
(1982) 04 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 128 of 1982

Narayan Shankar Patil

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 13-04-1982

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3

Citation : (1982) 1 BomCR 949

Hon'ble Judges : V.A. Mohta, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : Dhun N. Canteenwalla, for the Appellant; B.D. Kamble, Public Prosecutor for State, i.e. R. Nos. 1, 2, 4 and 5, for the Respondent

Judgement

C. S. Dharmadhikari, J.—In this writ petition the petitioner-detenu has challenged the order of this detention dated 15th January, 1982 on various grounds. One of the grounds raises is that the ground No. 1 is hopelessly vague and the material on which the ground is based was also not communicated or furnished to the detenu, and because of this non-supply of documents and material, the detenu's right to make effective representation under Article 22(5) of the Constitution of India is violated. As in our opinion there is much substance in this contention, it is not necessary to consider other contentions raised and argued before us.

2. Shri Kamble, the learned Public Prosecutor contended before us that what is incorporated in paragraph 1 of the grounds of detention is not a ground of detention but merely a preamble. It is not possible for us to accept this contortions for obvious reason. The relevant grounds of detention are as under :---

"Mr. Krishna Shankar Patil of Bhopar, Taluka Kalyan, District Thane is hereby informed that the grounds on which the order of detention has been issued against you u/s 3 of the National Security Act of 1980 are as under :---

Your name is entered as a goonda in the Records of Dombivali and Manpada Police Station. You are spreading fear among and intimidating the people in the areas of Dombivali, Manpada and Bhopar Taluka, Kalyan. You are also committing offences which affect the lives of people. You are always carrying with you lethal weapons as knives, spears, country guns and pistols and while committing your criminal acts, you do not hesitate to use the same against peaceful citizens. You have organised a gang of anti-social elements and are thereby spreading terror. And in recent time you have Committed offences which are punishable under Indian Penal Code".

Then other grounds of detention are enumerated. From the bare reading of the grounds of detention, it is quite obvious that what is incorporated in the above paras is nothing but a ground of detention. It is not necessary to deal with this aspect of the matter in detail, in view of the decision of the Supreme Court in Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, wherein the Supreme Court has considered similar arguments and has ultimately come to the conclusion that no distinction could be made between the introductory facts, backgrounds facts, and grounds as such. In para 3 of the said judgment, the Supreme Court had also explained as what could be called a preamble. In this view of the matter. It is not possible for us to hold that the first part of the ground of detention is not a ground of detention, but is a merely preamble.

3. Once it is held that the aforesaid ground is a ground of detention, then it will have to be further held that it is hopelessly vague. To say the least it does not convey anything to the detenu. In this context a reference could usefully be made to the following observations of the Supreme Court in Sasthi Keot v. The State of West Bengal AIR 1974 S.C. 524.

"2. It is important to note that in the affidavit-in-opposition, filed on behalf of the respondent we find a statement as under :---

"I further state that it appears from the records that the detent-petitioners is a man of desperate habits and dangerous character and also prone to committing theft of underground telecommunication cables".

This has been relied upon by the State as additional ground in support of the detention, apart from the theft of cables, recited in the detention order and repeated in the counter-affidavit. Counsel candidly admitted that this additional circumstances had been placed before the State Government and the Advisory Board, and certainly was before the District Magistrate when he passed the detention order. It is perfectly plain that the authorities have been influenced by the report of the police that the petitioner was "a man of desperate habits and dangerous character and also prone to committing theft of underground cables". We do not regard "desperate habits" and "dangerous character" as any thing but vague. Apart from the vice of vagueness which perhaps may not matter so far as the satisfaction of the authorities is concerned, every desperate or dangerous man cannot be run down u/s 3 of the M.I.S.A Moreover, this vital yet injurious

dossier about petitioner has not been communicated to him and opportunity afforded for making a proper representation contra. Therefore, there is violation both of Article 22(5) of the Constitution of India and of Section 3(3) of the Act. In this view, we are constrained to quash the detention order on the petitioner and direct his release."

Similar view is taken by Supreme Court in Shaik Hanif and Others Vs. State of W.B.,

4. In our opinion these observations of the Supreme Court aptly apply to the present case also. It is an admitted position that the vital yet injurious dossier about petitioner has not been communicated to him to enable him to make an effective representation within the contemplation of Article 22(5) of the Constitution of India.

5. It is equally well settled that even one of the grounds of detention is vague, the whole order must fail. Having held that the first ground of detention is hopelessly vague and the material and/or documents on which the said ground was based was also not supplied to the detenu, then it will have to be held that the whole order is void ab initio and illegal.

Hence rule is made absolute and the detenu is directed to be released forthwith, if not required in any other case.