
(1999) 06 BOM CK 0072
In the Bombay High Court
Case No : Criminal W. P. No. 962 of 1998

Lavaji Devanna Zende

APPELLANT

Vs

R. H. Mendonca and others

RESPONDENT

Date of Decision : 10-06-1999

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
Penal Code, 1860 (IPC) — Section 170, 34, 420

Citation : (1999) 06 BOM CK 0072

Hon'ble Judges : Vishnu Sahai, J;T. K. Chandrashekhara Das, J

Bench : Division Bench

Advocate : Shirish Gupte, for the Appellant; R. L. Patil, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—Through this writ petition preferred under Article 226 of the Constitution of India, the Petitioner-detenu has impugned the detention order dated 25th June, 1998, passed by the 1st respondent Mr. R. H. Mendonca, Commissioner of Police, Greater Bombay by virtue of the powers vested in him by 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 Act 1996) detaining him under the said provision. The detention order dated 25th June, 1998 along with the grounds of detention bearing the said date was served on the petitioner-detenu on the same date itself.

2. Since this petition deserves to be allowed on a purely legal ground we are not advertng to the prejudicial activities of the petitioner-detenu as contained in the grounds of detention.

3. Mr. Shirish Gupte, learned counsel for the Petitioner-detenu strenuously urged that although the detenu was granted bail in C.R. No. 16 of 1998 of Bhoiwada Police Station u/s 170/420 read with 34, Indian Penal Code by a reasoned order, and was on bail at the time of passing of the detention order the Sponsoring

Authority did not forward complete text of the bail order to the Detaining Authority and instead forwarded only the operative part of the bail order and the Detaining Authority furnished its copy to the detenu. In Mr. Shirish Gupte's contention this is impermissible in view of the ratio laid down in the Division Bench decision of our court reported in 1997(1) Mh.L.J. 427 = 1997 (1) L.J. 186, Samir Shama vs. State of Maharashtra and others to which one of us (Sahai, J.) was party. Paragraph 14(iii) and (iv) of the said decision read thus :

"(iii) In a case where bail has been granted without giving reasons, placing of an operative part of the order granting bail which indicate the fact that bail has been granted and the terms and conditions on which the bail has been granted, may be sufficient. But in a case where, in the application for bail the detenu urges ground in support of his plea for bail and the court grants bail by a reasoned order, copy of the complete order of the court granting bail and the bail application on the basis of which that order has been made, are vital and material for recording subjective satisfaction regarding preventive detention of the person concerned.

(iv) Once the order granting bail is a reasoned order the detenu must be furnished with the copy of the order whatever may be the nature of reasoning."

4. Mr. R. L. Patil, learned counsel for the respondent, true to its customary fairness does not dispute that only the operative part of the bail order and not its complete text was forwarded by the Sponsoring Authority to the Detaining Authority and the Detaining Authority only forwarded to the detenu the operative part of the bail order.

In such a factual matrix, the ratio laid down in 1997(1) Mh.L.J. 427 = 1997(1) L.J. 186 (supra) would have application.

5. In our view, since only operative part of the bail order and not its complete text was forwarded by the Sponsoring Authority to the Detaining Authority and the Detaining Authority only furnished operative part of the bail order to the detenu the impugned detention order is rendered unsustainable in law for two reasons :

(a) On account of non-placement of a vital document, the subjective satisfaction of the detaining authority to preventively detain the detenu is rendered bad in law and;

(b) On account of non-supply of a vital document to the detenu, he has been deprived of his right of making an effective representation under Article 22(5) of the Constitution of India.

6. Consequently, we allow this Writ Petition; set aside the impugned detention order; and direct that the petitioner-detenu be released forthwith if not wanted in some other case.

Rule made absolute.

Office to communicate this order forthwith to the relevant authorities.