

(1985) 10 BOM CK 0052

In the Bombay High Court

Case No : Criminal Writ Petition No. 644 of 1985

Abdul Rahiman Rahimkhan

APPELLANT

Vs

D.S. Soman, Commissioner of Police and Another

RESPONDENT

Date of Decision : 15-10-1985

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226

National Security Act, 1980 — Section 14, 3, 3(5), 5A, 8

Citation : (1986) 1 BomCR 319

Hon'ble Judges : V.V. Vaze, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : D.N. Canteenwala, M.R. Kotwal and S.R. Parekh, for the Appellant;
P.R. Vakil, Special Counsel and N.M. Kachara, Public Prosecutor for respondent
Nos. 1, 2 and 4 and R.M. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

V.V. Vaze, J.—Abdul Karim son of Sherkhan alias Karim Lala, a septuagenarian pathan, residing at 28, Taher Manzil, Second Floor, Agiar Lane, Grant Road, has been in and about the city of Bombay for over 30 years by now. Karim Lala claims to be a peace-loving citizen, living an honest life, running three venture; Karim Furnitures, Karim Auto Garage and New Oxford Tailoring shop. He claims to have an altruistic bent of mind and presses his presidentship of Pukhtaon Jargah-E-Hindi which looks after welfare of the Pathan community of India to support that claim. In short, Karim Lala says that he draws a straight furrow but the guardians of law seem to think otherwise.

2. Karim Lala came to the adverse notice of the authorities under the National Security Act ("the Act") in 1984.

3. The first detention order under the Act was passing on 4-7-1984 which, for some inexplicable reasons, was promptly revoked on 27-7-1984. Then followed the second order of detention on 19-4-1985. Karim Lala was actually detailed on the same day, and approval of the State Government was granted on 29-4-1985.

On the same day a report was made to the Central Government u/s 3(5) of the Act. After receiving the report of the Advisory Board on 31-5-1985, the State Government confirmed the detention. This detention and continued detention was challenged by Criminal Writ Petition No. 366 of 1985 filed in this Court on 17-5-1985. During the pendency of this writ petition, the detention was revoked on 24-7-1985 and on the next day i.e. on 25-7-1985 a third detention order was passed. Karim Lala was detained on the same day. A report was made to the Central Government on 31-7-1985 which was received by them on 2-8-1985. On 9-8-1985 a reference was made to the Advisory Board and after receiving a report of that Board, the State Government confirmed the detention on 9-9-1985. It is this last detention and the continued detention that is being challenged by the present criminal writ petition.

4. Counsel for the petitioner has gone hammer and tongs and this detention order and according to Counsel to the Achilles heel of the process of detention lies in the fact that though the detenu knows only Pushtu language, neither the order nor the grounds of detention which were in English were explained to him in Pushtu and hence there was no communication within the meaning of Article 22(5) of the Constitution. Counsel placed reliance on *Magalin v. State of Maharashtra*, 1982 Mh.L.J. 50, for the proposition that the Detaining Authority must serve the order of detention in the language understood by the detenu and the mere reproduction of the substance of the order in the grounds cannot be equated with the service of the order. *Magalin's* case was considered by another Division Bench of this Court in *Ladhaji Mavaji Jain Vs. The Union of India and others*, wherein it has been held that in view of the pronouncement of the Supreme Court in *Devji Vallabhnbhai Tandel Ors. Vs. Administrator of Goa, Daman and Diu and Another*, if the order of detention is incorporated in the grounds of detention and thereafter the grounds are themselves translated into a language known to the detenu, there would be compliance of Article 22(5) of the Constitution.

5. In the present case, the sequence of events has been explained by affidavits filed by Sub-Inspector Ghosalkar, who was attached to Nagpada Police Station. According to S.I. Ghosalkar, he left Bombay for Nashik Road, Central Prison in the early hours of 25th July, 1985 with a view to serving upon the detenu the detention order as well as the committal order passed by the Commissioner of Police, Greater Bombay. He met Sub-Inspector Katebhande, waiting outside the prison who informed him that he had already handed over an order of revocation bearing the date 24-7-1985 and that the detenu was expected to come out of the jail. S.I. Ghosalkar waited and as soon as Karim Lala came out of the prison, he served the present order of detention and another confining him in Nasik Road Central Prison and interpreted both the order to the detenu in Hindi. He then took Karim Lala inside the jail, informed the judicial jailor on duty about the service of the orders, showed him the duplicate and once again interpreted both the orders to the detenu in Hindi. Three days thereafter, S.I. Ghosalkar again visited the jail and served the detenu the grounds of detention with the Urdu

translation thereof as well as the Urdu translation of the detention order and the committal order.

6. It has been the consistent stand of the detenu that he being a Pathan, was educated only in Pushtu, and is not conversant with urdu. Inspector Zaveri, who was in-charge of the investigation of one of the cases formed the subject matter of the grounds of detention, claims to have interrogated Karim Lala in what can be called "Hindustani" which is an admixture of various languages spoken in Bombay. As the language in which the order of detention as well as the grounds of detention that were communicated to the detenu formed the bed-rock of Counsel's argument of the petitioner, it has been submitted the affidavits of Zaveri and Ghosalkar are a result of an afterthought, and have been filed when the arguments in the his matter were about to come to a close. The affidavits are also suspect, argues Counsel, because they are at variance with the earlier stand taken by the State Government wherein it was never claimed that the contents of the orders were explained twice to the detenu and that too in Hindustani. Reliance has been placed by Counsel on Harikisan Vs. The State of Maharashtra and Others, , for the proposition that the detenu who is not conversant with the English language must be given the grounds in a language which he understands.

7. No two cases based purely on facts can be as similar as two congruent triangles which can be super-imposed on each other, line by line, point by point. The ability to understand the communication will depend upon the qualities of his head and heart which are honed by experience. According to the detenu, who has filed a Counter-affidavit today traversing the contentions of Government regarding the service of detention order and the translation made to him, he has "an inadequate understanding of little spoken "Hindustani" and that he reiterates that "I can understand a little spoken Hindustani but that too inadequately". Karim Lala admits that Inspector Zaveri interrogated him in "Simple spoken Hindustani".

8. About purity of language and semantics, let linguistics and lexicographers wrangle but for a man of business who is short on style but long on solemnities, a lingo made up of words from local languages like Marathi, Gujarathi, Urdu, etc. will serve the purpose of a vehicle of thought and he may make do with a handful for words and phrases rather than a bushel of learning. The ubiquitous expression heard in the bazaars of Bombay-"Kya Mangta Hai"-may not have the finesse of "Are you being served" of a carnation-on-the-lapel Captain Peacock of classy departmental stores of piccadilly Circus of Fifth Avenue. A high-brow Hindi Pandit may scoff at the expression "Kya Mangta Hai" as being no Hindi at all, because "Mangna" is more associated with mendicancy than a usual customer-shopkeeper conversation. None-the-less, the merit of the lingo that is spoken of and goes by the expression Bombay Hindi is that it works. It would shock the conscience of the community and be an affront to common sense to say that a man can successfully do business in this metropolis of Bombay for 30 years, pay heavy Income Tax as Karim Lala claims, and still not have a tertiary or working

knowledge of the local languages. The essence of the matter is whether Karim Lala knew that he is being detained under the National Security Act and was told about the grounds which formed the basis of the detention. In the background of the admission of Karim Lala in the counter-affidavit about his working knowledge (though inadequate) of Bombay Hindi, we find that there is nothing on record by which we can disbelieve the endorsement on the orders by which we can disbelieve the endorsement on the orders that the contents were explained to him by the Sub-Inspector who served the order in Hindi.

9. Counsel then attacks the language of the translations of the order and grounds of detention, saying that they being in Urdu, Karim Lala could not read the translations which were supplied to him. According to Karim Lala he had put signature below the orders in Urdu as he has learnt to sign in Urdu, but that he cannot read, write or understand Urdu. Similarly, he claims, he cannot read, write to understand English but can write figures and dates in Roman numerals. According to Inspector Zaveri, he had interrogated Karim Lala for about a couple of hours in Urdu and that he answered in Urdu which is disputed by Karim Lala. As observed earlier, Bombay Hindi which has grown in the business circles of Bombay is an amalgam of various languages. Inspector Zaveri has explained the contents of the order to the detenu in that language. Detention without trial is, to borrow a phrase from Justice Holmes, "a stench in the nostrils". None-the-less, whether one like or not, it has become an integral part of our Constitution, and so long as the detaining authority comports with the normative structure of Article 22 of the Constitution and the provisions of a particular law under which the person is detained, such detention will not become assailable. These provisions of the Constitution will have to be construed liberally and in favour of the detenu and habeas corpus being not a discretionary writ, like other prerogative writs, the detenu is entitled to the relief if held under unjustifiable detention orders. The expression "communicate" occurring in Clause (5) of Article 22 of the Constitution, will have to be interpreted to include oral communication in case the detenu does not know how to read or write any language. Inspector Zaveri has stated that the detenu was asking for Urdu newspaper and books. At this stage, we do not have any means of knowing the educational qualifications of Karim Lala. Suffice it to say that he has signed in Urdu, and that he had challenged the earlier detention order based on almost identical grounds, by making representation before the Advisory Board as well as by writ petition in this Court. Considering the length of the detenu's stay in Bombay and the fact that the grounds and provisions of law which form the basis of the present detention order and similar to those which were challenged earlier, we feel that Karim Lala had a working knowledge of Urdu, the language in which the translations were supplied to him. We find that the requirement of "Communication" under Article 22(5) was complete when the detaining authority explained the contents of the order as well as the grounds to Karim Lala in Bombay Hindi and supplied with Urdu translations of all the orders as well as the relevant documents.

10. The Counsel next attacked the order of detention on the ground that it was result of a mechanical exercise without application of mind. Reliance has been placed on Avtar Singh and Others Vs. State of Jammu and Kashmir and Others, , for the proposition that if a reading of the grounds of detention does not indicate that the detenus were already in detention for some months not it is indicated whether the detaining authority considered the question whether further detention of the detenus was necessary in the circumstances, the detention order could be said to have necessary in the circumstances, the detention order could be said to have been made in mechanical fashion and the detenus would be entitled to be released. In Awatar Singh's case neither counter affidavit not the records produced before the Court disclosed as to why the orders of detention were revoked and all that was mentioned was that the orders were revoked for "technical reasons". The Court was distressed to find that they were not informed as to what those technical reasons were.

11. It would not be open to a Court to wade through the confidential files of the Government in order to fish out a point against the detenu. The Court will mend on man's bargains. However, reading of a ratio of a reported judgment of this Court and applying the same to the factual data apparent on the face of record will not be wading through the files to fish out a point. It appears that this Court, in Vinayak Sakhalkar v. D. Ramchandran, 87 Bom.L.R. 211, held that the import of the expression "report the fact" occurring in section 3(5) of the Act is bringing home the effective knowledge of facts and unless the report sent by the State Government u/s 3(5) is received by the Central Government within 7 days there would be no reporting within meaning of section 3(5). The Court further held that a mere sending of report by State Government within 7 days is not enough; it is imperative that the report should be received by the Central Government within 7 days" period.

12. During the pendency of the Writ Petition No. 366 of 1985 the State Government must have realised that the order of detention dated 19-4-1985 having been reported to the Central Government on 29-4-1985 would vitiate the detention in view of the ratio of the Sakhalkar's case and hence it is easy to see why the order was revoked on 24-7-1985. The Counsel has also attacked this revocation during the pendency of the writ petition as mala fide. Absent any suggestion that the order dated 19-4-1985 was quashed by a Court in exercise of its extra-ordinary jurisdiction, it would be permissible for the detaining authority to pass a fresh order of detention after revoking the previous order in accordance with the provisions of section 14 of the Act. See Ibrahim Bachu Bafan Vs. State of Gujarat and Ors,

13. Further relying on Awatarsingh's case, it has been urged at the bar that the detaining authority has not applied its mind as to whether continued detention of the detenu was necessary. Concededly, in the criminal cases arising out of the incidents referred to in the grounds of detention Karim Lala has been released on bail and sometimes upon a concession made by the Public Prosecutor. Various

fetters have been put on him like reporting to the police station periodically, prohibition of entry in specified areas. It is argued that the detaining authority has not explained as to why the continued detention of Karim Lala was called for when even on the showing of the Public Prosecutor the fetters imposed by the Court on the movements of Karim Lala should have served the cause of public order. It will have to be appreciated that the consideration that would weigh with a law officer prosecuting a person in a Criminal Court would be different from those that would weigh with a Detaining Authority in taking preventive and pre-emptive action with a view of curbing further disturbance of the even tenor of society. The exercise of preventive detention is by its very nature of posterior; and while proceeding backwards from the effect to the cause the parameters would be different. A perusal of the grounds shows that the offence like extortion, kidnapping, criminal intimidation and arson have been imputed to Karim Lala. Thus, it would not be correct to say that simply because Karim Lala was released on bail in the criminal proceedings of such serious offences the detaining authority erred in passing the order of fresh detention in the background of the seriousness of the grounds communicated to him.

14. Coming on the grounds, Counsel urges that Ground No. 3 pertaining to arson of 42 galas in Dawood Baug of Sukhlaji Street is vitiated by total non-application of mind. In the grounds the detaining authority has alleged that with the result of throwing of fire balls fire spread over all the galas which resulted in the damage of the property worth more than two crores of rupees which is factually incorrect. A comparison of the earlier grounds dated 19-4-1985 on the basis of which previous detention order of the same date was passed above that this factual error has been bodily lifted from the earlier narration without caring to verify the facts. As regards the Ground No. 2, reliance has been placed on the alleged threat which Karim Lala held out to Kanna Khan asking him to remove locks of the godown on pain of serious consequences. It is pointed out from the statement of Kanna Khan that it was Madhubhai and Harish Bulchandani who gave him threat and no reference has been made to Karim Lala. Here again Counsel compares the grounds supplied with the earlier detention order and says that they have been bodily lifted. Preventive detention being pre-emptive action is based on materials which have probative value but suspicions also plays some part in the process of rationcination. A perusal of the voluminous documents furnished to the detenu along with grounds shows a mosaic of facts and these two statements imputed to Karim Lala are but threads in an entangled skein. It cannot be said that this minor discrepancy being not a vital or material fact, if brought to the notice of detaining authority, would have altered his decision in any manner.

15. As respects Ground No. 1, it is submitted that it pertains to July-August 1983, and is totally stale as the detention order was issued a couple of years later. This argument would have acquired some force before the amendment of National Security Act on 21-6-1984 by which section 5(4) has been added regarding severability of the grounds of detention. Assuming that before the

amendment the order could be assailed because one of the grounds is not proximately connected with the person or invalid for any other reason, such an argument would now be not open after 21-6-1984, if the remaining grounds are sufficiently serious to justify making of such an order. This Ground No. 1 is serious enough, in connection with which a case under sections 384, 386, 387, 341 and 34 of the Indian Penal Code read with section 506 Part II of the Indian Penal Code has been registered against the detenu. The seriousness of the allegation would override the passage of time and we do not think that the passage of time alone and by itself would snap the link connecting it with other events. The alembic of the other grounds shows brass-knuckled tactics of muscle men which would have an enduring effect on public order, and the order of detention could be sustained on these remaining grounds also.

16. A querulous note was stuck by Counsel about the delay in service of translations. Merely because the detainee was not simultaneously furnished with the grounds of detention along with the order, it cannot be said that the detenu was thereby deprived of the right of making representation against the order. Clause (5) of Article 22 of the Constitution does enjoin upon the detaining authority to communicate grounds on which order has been made "as soon as may be" and, to "afford him the earliest opportunity of making a representation against the order". Though the Constitution by itself does not prescribe the period within which the grounds should be supplied to the detenu, section 8 of the Act specifies the period ranging from five days to 10 days depending upon the facts and circumstances of the case. A compliance of section 8 of the Act would be a compliance of Article 22(5) of the Constitution. See *Ashok Kumar Vs. Delhi Administration and Others*, .

17. The scheme of the Act permits the detenu a number of opportunities when the order of detention can be revoked or rescinded. u/s 3 of the Act it is obligatory upon the State Government to report the fact of detention to the central Government within 7 days together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order. This provision read with section 14 which empowers the Central Government to revoke detention order provides a chance to the detenu to obtain revocation. The normative structure of the Act provides many checks and counter-checks to that the provisions are not misused for harassment of innocent persons. It is urged at the bar that State Government did not send all the documents, copies of which have been supplied to him, to the Central Government and hence, has not complied with the mandatory provisions of section 3(5) of the Act. The documents run to about 91 pages and contained statements of witnesses, copies of F.I.R., panchanamas and copies of police station C.Rs. The Desk Officer of the Home Department of the State Government have averred that the State Government has forwarded a report u/s 3(5) of the Act along with the detention order, committal order, grounds of detention and "other relevant material in respect of

the detenu". The Desk Officer of the Ministry of Home Affairs in his counter-affidavit on behalf of the Union of India, states that a report "as envisaged u/s 3(5) of the National Security Act, 1980", about the detention of Abdul Karim was made by Government of Maharashtra to the Central Government in the Ministry of Home Affairs, vide their letter dated 31-7-1985 which was received by the Central Government on 2-8-1985. The Desk Officer further avers that Mr. M.K. Kaul, a Joint Secretary in the Ministry of Home Affairs, considered the said report and took a decision on 7-8-1985. In the affidavit of Dr. Pachori, a Director in the Ministry of Home Affairs, it has been said that the Central Government received a letter dated 26-7-1985 along with its accompaniments, detention order, committal order and grounds of detention and order regarding approval of Government of detention order. The requirement of section 3(5) is that the grounds and other particulars having a bearing on the necessity for the orders should be sent to the Central Government and we find from the affidavit of Dr. Pachori that there was substantial compliance of that section.

18. In the result, the petition fails and is dismissed. Rule stands discharged.