
(1999) 07 BOM CK 0099
In the Bombay High Court
Case No : W. P. No. 409 of 1999

Mehmood Abdul Rehman Shaikh	Vs	APPELLANT
R. H. Mendonca and others		RESPONDENT

Date of Decision : 20-07-1999

Acts Referred:

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

Citation : (1999) 07 BOM CK 0099

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

Bench : Division Bench

Advocate : N. V. Gangal, for the Appellant; Rajiv Patil, Assistant 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 has impugned the detention order dated 25th January 1999 passed by the 1st Respondent Mr. R. H. Mendonca, the 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).

2. The detention order along with the grounds of detention also dated 25th January 1999 was served on the detenu on 26-1-1999. True copies of the detention order and the grounds of detention are annexed as Annexures "B" and "D" respectively to this writ petition.

3. We have heard Mr. N. V. Gangal for the Petitioner and Mr. Rajiv Patil, Additional Public Prosecutor for Respondents.

4. Mr. N. V. Gangal has assailed the impugned detention order on three grounds viz. those pleaded as ground numbers 6(viii), 6(ix) and 6(xi) in the petition.

The said grounds have been replied to in two returns viz. those filed by the detaining authority and Mr. M. B. Khopkar, Desk Officer, Home Department (Special). Government of Maharashtra, Mantralaya, Mumbai.

5. Ground No. 6(viii) in short is that since the last case was registered against the petitioner-detenu on 1st and 3rd December 1998 and the detention order was issued on 25th January 1999. the detention order is vitiated by the vice of delay and this delay has snapped the live-link between the prejudicial activities of the petitioner-detenu and the rationale of clamping a detention order on him.

This ground has been replied to in para 12 of the return of the detaining authority. In the said paragraph the detaining authority has mentioned that the proposal for detention of the detenu was initiated by the Juhu Police on 15th December, 1998. It was forwarded to the Assistant Commissioner of Police, Bandra Division on 18-12-1998; to the Deputy Commissioner of Police, Zone VII on 19-12-1998; and to the Additional Commissioner of Police on 30-12-1998. On 30-12-1998 it was forwarded for legal opinion of Assistant Director of Public Prosecution and Public Prosecutor who on 31-12-1998 gave his opinion and thereafter the said proposal was sent to the Assistant Commissioner of Police, Crime Branch (Prevention) on 1-1-1999; who on the said date forwarded it with remarks to the Deputy Commissioner of Police. On the same day the Deputy Commissioner of Police forwarded it to the Additional Commissioner of Police. On 5-1-1999 the Deputy Commissioner of Police recommended that it was a fit case for preventive detention and submitted the proposal to the Joint Commissioner of Police who submitted the same before the Detaining Authority on 6-1-1999. The Detaining Authority perused the papers and found that it was a fit case for preventive detention. He directed that the compilation of documents and translations be prepared. They were received through the Additional Commissioner of Police on 21-1-1999 and the Detaining Authority on 25-1-1999 formulated the grounds of detention and issued the detention order.

6. We have examined the averments contained in para 12 of the return of the Detaining Authority and in our judgment there has been no delay in the issuance of the detention order. We also feel that in view of the explanation contained in para 12 of Detaining Authorities' return the time lag of 8 weeks between the prejudicial activities of the petitioner-detenu and the date of issuance of the detention order, has not snapped the live-link between the prejudicial activities of the petitioner-detenu and the rationale of clamping a detention order on him. Hence ground number 6 (viii) fails.

7. Ground No. 6(ix) in short is that the petitioner does not understand Hindi Language and his mother-tongue is Urdu. Since all the material was supplied to him in Hindi Language his right of making an effective representation under Article 22(5) of the Constitution of India has been impaired.

This ground has been replied to in para 12 of the return of the Detaining Authority wherein it has been categorically averred that it is wrong to state that

the petitioner does not understand Hindi as his mother tongue is Urdu. In the said paragraph, the Detaining Authority has also averred that the petitioner-detenu has stated in his statement that he speaks Hindi and deals with his affairs in Hindi and has prayed that translation of documents in Hindi be furnished to him.

In our view the reply of the Detaining Authority referred to above shows that this ground is also without substance.

8. The last ground which has been pleaded is ground 6(xii). The said ground in short is that on 26-2-1999 the petitioner/detenu made a representation through his advocate to the Hon"ble Minister of Home, Mantralaya, Mumbai which was acknowledged by the office of the Home Minister on the said date. The learned Counsel for the petitioner-detenu urged that since there is an inordinate delay on the part of the Additional Chief Secretary, (Home) in considering this representation the continued detention of the petitioner-detenu is rendered illegal.

9. Ground No. 6(xii) has been replied to by Shri Mr. M. B. Khopkar, Desk Officer, Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai, in para 2 of his return. In the said paragraph it has been averred that the detenu's representation (annexed as Exhibit "E" to the petition) addressed to Shri Gopinath Munde, the Hon"ble Minister Home Department, Mantralaya, Mumbai 400 032 was received in the Home Department on 10th March, 1999. It was scrutinised and processed through the Desk Officer to the Joint Secretary for his consideration on 11th March, 1999 and the latter forwarded it the same day to the Secretary (Preventive Detention) who considered it and forwarded the same to the Additional Chief Secretary (Home) the same day (11th March, 1999) and the Additional Chief Secretary (Home) rejected it on 12th March, 1999, and detenu's advocate through whom the representation had been transmitted was informed about the rejection on 12th March, 1999 itself.

10. Mr. Gangal learned counsel for the petitioner-detenu strenuously urged that there was an inordinate delay of 12 days on the part of the Office of the Hon"ble Minister (Home) to forward the same and in view of this the continued detention of the detenu is rendered illegal.

11. We regret that we cannot accede to Mr. Gangal's contention. A perusal of para 7 of the grounds of detention would show that the detenu was informed that if he so wished he could make a representation and address it to the Secretary to the Government of Maharashtra (Preventive Detention), Home Department (Special), Mantralaya. In spite of this the Advocate of the petitioner-detenu chose to address the representation to the Hon"ble Minister of Home, Mantralaya, Mumbai and deliver the same to the Secretary of the Hon"ble Chief Minister.

12. We are constrained to observe that the Advocate of the petitioner-detenu would not be permitted to take advantage of his own wrong. When the grounds

of detention specifically provided that the representation ought to be addressed to the Secretary to the Government of Maharashtra (Preventive Detention), Home Department (Special), Mantralaya, he should have addressed it to the said authority and if he had to deliver it by hand he should have delivered it to it and not to the Secretary of the Hon''ble Chief Minister. Since he handed it over to the Secretary of the Hon''ble Chief Minister we can well imagine that it must have been lying in Chief Minister''s office and reached only the Home Department on 10th March, 1999. wherein within three days (on 12th March. 1999) the Additional Chief Secretary (Home) rejected it and the same day the detenu''s advocate, through whom the representation had been sent, was apprised of the rejection.

13. We cannot restrain from observing that an Advocate knows the distinction between the Secretary to the Government of Maharashtra (Preventive Detention) Home Department and Secretary to the Chief Minister and if in spite of this he choses to handover the detenu''s representation to the Secretary of the Chief Minister the detenu cannot make a grievance.

A more or less similar situation arose before this Bench in Criminal Writ Petition No. 1471 of 1998 Shri Sameer Mohd. Iliyas Dhangire Vs. Shri R.H. Mendonca Commissioner of Police Brihan Mumbai and others, wherein also the grounds of detention provided that the representation should be addressed to the Secretary to the Government of Maharashtra (Preventive Detention), but the father of the detenu made it to Mr. Gopinath Munde, Deputy Chief Minister (Home). This Court, for the reasons stated above, relying upon its earlier decision in Criminal Writ Petition No. 565 of 1998 Smt. Vinaya Manohar Madhavi Vs. Shri O.P. Bali, Commissioner of Police and others, held that since the representation had not been furnished to the correct authority the detenu could not be permitted to take advantage of his own wrong and did not fault his continued detention as illegal on the ground of delay in disposal of his representation.

14. In view of the ratio laid down in the said authorities we feel that the continued detention of the detenu cannot be faulted with on the ground of delay in disposal of the detenu''s representation. Hence this ground is also rejected.

15. For the said reasons we find this petition to be devoid of substance and dismiss the same. Rule is discharged.