

(2002) 01 BOM CK 0084
In the Bombay High Court
Case No : Criminal W.P. No. 1618 of 2001

Jafar Ahmed alias Jafar Fantoosh Mohamad Razzak Khan APPELLANT
Vs
M.N. Singh and Others RESPONDENT

Date of Decision : 28-01-2002

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 2, 3(1), 5A, 8
Penal Code, 1860 (IPC) — Section 384, 387, 506

Citation : (2002) BomCR(Cri) 835 : (2002) CriLJ 1723

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

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; Aruna Kamath, APP, for the Respondent

Final Decision : Dismissed

Judgement

Vishnu Sahai, J.—Through this petition preferred under Article 226 of the Constitution of India the petitioner-detenu, has impugned the order dated 18th Sept. 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 the 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 18th Sept. 2001, were served on the detenu on 27th Sept. 2001 and their true copies are annexed as Annexures "A" and "B" respectively to the writ petition.

2. A perusal of the grounds of detention would show that the impugned order is founded on one C.R. viz. C.R. No. 102/2001 under Sections 384, 387, 506(ii) IPC, registered on the basis of a complaint dated 7th May, 2001 lodged by Abdul Manan Abdul Kadar Shaikh, at Sir J.J. Marg Police Station and in-camera

statements of two witnesses, namely, A and B, which were recorded on 14th August, 2001 and 16th August, 2001, respectively.

2A. The details relating to C.R. No. 102/01, referred to above, are contained in paragraphs 5(a), 5(a)(i) and 5(a)(ii) of the grounds of detention and are as under :-

On 27-12-2001, the detenu and his associate Azad assaulted Abdul Mannan over a petty matter resulting in the latter lodging a N.C. complaint against the detenu at Sir J.J.Marg Police Station, bearing N.C. No. 163/2000. On account of this N.C. complaint the detenu had to meet expenses to the tune of Rs. 20,000/- and hence he bore grudge against Abdul Mannan.

On 3-1-2001 the detenu called Abdul Mannan at Huzria Street, (near Baba's dabha) and threatened him to pay the expenses of Rs. 20,000/- which he had incurred or else he would be killed.

On 7-5-2001, at about 5 p.m., while Abdul Mannan and his son Kumar Mohamed Azam Abdul Mannan Shaikh were proceeding towards Mastan Talao and had reached near Building No. 110, the detenu way laid them and told Abdul Mannan that on account of the case he had to incur expenses of Rs. 20,000/- and he should pay the said amount, otherwise he would be shot at. Due to the detenu's threat Abdul Mannan felt terribly frightened.

2B. The details in short, in the in-camera statements are as under :-

Witness "A" in his statement recorded on 14-8-2001 stated that he knew the detenu as a goonda who used to move about in the areas of Temkar street, Dimitikumar Road, Mastan Talao and the areas adjoining thereto and collect hafta money forcibly from the shop keepers, hawkers and businessmen on the point of weapons. He knew the detenu as being affiliated to Dawood gang.

One day at about 8.45 p.m. in the last week of Feb. 2001, the witnesses had brought a passenger from C.S.T. Railway station to Temkar Mohalla and after the said passenger had paid him the fare and he had started counting the money which he had earned throughout the entire day, the detenu came near his taxi and snatched away a sum of Rs. 600 to 650/- from his hand. When he asked the detenu to return the amount the detenu abused him. On seeing this incident the passers by gathered there but on the detenu whipping out a knife and threatening them, they ran away. On hearing the detenu's threats the people who had collected ran away helter skelter. and the shopkeepers in the vicinity pulled down their shutters and hawkers ran away leaving their goods behind.

Witness "B" in his statement recorded on 16-8-2001 in short stated as under :

He knew the detenu as a goonda who used to move about armed with deadly weapons, extorting hafta money from shopkeepers hawkers and businessman, on the point of weapons in areas of Dimitikumar Road, Mastan Talao, Peer Khan Street and areas adjoining thereto. One day at about 8.30 pm, in the third week

of April 2001, while the witness was closing down his banana godown, the detenu approached him, abused him and asked him to take out Rs. 5000/-. When he told the detenu that he did not have that much money he whipped out a knife, put it on his stomach threatened him, saying that if he tried to act too smart he would pierce the knife and so saying he removed Rs. 750/- from his shirt pocket. On seeing the incident the passers by collected there but the detenu threatened them on the point of knife, saying that if anybody come forward he would be cut into pieces. Hearing the threats of the detenu the people, hawkers and taxi drivers, who had collected there ran away helter skelter.

2C. A perusal of para 6 of the grounds of detention would show that the detenu has been detained as a dangerous person u/s 2(b-1) of the M.P.D.A. Act.

3. We have heard learned counsel for the parties. Mr. U.N. Tripathi learned counsel for the petitioner detenu assailed the detention order on two counts.

He firstly invited our attention to ground 60) in the petition. The pleading in substance in the said ground is that since the copy of the detention order and grounds of detention furnished to the detenu in Hindi is not a true and faithful translation of their original, which is in English the detenu's fundamental right to make an effective representation guaranteed under Article 22(5) of the Constitution of India was impaired.

4. Mr. U.N. Tripathi, learned counsel for the petitioner detenu invited our attention to three infirmities.

He firstly pointed out that in the original detention order, in para 2, the Detaining Authority has stated that in exercise of the powers conferred by Sub-section (1) of Section 3 of the said act, the order has been issued but in the copy of the detention order furnished to the detenu, in Hindi, the words in the exercise of powers conferred by are not there.

The second infirmity pointed out by Mr. U.N. Tripathi, is that whereas in the original bail order which is in English it is mentioned that the detenu has been released on executing a surety of Rs. 3000/-, in the Hindi translation the word surety is omitted.

The third infirmity pointed out by Mr. Tripathi pertains to the translation of para 1 of the original grounds of detention (in English).

Mr. Tripathi contended that whereas in para 1 of the original grounds of detention the Detaining Authority has conveyed to the detenu that in pursuance of Section 8 of the M.P.D.A. Act, Article 22(5) of the Constitution of India, I hereby communicate to you the grounds as mentioned in para No. 5 below on which the detention order has been made by me on this day against you under Sub-section (1) of Section 3 of the said Act, the Hindi translation of the said paragraph in English would read thus :- u/s 8 M.P.D.A. Act, r.w Article 22(5) of the Constitution of India, u/s 3(1) of this Act this detention order is being issued and I am issuing the same in pursuance to grounds mentioned in para 5 below, which

I am communicating to you.

Mr. Tripathi urged that the aforesaid Hindi translation as read in English makes it manifest that the detenu must have become confused in exercising his fundamental right of making an effective representation guaranteed under Article 22(5) of the Constitution of India.

It is pertinent to mention that there are some other infirmities in the Hindi translation that have been assailed in ground 6B but since Mr. U.N. Tripathi, is not pressing them we are not adverting to them. We have considered the said infirmities and in our view, they are inconsequential.

4A. It is well-settled that infirmity simplicitor in translation does not vitiate the detenu's fundamental right to make an effective representation, guaranteed under Article 22(5) of the Constitution of India and the said right is only impaired when on account of the infirmity the detenu could have been misled or confused in exercising his aforesaid right.

If we examine the infirmities, referred, to above, on the said touchstone, we dare say that they do not in any way vitiate the detenu's right to make an effective and purposeful representation. We fail to see how merely because in the copy of the Hindi translation of the detention order furnished to the detenu, the words in exercise of the powers conferred are omitted would the detenu's right to make an effective representation be hampered. Again we fail to see how merely in the Hindi translation of the bail application the omission of the word "surety" would defeat the detenu's right to make an effective and purposeful representation.

5. We now come to Mr. Tripathi's submission regarding the third infirmity in translation. We regret that we do not find any merit in it.

It is well settled that a translation need not be a verbatim of the original. So long as the meaning is conveyed in the translation, the infirmity in translation would not vitiate the detenu's fundamental right of making an effective representation.

In the instant case, in our view, in the Hindi translation of para 1 of the grounds of detention the meaning has been conveyed to the detenu. He has been conveyed that the detention order passed against him has been issued in pursuance of grounds mentioned in para 5 below which I (the Detaining Authority) communicate to you.

It is common knowledge that the material relevant for the detenu to exercise his fundamental right of making a representation is the grounds of detention and the documents on which the grounds are based.

In the case it is not the grievance of Mr. Tripathi that there is any infirmity or error in the Hindi translation of the grounds of detention or in the Hindi translation of the documents on which the grounds are founded.

For these reasons we reject Mr. Tripathi's contention in respect of the aforesaid infirmities.

6. For the aforesaid reasons ground 6(b) fails.

7. The second ground on which Mr. Tripathi has tried to assail the detention order is that the averments pertaining to C. R. No. 102/01, referred to above, only disclose a breach of law and order and do not show that the detenu was committing acts prejudicial to the maintenance of public order, in terms of Section 2 of the M.P.D.A. Act.

The submission of Mr. U.N. Tripathi, learned counsel for the petitioner-detenu, is that the said C.R. cannot be a ground of detention and since the Detaining Authority has based the impugned order on it, the said order deserve to be set aside.

8. At the very outset we may mention that since the said ground has not been pleaded in the petition the Detaining Authority has not furnished any reply to it.

9. It is true that this ground has not been pleaded in the petition but since the principle of strict pleadings does not apply to habeas corpus petitions (see para 2 of Harish Pahwa Vs. State of U. P. and Others, and para 4 of the Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, and there is material for adjudication of the said ground, we permitted learned counsel for the petitioner-detenu to canvas it. In our Judgment, learned counsel for the petitioner-detenu is justified in urging that the details pertaining to C.R. No. 102/2001, which are contained in paragraphs 5A, 5a(i) and 5a(ii) of the grounds of detention show that there has been a violation of law and order simplicitor and do not disclose that the detenu was committing any acts prejudicial to the maintenance of public order, in the sense in which the expression is used in Section 2 of the M.P.D.A. Act.

10. We have seen that in para 5(a)(ii) of the grounds of detention it is mentioned that when on 7-5-2001 at about 5 p.m. the informant Abdul Mannan along with his son reached, Building No. 110 the detenu accosted him and told him that on account of the N.C. complaint filed by him he the detenu had incurred an expense of Rs. 20,000/- and in case he did not pay the said amount immediately he would be killed. On this averment the said C.R. has been registered.

It is pertinent to mention that neither in para 5(a)(ii) of the grounds of detention nor in any other para thereof is there a reference to the impact of the aforesaid act of the detenu on public or a section of public. In fact even there is no mention that when the detenu accosted the informant in the manner stated above, there were persons present there, or they ran away on seeing the said act. In these circumstances, in our view, C.R. No. 102/2001 only discloses that the detenu breached law and order and it cannot be ground for holding that the detenu committed acts prejudicial to the maintenance of public order u/s 2 of the M.P.D.A. Act.

11. However, we are not inclined to accede to Mr. Tripathi's submission that merely because C.R. No. 102/2001 fails the impugned order would have to be

necessarily struck down.

We say this because Section 5A of the M.P.D.A. Act provides that where a detention order is passed on more than one ground it would be deemed to be separately passed on each ground and the mere fact that one of the grounds have been found to be invalid, would not mean that it cannot be sustained if the other grounds are valid and are in accordance with law.

In the instant case, in our Judgment, in view of the aforesaid provision the detention order would not be vitiated.

We have earlier mentioned that it is based on three grounds, viz., the ground pertaining to C.R. No. 102/2001, the ground relating to in-camera statement of the witness "A" and the ground relating to the in camera statement of the witness "B". We have referred to in some detail earlier the averments contained in the said in camera statements. A perusal of the in-camera statement of the witnesses "A" and "B" clearly shows that the petitioner detenu was acting in a manner prejudicial to the maintenance of public order, in terms of Section 2 of the M.P.D.A. Act. In paragraph 2B we have set out in detail the prejudicial acts of the detenu as contained in the said statements. A perusal of the said para would show that the impact of the said acts was not restricted to individuals and resulted in breach law and order simpliciter. On the converse the underlined portions of the said para shows that it directly affected that segment of society which was present there and ran away helter and skelter on seeing the detenu commit them.

It is pertinent to mention that the detenu has been detained as a dangerous person in terms of Section 2(b-1) of the M.P.D.A. Act and Section 2 of the M.P.D.A. Act makes it manifest that acting in any manner prejudicial to the maintenance of public order, in case of a dangerous person means if his activities as a dangerous person directly or indirectly cause alarm or a feeling of insecurity amongst the public or a segment of public. At the cost of repetition we would like to point out that in the instant case, they directly caused alarm amongst the section of persons present there. They ran away helter and skelter on seeing the detenu commit them.

We also do not have any iota of doubt that the detenu could have been categorised as a dangerous person u/s 2(b-1) of the M.P.D.A. Act because the said provision provides that if a person either singly or as a member or a leader of gang habitually commits offences punishable under Chapter XVII of the Indian Penal Code, he would be a dangerous person thereunder. In the instant case the in-camera statement of the witness "A" shows that he was acting as a member of the Dawood gang and that of witness "B" discloses that he was acting singly. Since the statements of both the witnesses show that he was habitually committing the offence of extortion (habit means more than once), punishable under Chapter XVII of the Indian Penal Code, he could have been detained as a dangerous person on the basis of the said in-camera statements.

12. For the aforesaid reasons, in view of the provisions contained in Section 5-A of the M.P.D.A. Act, on the mere failure of the ground pertaining to C.R. No. 102/01 the detention order would not be vitiated, as contended by Mr. Tripathi. Hence we also reject this contention of Mr. Tripathi.

13. No other ground has been pressed by Mr. Tripathi, learned counsel for the petitioner detenu.

14. In the result we dismiss this petition and discharge the rule.