

(2000) 03 BOM CK 0033
In the Bombay High Court
Case No : Criminal Writ Petition No. 8 of 2000

Mrs. Fehmida Iqbal Shaikh

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 06-03-2000

Acts Referred:

Arms Act, 1959 — Section 25, 3
Bombay Police Act, 1951 — Section 22, 395, 397, 452, 51
Constitution of India, 1950 — Article 22(5), 226
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)

Citation : (2000) 5 BomCR 589 : (2000) BomCR(Cri) 589 : (2000) CriLJ 3604

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

Bench : Division Bench

Advocate : Ms. A.M.Z. Ansari, for the Appellant; Rajiv 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 who styles herself as wife of the detenu Iqbal alias Balu Rafiuddin Shaikh, has impugned the detention order dated 21-4-1999 passed by the second respondent Mr. R.H. Mendonca, Commissioner of Police, Brihan Mumbai detaining the detenu 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).

True copies of the detention order and the grounds of detention which are also dated 21-4-1999 are annexed as Annexure A and C respectively to this petition and were contemporaneously served on the detenu on 3-5-1999.

2. A perusal of the grounds of detention would show that the impugned detention order is founded on two C.Rs. namely C/R. No. 411 of 1998 under sections 452, 395, 397, 34 read with 37(a)(1), 22-51 of the Bombay Police Act, registered at M.R.A. Marg Police Station on the basis of a complaint lodged on

10-10-1998 by one Nitesh Shah and C.R. No. 440 of 1998 u/s 399, 402 read with section 3, 25 Arms Act of M.R.A. Marg Police Station on the basis of a complaint lodged on 2-11-1998 by P.S.I. Prakash Shinde and two in camera statements dated 24-11-1998 and 26-11-1998 of witnesses A and B respectively. A perusal of the grounds of detention would show that the said C.Rs. and in camera statements incriminate the detenu.

3. We have heard learned Counsel for the parties. Ms. Ansari, learned Counsel for the petitioner strenuously urged that the impugned detention order is vitiated because, the Hindi translation of para 6 of the grounds of detention furnished to the detenu, is vitally different from para 6 of the grounds of detention which is in English. She pointed out that whereas in para 6 of the grounds of detention, the detaining authority has stated that he was further satisfied that having availed of the bail facility and in the event of becoming a free person and remaining at large, you (detenu) are likely to revert to similar activities prejudicial to the maintenance of public order in future and it was necessary to detain you (detenu) under the M.P.D.A. Act, the Hindi translation of para 6 of the grounds of detention is to the effect that the detaining authority was satisfied that in C.R. No. 411 of 1998 and 440 of 1998, the detenu would not be released on bail and would remain in custody but, still there was a possibility that he could be released on bail in the said C.Rs. and thereafter, indulge in activities prejudicial to the maintenance of public order and hence it was imperative to detain him under the M.P.D.A. Act. In Ms. Ansari's contention, on account of the aforesaid discrepancy, the detenu may have been confused in making a representation and consequently, his right to make an effective representation under Article 22(5) of the Constitution of India was infringed.

4. Mr. Rajiv Patil, learned Counsel for the respondents urged that although he conceded that the aforesaid discrepancy was there, but, the petitioner's Counsel should not be permitted to canvass this submission in view of the fact that at the time of the admission of this writ petition, as is reflected from our order dated 13-1-2000, learned Counsel for the petitioner had made a statement that she would only press ground 5(iii) of the petition, which ground is different from this ground.

5. We have given our anxious consideration to the technical submission canvassed by Mr. Rajiv Patil.

It is true that the submission pleaded in ground 5(iii) is different from the submission canvassed before us. However, in our judgment merely because, the submission of Ms. Ansari is not the one which is pleaded as ground 5(iii) we would not be justified in not allowing her to canvass it.

6. It is well-settled that in a habeas corpus petition, the law of strict pleadings does not apply and if the material necessary for determination of a ground is available on record, a ground though not pleaded can be considered by the Court.

In this connection, it would be appropriate to refer to two decisions of the

Supreme Court, namely those reported in Harish Pahwa Vs. State of U. P. and Others, , and Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, .

A perusal of para 2 of the former decision would show that it was urged before the Supreme Court that since before the High Court, it was not pleaded that the detenu's representation to the State Government was not decided within a reasonable time and hence the delay was fatal to the detention, the detenu could not canvass this point. A perusal of para 2 would also show that the Supreme Court repelled the said objection observing as under :

"This point was no doubt not taken before the High Court, but in view of its importance and the fact that all the material necessary for its determination is available on record, we have allowed it to be raised before us and have overruled a preliminary objection taken by the State to the effect that it should not be entertained."

In the latter decision in para 4, the Supreme Court observed thus :

"It is also necessary to point out that in case of an application for a writ of habeas corpus, the practice evolved by this Court is not to follow strict rules of pleading nor place undue emphasis on the question as to on whom the burden of proof lies."

7. Since the material supplied to the detenu includes the grounds of detention and their Hindi translation and their true copies have been annexed as Annexures C and C-1 respectively to the writ petition, the material on which the said submission is founded is there, and consequently, we over-rule the objection of Mr. Rajiv Patil.

8. Since in para 6 of the grounds of detention the subjective satisfaction of the detaining authority is in terms that the detenu having availed of the bail facility and remaining at large, was likely to revert to similar activities prejudicial to the maintenance of public order in future and hence, it was imperative to detain him under the M.P.D.A. Act but, in para 6 of the Hindi translation of the grounds of detention, the satisfaction of the detaining authority is that the detenu was in custody and was not likely to be released on bail in C.R. Nos. 411 of 1998 and 440 of 1998 of M.R.A. Marg Police Station but, all the same as he could be granted bail under the ordinary law of the land and in that contingency, could revert to committing activities prejudicial to the maintenance of public order and hence, it was imperative to detain him under the M.P.D.A. Act, the detenu could have been confused in making a representation as urged by his Counsel. Hence, this petition would have to be allowed.

9. We are fortified by the decision of the Supreme Court reported in Vijay Kumar Dharna alias Koka Vs. Union of India and others, . A perusal of para 3 of the said decision shows that in the said case, the detenu who only knew Gurumukhi was supplied with the copies of the detention order and grounds of detention in Gurumukhi along with the detention order and the grounds of detention in

English. It was urged on behalf of the detenu that the detention order and the grounds of detention in Gurumukhi were at variance with the English version. Para 4 of the said decision shows that in the Gurumukhi version of the detention order, it was mentioned that the detention order had become necessary with a view to prevent the detenu from smuggling of goods and from abetting the smuggling of goods, but, in the grounds of detention in English, the detaining authority had recorded his satisfaction as under :

"I am satisfied it is necessary to detain you under COFEPOSA Act, 1974 with a view to preventing you from concealing, transporting smuggled goods as well as dealing in smuggled goods."

Since the above satisfaction did not speak of smuggling of goods or abetting smuggling of goods, which was in Gurumukhi version of the detention order, the Supreme Court took the view that the detenu could have been confused whether he should represent against the grounds in the detention order or the satisfaction recorded in the grounds of detention. Hence, it held that he was precluded from exercising his right of making an effective representation under Article 22(5) of The Constitution of India and quashed the detention order.

10. For the said reasons, we allow this writ petition : quash and set aside the impugned detention order; direct that the detenu Iqbal alias Balu Rafiuddin Shaikh, be released forthwith unless wanted in some other case; and make the rule absolute.

11. Writ petition allowed.