

(2001) 09 BOM CK 0009
In the Bombay High Court
Case No : Criminal W.P. No. 876 of 2001

Aslam Noorani

APPELLANT

Vs

M.N. Singh and Others

RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)
Penal Code, 1860 (IPC) — Section 323, 354, 395, 427, 452

Citation : (2001) ALLMR(Cri) 2249 : (2002) BomCR(Cri) 166 : (2002) CriLJ 1102

Hon'ble Judges : Vishnu Sahai, J; P. V. Kakade, J

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; B.R. Patil, Acting Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—Through this writ petition preferred under Article 226 of the Constitution of India, the petitioner who styles himself as the brother of the detenu Yusuf alias Chikna Yusuf alias Mohmed Yusuf Salim Nurani, has impugned the order dated 30-12-2001 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 MPDA Act".

The detention order along with the grounds of detention, which are also dated 30-12-2000, was served on the detenu on 6-1-2001 and their true copies are annexed as Annexures A and B, respectively to this petition.

2. A perusal of the grounds of detention (annexure "B") would show that the impugned order is founded on two CRs. and two in-camera statements, viz. C.R. No. 106/2000, under Sections 452, 354, 427, 323, 506(II), IPC, registered on

the basis of a complaint dated 16-4-2000 lodged by Smt. Chandni Desai at Malad Police Station and C.R. No. 259/2000 u/s 395, IPC, registered on the basis of a complaint dated 10-10-2000 lodged by Deepak Gaurishanker Dave at Mira Road Police Station and in-camera statements of two witness, viz. A and B which were recorded on 14-7-2000 and 13-7-2000, respectively.

Since in our view a reference to the prejudicial activities of the detenu, contained in the grounds of detention, is not necessary for the adjudication of ground 8(h) pleaded in the petition, on which ground alone this petition deserves to succeed, we are not advertng to them.

3. Ground 8(h) in short is that on 22-6-2001 the detenu through his lawyer had sent a representation to the State Government wherein it was prayed that the detention order issued against the detenu be revoked and certain vital documents be furnished to the detenu. The pleading in the ground is that vide communication dated 27-6-2001 addressed by the State Government to the lawyer of the detenu, which was received by the detenu's lawyer on 3-7-2001, it was conveyed that the detenu's representation was carefully considered by the Government and your request for supplying vital documents, pertains to the Commissioner of Police, Brihan Mumbai and you are requested to contact him. The grievance raised in the said ground is that the communication dated 27-6-2001 does not make it manifest whether the State Government allowed, revoked or rejected the representation of the detenu and it only indicates that the State Government has carefully considered the detenu's representation. In the circumstances the pleading in ground 8(h) is that the order of detention is illegal and bad in law and ought to be quashed and set side.

4. Ground No. 8(h) has been replied to in two returns viz., in the additional return filed by the Detaining Authority dated 19-9-2001 and in that of Mr. M.S. Kasardekar, Desk Officer, Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai, dated 13-9-2001.

5. We now propose considering the reply furnished in the said returns. We begin with the additional return filed by the detaining authority.

Ground 8(h) has been replied to in para 3 of the said return. It has been stated therein as under :

The detenu's representation addressed to the Secretary to the Government of Maharashtra (Preventive Detention) Home Department (Special), Mantralaya, Mumbai, requesting for furnishing of vital documents, dated 22-6-2001 was forwarded to him. 23rd and 24th June, 2001 were holidays. It was forwarded to PCB CID which received it on 29-6-2001, and forwarded it to the sponsoring authority for parawise remarks on 30-6-2001. 1-7-2001 was a holiday. On 2-7-2001 it was forwarded to the public prosecutor who prepared parawise comments and forwarded it to the sponsoring authority. On 3-7-2001 the parawise comments were forwarded to the Senior P.I. PCB CID, and on 4-7-2001 the papers were forwarded to him (the detaining authority) and since correct,

faithful, true and legible copies of documents had been furnished to the detenu he independently considered and rejected the said representation on 6-7-2001 and the same day communicated the decision to the Advocate of the detenu who acknowledged the receipt the same day.

6. We now come to the return of Mr. M.S. Kasardekar. The said ground has been replied to in para 2 of his return. In short the reply is as under :

The detenu's representation dated 22-6-2001 wherein a prayer was made for revocation of the detention order as well as supply of certain vital documents was forwarded to the Detaining Authority on 27-6-2001 for taking necessary action in respect of furnishing of vital documents. 24-6-2001 and 25-6-2001 were holidays. On 27-6-2001 the Government independently considered the representation and rejected the same and sent a reply to the detenu and his Advocate, the same day. However, due to typographical mistake the request for revocation of detention order which had been already rejected was not typed in the reply. At the end of para 2 it has been averred that in the circumstances the averment that the Government did not take decision on the said representation is denied.

7. Since in our view, the text of the reply communicated by the State Government vide its letter dated 27-6-2001 to the Advocate of the detenu who had preferred the representation dated 22-6-2001 would be necessary for appreciating the averments made in ground 8(h) we are extracting the said letter in, entirety. The said letter has been filed at page 10-D of the petition and reads thus :

Government of Maharashtra

Sir,

I am directed to refer to your representation, dated the 22nd June, 2001 on behalf of Shri Yusuf alias Chikha alias Yusuf Moh. Yusuf Salim Nurani, addressed to the Secretary to the Government of Maharashtra (Preventive Detention), Home Department (Special), Mantralaya, Mumbai-32, on the subject mentioned above and to state that your representation is carefully considered by the Government. However, your request regarding the supplying the vital documents to the detenu, pertains to the Detaining Authority i.e. Commissioner of Police, Brihan Mumbai. He has been requested to take necessary action in this behalf. Therefore, you are requested to contact the Commissioner of Police, Brihan Mumbai.

Yours faithfully, Sd/-

Desk Officer, Home Department (Special), Government of Maharashtra.

8. We have considered the averments contained in ground 8(h) of the petition those contained in paragraph 3 of the additional return of the Detaining Authority and para 2 of the return of Mr. M.S. Kasardekar wherein the said ground has

been replied to and heard learned counsel for the parties. In our judgment there is merit in ground 8(h) and this petition deserves to succeed.

9. It would be manifest from the above :

(a) The detenu through his Advocate on 22-6-2001 sent a representation to the State Government making therein a dual prayer viz; (i) the detention order be revoked, and (ii) copies of certain vital documents be furnished to him;

(b) The State Government so far as the prayer of the detenu relating to supply of vital documents was concerned forwarded the representation to the detaining authority vide letter dated 22-6-2001;

(c) The detaining authority rejected the prayer for supply of vital documents on 6-7-2001 and the same day sent the reply rejecting the said prayer to the detenu's Advocate, who also acknowledged it, the same day;

(d) The State Government considered the representation on behalf of the detenu independently and rejected the same on 27-6-2001 and sent a reply to the detenu and his Advocate on the same day; and

(e) Due to typographical error the request for revocation of detention order which had been already rejected was not typed in the reply and what was mentioned therein was thus :

Your representation is carefully considered by the Government. However, your request regarding the supplying the vital documents to the detenu, pertains to the Detaining authority i.e. Commissioner of Police, Brihan Mumbai. He has been requested to take necessary action in this behalf. Therefore, you are requested to contact the Commissioner of Police, Brihan Mumbai.

10. It is thus crystal clear that the State Government did not communicate to the detenu and his lawyer that it rejected the detenu's prayer for revocation of the detention order.

11. The Supreme Court in para 3 of the decision reported in Harish Pahwa Vs. State of U. P. and Others, , has observed thus :

We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional....

11-A. The lines which we have extracted above from Harish Pahwa Vs. State of U. P. and Others, would show that not only a representation made by the detenu has to be disposed of with the utmost promptitude but its result has also to be communicated to the detenu with the same promptitude.

12. In the instant case we find that the result communicated by the State Government to the detenu and his lawyer was only in respect of one of the prayers made on his behalf by his lawyer viz., that pertaining to supply of vital documents. In the communication sent by the State Government there was no mention about the decision taken by it on the prayer pertaining to revocation of detention order.

In our judgment, in view of the ratio laid down in *Harish Pahwa Vs. State of U. P. and Others*, the State Government was enjoined in law to communicate to the detenu and his lawyer its decision on the said prayer also. And since it has failed to do so the detention order would stand vitiated in law.

13. Before proceeding to the operative part of the judgment we would like to observe that eternal vigilance is the price which the law expects from Officers of the State Government if they want a preventive detention order to be sustained by this Court in its jurisdiction under Article 226 of the Constitution of India. In their laxity lies the liberty of the detenu. And lax (sic) indeed they have been in not communicating to the detenu and his lawyer that the prayer for revocation of detention order issued against the detenu has been rejected. When the law enjoins that the decision on the detenu's representation has to be communicated to the detenu and in case it has been preferred on his behalf by his lawyer to the latter and the same is not done the plea of typographical error would not save the detention order from being vitiated in law.

14. In the result:--

We allow this writ petition; quash the impugned detention order; direct that the detenu Yusuf alias Chikha Yusuf alias Mohmed Yusuf Salim Nurani be released forthwith unless wanted in some other case; and make the rule absolute.