

(2002) 01 BOM CK 0010

In the Bombay High Court

Case No : Criminal Writ Petition No. 1535 of 2001

Ganesh Motiram Vichare

APPELLANT

Vs

M.N. Singh and Others

RESPONDENT

Date of Decision : 15-01-2002

Acts Referred:

Arms Act, 1959 — Section 25(IB), 27, 35, 4

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

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1), 3(3)

Citation : (2002) CriLJ 1636

Hon'ble Judges : Vishnu Sahai, J;S.K. Shah, J

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; Aruna Kamath, Public Prosecutor, 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-detenu, Ganesh Motiram Vichare, has impugned the order dated 12-10-2001 passed by the 1st Respondent Mr. M. N. Singh, Commissioner of Police, Brihan Mumbai, detaining him 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 "MPDA Act").

The detention order along with the grounds of detention, which are also dated 12-10-2001, was served on the petitioner-detenu on 15-10-2001 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 one C. R. viz. C. R. No. 340/2001, under Sections 326, 34, I.P.C. and Sections 4 r/w. 25(I-B)(b), 27 and 35 of Arms Act, registered at Vakola Police Station, " on the basis of a complaint dated 20-8-2001 lodged by

one Rajesh Dhondu Gundaye and in camera statements viz. of two witnesses viz. A and B, which were recorded on 14-9-2001.

3. We have heard learned counsel for the parties. Although in this Writ Petition Mr. U. N. Tripathi, learned counsel for the petitioner-detenu, has pleaded a larger number of grounds numbered as grounds 6(A) to 6(E) but he has only pressed before us a solitary ground viz. that pleaded as ground 6(A).

Ground 6(A) in short is that the petitioner-detenu is a Maharashtrian, He is educated a little. He knows only Marathi language. The copy of the grounds of detention supplied to him by the Detaining Authority in Marathi is not a true and faithful translation of the original which is in English. In para 8 of the grounds of detention supplied to the petitioner-detenu, in Marathi, the detenu has not been communicated his right to make a representation to the Detaining Authority. This amounts to non-communication of the grounds of detention violating the first facet of Article 22(b) of the Constitution of India. As a result of the aforesaid non-communication the detenu lost his right to make a representation to the Detaining Authority at the earliest opportunity.

At the end of ground 6(A) it has been averred that both the facets of Article 22(5) are violated and the detention order has been rendered illegal and bad in law and ought to be quashed.

4. Mr. U. N. Tripathi, learned counsel for the petitioner highlighted a solitary infirmity in translation to substantiate ground 6(A).

Although in para 8 of the original grounds of detention, which are in English, the Detaining Authority has communicated to the petitioner-detenu that pending approval of the detention order, u/s 3(3), he had a right to make a representation against the detention order to the Detaining Authority, i.e. Commissioner of Police, but in the Marathi translation of the said paragraph the word "right" has not been mentioned and instead the said translation reads that pending approval of the detention order, u/s 3(3) the detenu can make a representation to the Detaining Authority i.e. the Commissioner of Police.

The grievance of Mr. Tripathi is that the word "right" which is in para 8 of the original grounds of detention, in English, is not there in the Marathi translation of the said paragraph. Mr. Tripathi contended that there is a world of difference between the expressions can make a representation and the right to make a representation. He urged that in the latter situation a person would almost certainly make a representation but not necessarily in the former. Mr. Tripathi contended that on account of the aforesaid infirmity the detenu could have been confused or misled in exercising his right to make an effective representation guaranteed to him by Article 22(5) of the Constitution.

5. Ground 6(A) has been replied to in para 7 of the return of the Detaining Authority. In short the Detaining Authority has averred therein as under :

The detenu has studied up to 10th standard and is a resident of Mumbai right

from his birth. It is denied that his right to make an effective representation under Article 22(5) of the Constitution of India is violated. The detenu has been apprised in unequivocal terms his right to make an effective representation to the Detaining Authority in para 8 of the Marathi translation of the grounds of detention and the said paragraph is a true and faithful translation of the original in English. In the Marathi translation of para 8 of the grounds of detention the detenu has also been apprised the address of the Detaining Authority on which he should send his representation and it has also been communicated to him that on approval of the detention order by the Government, u/s 3(3) of the M. P. D. A. Act, the detenu's right to make a representation to the Detaining Authority would be automatically extinguished.

The burden of the song of the Detaining Authority, in para 7 of his return is that if paragraph 8 of the Marathi translation of the grounds of detention is read as a whole the detenu has been communicated that he had a right to make a representation to the Detaining Authority.

6. Ms. Aruna Kamath learned counsel for the respondents fairly admitted that although in the Marathi translation of the 2nd line of para 8 of the grounds of detention the detenu has not been apprised that he had a right to make a representation to the Detaining Authority and instead he has been communicated that he could make a representation to it, but if paragraph 8 of the Marathi translation is read in entirety, as it should be, it would become manifest that the detenu had been communicated that he had a right to make a representation to the Detaining Authority. Ms. Kamath wants us to draw this inference in view of the averments contained in the last three lines, both in the original and Marathi translation of the grounds of detention, wherein it has been averred that on approval of the detention order by the Government u/s 3(3) the right to make a representation to the Detaining Authority is automatically extinguished. Ms. Kamath contended that since it has been mentioned that on approval of the detention order by the Government u/s 3(3) his right to make a representation to the Detaining Authority is automatically extinguished, it can safely be presumed that the detenu who was born and brought up in Bombay and had studied up to Xth standard in Marathi, would have also comprehended that he had a right to make a representation to the Detaining Authority. She urged that para 8 of the Marathi translation of the grounds of detention should be read as a whole and the first two lines therein should not be read in isolation.

7. 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.

8. An analysis of Article 22(5) of the Constitution of India would show that the

detenu has two distinct fundamental rights namely :

- a) The right to be communicated by the Detaining Authority the grounds on which a detention order has been made; and
- b) The right of making a representation at the earliest opportunity, against a detention order.

The rationale for fundamental right (a) is founded on fundamental right (b) Unless the detenu has been communicated the grounds on which a detention order has been made, he cannot exercise his fundamental right of making a representation against the detention order at the earliest opportunity.

Another rationale on which fundamental right (a) is founded is the principle of fairness. The said principle warrants that a person who is preventively detained should be communicated the grounds on which he is detained.

9. Since the fundamental right: of making a representation at the earliest opportunity pertains to making a representation against a detention order, it is implicit in Article 22(5) that along with the copy of grounds of detention and the material on which the grounds are founded copy of the detention order should also be served on the detenu.

It is also implicit in Article 22(5) that copy of the grounds of detention and the detention order be furnished to the detenu in a language known to him because then and then alone would the detenu be able to exercise his fundamental right of making a representation at the earliest opportunity.

10. Since the object of furnishing to the detenu, copy of the grounds of detention and the detention order is to enable him to exercise his fundamental right of making a representation at the earliest opportunity, it is implicit in Article 22(5) that an error in translation would only be fatal if on account of it, the detenu's fundamental right of preferring a representation at the earliest opportunity is impaired. A mistake simpliciter in translation of the grounds of detention, the material on which the grounds are founded and the detention order, which does not impair upon the detenu's aforesaid right would be innocuous and would not amount to noncommunication of grounds in terms of Article 22(5) of the Constitution of India.

11. It is in the above perspective that we have to examine ground No. 6(A) and Mr. Tripathi's submission that inasmuch as in para 8 of Marathi translation of the grounds of detention, the detenu has not been apprised that he had a right to make a representation to the Detaining Authority, there has been non-communication of his aforesaid fundamental right guaranteed to him by Article 22(5) of the Constitution of India and his fundamental right to make an effective and purposeful representation, guaranteed by the said provision has also been violated.

12. In order to adjudicate upon Mr. Tripathi's aforesaid submission, a perusal of

para 8 of the original grounds of detention, in English and its Marathi translation would be necessary.

Para 8 of the original grounds of detention reads thus :

I inform you that pending approval of this detention order u/s 3(3) by the State Government, you have a right to make a representation to the Detaining Authority i.e. Commissioner of Police against the order of detention. Should you wish to make such a representation, you should address it to the Commissioner of Police, Brihan Mumbai, c/o. Deputy Commissioner of Police (Preventive) Crimes Branch, 3rd floor, Shivaji Market, M. R. A. Marg, Mumbai 400 001, through the Superintendent of Jail where you are detained. On approval of the detention order by Government u/s 3(3), the right of representation to the Detaining Authority is automatically extinguished.

Para 8 of the Marathi translation of the grounds of detention in English would read thus :

I inform you that pending approval of this detention order u/s 3(3) by the State Government, you can make a representation to the Detaining Authority i.e. Commissioner of Police against the order of detention .Should you wish to make such a representation, you should address it to the Commissioner of Police, Brihan Mumbai c/o. Deputy Commissioner of Police (Preventive) Crime Branch, 3rd Floor, Shivaji Market, Mumbai 400 001 through the Superintendent of the Jail where you are detained. On approval of the detention order by Government u/s 3(3), the right of representation to the Detaining Authority is automatically distinguished.

13. A perusal of para 8 of the original grounds of detention and their Marathi translation would show that in the latter, the expression you have a right to make a repre sensation to the Detaining Authority has not been used and what has been used is you can make a representation to the Detaining Authority.

14. We are not oblivious, as urged by Mr. Tripathi, learned counsel for the petitioner-detenu that there is a world of difference between the expressions you have a right to make a representation and that you can make a representation. In the former situation, the detenu will perhaps necessarily make one but not necessarily in the latter.

15. The question is merely because, if in the second line of para 8 of the original grounds of detention, the detenu has been apprised that he had a right to make a representation to the Detaining Authority, but in the second line of para 8 of the Marathi translation of the grounds of detention, he has been conveyed that you can make a representation to the Detaining Authority, can it be said that there has been non-communication to him of his fundamental right of making a representation to the Detaining Authority.

Our answer to the said decision is in the negative.

16. A paragraph wherein an averment is made has to be read in entirety and some lines contained in it cannot be read in isolation. In our Judgment, if the Marathi translation of para 8 of the grounds of detention is read in entirety, it would become manifest that the detenu has been communicated that he has a right to make a representation to the Detaining Authority.

In our Judgment, the second line in the Marathi translation of para 8 of the grounds of detention wherein the detenu has been communicated that he can make a representation to the Detaining Authority has to be read conjunctively with the last three lines contained therein wherein he has been informed that on approval of the detention order by the Government u/s 3(3) the right of representation to the Detaining Authority is automatically extinguished. If the second line and the last three lines are read conjunctively, the detenu would have understood that he had a right to make a representation to the Detaining Authority.

It should be borne in mind, as is manifest from the averments contained in para 7 of the affidavit of the Detaining Authority, which have not been rebutted from the petitioner's side, that the detenu is conversant with Marathi language and has studied up to class X. The said circumstance leaves not even an iota in our minds that on reading para 8 of the Marathi translation of the grounds of detention furnished to him, the detenu would have comprehended that he had a right to make a representation to the Detaining authority.

16A. It should be remembered that implicit in extinguishment of a right is its existence. Only a right which exists can be extinguished. Such a view, which is based on commonsense, also warrants the inference that the detenu would have comprehended the aforesaid right.

17. We feel it pertinent to refer to the Division Bench decision rendered by the Delhi High Court in the case of Jamila Begum Vs. Union of India and others,

The petitioner Jamila Begum was detained under the COFEPOSA Act. Her grievance, as is manifest from a perusal of para 18 of the Judgment, was that in the original order of detention in English, the reason for detention given was with a view to preventing her from smuggling goods and also preventing her from engaging in transporting, concealing and keeping smuggled goods. But the words keeps smuggled goods were missing in the Hindi translation wherein there was only reference to prevention of smuggling in future. Since the petitioner admitted in her statement u/s 108 that she was a graduate the Division Bench took the view that even if there was some mistake in the Hindi translation, no prejudice was caused.

In our Judgment, the ratio laid down in the aforesaid case is applicable on all fours to our case.

18. We make no bones in observing that the first facet of the fundamental right guaranteed to the detenu by Article 22(5) of the Constitution of India namely,

communication of the grounds of detention would only stand violated if there is absence of communication of a fact or there is ambiguity in respect of its communication.

We wish to make it clear that merely because, if in a part of the paragraph of the grounds of detention a fact has not been communicated to the detenu, but if in another part of the same paragraph it has been communicated and a reading of the paragraph as a whole suggests, as is the case here, that the detenu could have comprehended it, the detention order would not be vitiated on the vice of non-communication of the grounds of detention.

It should be remembered that a paragraph in the grounds of detention to be read in entirety and it is only after it is so read and it is found that either a fact has not been communicated to the detenu at all or it is doubtful whether it has been communicated to him, would a detention order stand vitiated, on the ground that the detenu's fundamental right of communication of the grounds of detention has been violated.

19. For the aforesaid reasons, in our view, ground No. 6(A) fails.

20. We would be failing in our fairness if we do not refer to the five authorities cited by Mr. Tripathi, learned counsel for the petitioner-detenu, viz. :

a) Smt. Nazma Moiddin Shaikh Vs. Shri R.H. Mendonca, Commissioner of Police, Greater Bombay and Others, ;

b) Smt. Manisha N. Suryaji v. Mr. M. N. Singh, Commissioner of Police and Ors., rendered in Criminal Writ Petition No. 1182 of 2001;

c) Shri Brijbihari Shivdarshan Shukla Vs. Shri R.H. Mendonca, Commissioner of Police, Thane and others, ;

d) Ajay kumar Udayraj Yadav v. Shri S. C. Malhotra and Ors., rendered in Criminal Writ Petition No. 498 of 1997;

e) Fatmabi Sheikh Bhikan alias Sunabi v. Commissioner of Police, reported in (1993) 1 Crimes 262

21. We now propose examining each of the aforesaid authorities.

We begin with Smt. Nazma Moiddin Shaikh Vs. Shri R.H. Mendonca, Commissioner of Police, Greater Bombay and Others, . A perusal of para 2 of the said decision would show that the detenu Mohiddin Abdul Halim Shaikh was detained under Sub-section (1) of Section 3 Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 and the grievance urged before the Division Bench was that in the Hindi translation of the grounds of detention the word "public order" was translated as "law and order A perusal of para 7 of the said decision would show that the Division Bench took the view that public order can by no stretch be equated with law and order and therefore the impugned detention order was

quashed.

We fail to see how this authority is relevant in the instant case.

21 A. We now come to Smt. Manisha N. Suryaji's case (supra). To the said decision one of us (Vishnu Sahai, J.) was a party. In the said decision the detenu Chandrashekar Narayan Suryaji was detained under Sub-section (1) of Section 3 Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981. In the said case, in para 7 of the original grounds of detention, in English, the detenu was communicated that pending approval of the detention order, u/s 3(3), by the State Government, he had a right to make an representation to the Detaining Authority, i.e. the Commissioner of Police, but in Marathi translation of the said para it was conveyed to him that in case the detenu had anything to say regarding the delay of the detention order he had a right to give opinion to the Detaining Authority by making an application to him i.e. the Commissioner of Police. A perusal of paras 4 and 5 of the said Judgment would show that since in para 7 of the Marathi translation of the grounds of detention the detenu had not been apprised that he had a right to make a representation to the Detaining Authority, pending approval of the detention order by the State Government, this Court held that his right to make an effective representation guaranteed under Article 22(5) of the Constitution of India was impaired.

In our view, this case also does not help the petitioner-detenu.

21B. In Smt. Brijbihari Shivdarshan Shukla 1997 AIHC 2276 (supra) the detenu had been detained under the National Security Act. It is manifest from a perusal of paras 4 and 5 of the Judgment that there were mistakes in the Hindi translation of the copy of the detention order and the grounds of detention furnished to the detenu. The submission canvassed before the Division Bench, was that the said mistakes resulted in miscommunication of the grounds of detention to the detenu.

Mr. Tripathi urged that the said submission was accepted. We fail to see how this decision would help the petitioner-detenu because here we have taken the view that if para 8 of the Marathi translation of the grounds of detention is read as a whole, as it should be, it would become clear that it has been conveyed to the detenu, that pending approval by the State Government, u/s 3(3) he had a right to make a representation to the Detaining Authority.

21C. We now come to Ajay kumar Udayraj Yadav's case (supra). In this case the detenu was detained under Sub-section (1) of Section 3 Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981. It is manifest from a perusal of para 3 that there were large number of mistakes in the Hindi translation of the grounds of detention supplied to the detenu and one such mistake was that the word "right" had been translated as "kar sakate ho", i.e. he can do. Mr. Tripathi urged that the aforesaid translation was found to be incurred by the Division Bench, which

took the view that the detenu had not been communicated that he had a right to make a representation.

We have reflected over Mr. Tripathi's submission and we find that there is no getting away from the position that the aforesaid infirmity in the translation was one of the infirmities which was found fatal by the Division Bench. However, the said decision would not apply to the present case. It should be borne in mind that the right to make a representation to the Detaining Authority in the first 12 days was recognised as a right, as a result of the decision rendered by the Supreme Court in the case of State of Maharashtra and Others Vs. Santosh Shankar Acharya, . In that view of the matter in Ajay kumar Udayraj Yadav's case (supra), the situation which in the present case, viz. in the last two lines of Marathi translation of para 8 of the grounds of detention it is mentioned that after approval by the State Government u/s 3(3) the right to make a representation to the Detaining Authority would be come automatically extinguished, was not there.

In the instant case we have taken the view that if para 8 of the Marathi translation of the grounds of detention, is read as a whole, as it should be, the detenu has been communicated that he had a right to make a representation against the detention order to the Detaining Authority, i.e. Commissioner of Police.

Hence the ratio laid down in Ajay kumar Udayraj Yadav's case (supra) would also not be applicable in the instant case.

21.D. We now come to the last decision cited by Mr. Tripathi, viz. Fatmabi Sheikh Bhikan alias Sunabi 1993 (1) Crimes 262 (supra). Mr. Tripathi invited our attention to paras 4 and 6 of the said decision. A perusal of the said paras would show that therein the authority to whom the representation was to be addressed was not clearly stated and the address on which it was to be sent was not mentioned. We fail to see how the said decision would help the petitioner-detenu.

22. Before proceeding to the operative part of the Judgment we wish to make it clear that although in this writ petition Mr. Tripathi has pleaded 4 other grounds viz. 6(B), 6(C), 6(D) and 6(E) but since he had not pressed them we have not dealt with them.

23. In the result we dismiss the petition and discharge the rule.

Certified copy expedited.