

(2001) 08 BOM CK 0043

In the Bombay High Court

Case No : Criminal Writ Petition No. 744 of 2001

Nahida Tabassum Mohd. Harshad Mohd. Asraf Khan @ Rizvi APPELLANT
Vs

M.N. Singh, Commissioner of Police, Greater Bombay and RESPONDENT
Others

Date of Decision : 10-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)

Citation : (2002) BomCR(Cri) 7

Hon'ble Judges : Vishnu Sahai, J;Pratibha Upasani, J

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; B.R. Patil, Acting 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 Mrs. Nahida Tabassum Mohd. who describes herself as wife of the detenu-Mohd. Harshad Mohd. Asraf Khan @ Rizvi has impugned the order dated 18.1.2001 passed by the First Respondent Mr. M. N. Singh, 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. IV of 1981) (Amendment-1996).

The detention order along with the grounds of detention which are also dated 18.1.2001 was served on the detenu on 21.1.2001 and their true copies are annexed as Annexures A and B respectively to this writ petition.

2. At the very inception, we may mention that this is a second writ petition which has been preferred on behalf of the detenu in this Court. Earlier, the detenu-petitioner had preferred in this Court Criminal Writ Petition No. 155 of 2001

which was dismissed by a Division Bench of this Court of which one of us (Vishnu Sahai, J.) was a member, vide orders dated 20.4.2001.

It is well-settled that a second writ petition by the same person or on his behalf would only be maintainable, if new grounds after the dismissal of the first writ petition come into existence. The law clearly is that if a ground which was available when the first writ petition was dismissed was not pleaded in it would be deemed to have been pleaded and deemed to have been considered by the Court on the principle of constructive res judicata. Hence, we reject the oral prayer of the counsel for the petitioner seeking leave to carry out amendment for incorporating certain grounds which were already existing when the first writ petition was dismissed by us.

3. We have heard learned counsel for the parties. Mr. U. N. Tripathi, learned counsel for the petitioner urged that a new ground which came into existence after the rejection of the first writ petition has been pleaded by him as ground No. 7(A) in the petition. He urged that he is only pressing this ground and not the second ground pleaded in the petition, namely ground No. 7(B) which ground admittedly was subsisting when the first writ petition was preferred by the petitioner.

4. Ground No. 7(A) in short is that on 4.5.2001, the detenu sent a representation through his lawyer addressed to the Secretary (Preventive Detention) Government of Maharashtra, Mantralaya, Bombay and so far he has not received any communication from the State Government regarding the decision taken on the said representation. The Inference drawn in the ground is that the State Government has acted with delay in considering the representation and in communicating the decision to the detenu. It has been averred in the said ground that the State Government should explain the reasons for the delay in consideration of the representation of the detenu as also the delay in communicating the decision to the detenu.

At the end of ground No. 7(A), It has been mentioned that the continued detention of the detenu is illegal and bad-in-law.

5. Ground No. 7(A) has been replied to in para 2 of the return of Mr. M. B. Khopkar, Desk Officer, Home Department (Special), Government of Maharashtra, Mantralaya, Bombay. In short, the reply is as under :-

Representation dated 3.5.2001, which date by over-writing has been made as 4.5.2001, addressed to the Secretary, Government of Maharashtra (Preventive Detention) Home Department (Special), Mantralaya, Bombay was received on the same day from the Advocate of the detenu who had made it on behalf of the detenu. As the material and record was available, the said representation was scrutinised and processed by the Desk Officer and forwarded to the Deputy Secretary for his consideration on 5.5.2001. Since 6th and 7th May, 2001 were holidays, the Deputy Secretary considered and forwarded it to the Principal Secretary (Preventive Detention) for her consideration on 8.5.2001 and the latter

considered It and forwarded it to the Additional Chief Secretary (Home) on 9.5.2001 who after considering rejected it on 10.5.2001. On 11.5.2001, both the detenu and his Advocate were communicated through letters of the Government bearing the said date that the said representation was rejected.

6. We have considered the averments In ground No. 7(A) of the petition, those made in para 2 of the return of the Mr. M. B. Khopkar wherein the said ground has been replied to and heard learned counsel for the parties. In our judgment, ground No. 7(A) is devoid of substance. A perusal of para 7 of the return of Mr. M. B. Khopkar, to which we have referred to in detail earlier would show that within one week of the receipt of the representation (it was received on 4.5.2001) not only had the representation been disposed off by the Additional Chief Secretary (Home) but, both the detenu and his advocate were informed of the result.

A perusal of para 2 of Mr. Khopkar's return would show that there has been no delay much less an inordinate or callous delay in the disposal of the detenu's representation. In our judgment, the detenu's representation has been disposed off with the utmost promptitude and reply to the detenu and his advocate has also been communicated with the same promptitude.

7. For the said reasons, we make no bones in observing that ground No. 7(A) is devoid of substance. Since ground No. 7(A) is the only ground which has been pressed by counsel for the petitioner and the second ground namely No. 7(B) was subsisting when the first petition was dismissed by this Court, we have referred to and dealt with only ground No. 7(A).

8. For the said reasons, we dismissed this writ petition and discharge the rule.

9. Certified copy is expedited.