms Act. registered at Mulund Police Station on the basis of a complaint dated 1.2.2000 filed by the

Narendera Shah and two in camera statements viz. of witnesses viz. A and B, which were recorded on 20.6.2000.

3. We have heard learned counsel for the parties. Since in our view a reference to the prejudicial activities of the detenu contained in the aforesaid

CR., and the in camera statements is not necessary for adjudicating upon the solitary contention canvassed by learned counsel for the Petitioner,

which contention is pleaded in ground 7B, we are not adverting to the details contained therein.

4. Ground 7B in short is that the detenu only knows Marathi language and the Marathi translation of the detention order and the grounds of

detention furnished to the detenu is not a true and faithful translation of the original detention order and the grounds of detention which are in

English. It has been pleaded in the said ground that on account of this infirmity the detenu''s right to make an effective representation, guaranteed by

Article 22(5) of the Constitution of India has been impaired.

Although in ground 7B the learned counsel for the Petitioner has referred to a large number of infirmities in Marathi translation of the detention

order and the grounds of detention, but he has only pressed before us two infirmities contained in the detention order. He urged that whereas in the

original detention order it is mentioned that the Commissioner of Police, Brihan Mumbai was satisfied that with a view to prevent Vishwas alias

Vishwanath Balkrishna Pujari, (detenu) from acting in any manner prejudicial to the maintenance of the public order it was imperative to detain him

u/s 3(1) of the M.P.D.A. Act; in the Marathi translation neither the words ""is satisfied"" nor ""acting in any manner prejudicial to the maintenance of

public order"" have been mentioned.

5. We have perused the Marathi translation of the detention order which is filed at page 14 of the petition and we are constrained to observe that

in it the words ""is satisfied"" are there. However, we have no reservations in observing that the words ""acting in any manner prejudicial to the

maintenance of public order"" are not there.

6. The question is, whether the absence of the words ""acting in any manner prejudicial to the maintenance of public order"" in the copy of the

Marathi translation of the detention order furnished to the detenu impair the detenu''s right to make an effective representation guaranteed by

Article 22(5) of the Constitution of India? Having reflected over it our answer is in the negative.

Article 22(5) of the Constitution of India reads thus :

22(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the

order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest

opportunity of making a representation against the order.

A perusal of the said provision would show that an authority making a detention order is under an obligation to communicate to the detenu the

grounds on which the order has been made and to afford him the earliest opportunity of making a representation against the detention order. It is

obvious that since the detention order is founded on grounds of detention, on the absence of the latter the detenu would not be able to exercise his

fundamental right guaranteed by Article 22(5) of the Constitution of India, of making a representation at the earliest opportunity. It is also obvious

that the detenu would only be able to exercise his said right if copy of the grounds of detention are furnished to him in a language known to him.

Consequently the question we have to examine is whether on account of the said infirmity in the translation the detenu was prejudiced in exercising

his said right. As we have mentioned earlier our answer to it is in the negative.

7. A Division Bench of this Court consisting of S. K. Desai and V. V. Kamat JJ, in Shaikh Ahmed Kasim Shivkar v. State of Maharashtra, in para

4 has held that the detention order is not to be read in isolation but its legality and propriety has to be adjudicated after taking a composite view of

the detention order and the grounds of detention.

We are in respectful agreement with the ratio laid down in the said case. In the instant case we find that both in para 6 of the grounds of detention

in English and in para 6 of the copy of the Mariah translation of the grounds of detention supplied to the detenu it has been mentioned that the

detaining authority was subjectively satisfied that the detenu was acting in a manner prejudicial to the maintenance of public order and hence it was

imperative to detain him under the M.P.D.A. Act.

Hence in our view merely because in the Marathi translation of the detention order the words ""acting in any manner prejudicial to the maintenance

of public order"" have not been mentioned, the detenu''s right to make an effective representation under Article 22(5) of the Constitution of India

would not be impaired.

8. The view which we have taken is fortified by the decision of the Supreme Court in Devji Vallabhbhai Tandel v. The Administrator of Goa,

Daman and Diu, cited by Mrs. Tahilramani, the learned Public Prosecutor.

Mrs. Tahilramani invited our attention to para 8 of the said decision. She urged that a perusal of the said paragraph would show that the detenu

knew only Gujarati and copy of the detention order in Gujarati was not supplied to the detenu but inspite of that the Supreme Court held that the

detenu''s to make an effective representation under Article 22(5) of the Constitution of India was not impaired, because the necessary material was

in the copy of the Gujarati translation of the grounds of detention, supplied to the detenu. In particular she invited out attention to the following lines

in para 8:

8. ... ... So far as the non-supply of the Gujarati version of the ORDER as per Annexure "A" is concerned, in our opinion, there has been no

violation of Article 22(5) or any other law. The ORDER as per Annexure "A" was mere formal recital of Section 3(1) of the COFEPOSA,

showing the provision of law under which the order of detention has been made. Although, the section of the COFEPOSA has not been mentioned

in the last but two paragraphs of the ""grounds"", it has been stated that the detenu engaged himself ""in smuggling goods and that there is sufficient

cause to pass detention order against you with a view to preventing you from smuggling goods"", which was in Gujarati. It cannot, therefore be said

that the detenu was in any way handicapped in submitted his representation, or there has been any violation of Article 22(5) of the Constitution.

9. Mrs. Tahilramani urged and rightly in our judgment that in view of the said decision of the Supreme Court the contention of Mr. Tripathi is

untenable. She also contended, and rightly as held by us earlier, that since in the copy of the grounds of detention, supplied to the detenu in Marathi

language, the translation of the line "acting in any manner prejudicial to maintenance of public order" is mentioned, the detenu"s right to make an

effective representation under Article 226 of the Constitution of India was not impaired.

10. For the said reasons in our view ground 7B is devoid of substance and fails.

11. Since no other ground has been pressed before us by the counsel for the Petition, we dismiss this Writ Petition and discharge the rule. Issuance

of certified copy is expedited.