
(1984) 03 BOM CK 0053

In the Bombay High Court

Case No : Criminal Writ Petition No. 611 of 1983

Nasim " Ballu Sardar Jafri

APPELLANT

Vs

J.F. Ribeiro and Others

RESPONDENT

Date of Decision : 08-03-1984

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3(2)

Citation : (1984) 2 BomCR 109

Hon'ble Judges : H.H. Kantharia, J;B.C. Gadgil, J

Bench : Division Bench

Advocate : Mapsood Khan, for the Appellant; R.P. Desai, Public Prosecutor, for the Respondent

Judgement

H.H. Kantharia, J.—The petitioner, Nasim " Ballu Sardar Jafri, (hereinafter referred to as the "detenu") has by this writ petition challenged the legality and validity of the detention order dated 27th July, 1983 passed against him by the Commissioner of Police, Greater Bombay (hereinafter referred to as the "Detaining Authority") u/s 3(2) of the National Security Act, 1980. The impugned detention order was served on the detenu on 1st August, 1983 with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. Along with the detention order he was also served with the grounds of detention.

2. The grounds of the detention were as under :---

"I. On 10-4-1982 at about 13.45 hours Shri Sayed Khwaja Sayed Mehboob, R/o Aziz Murgiwala Chawl, Prem Nagar, Jogeshwari (East), Bombay- 60 along with his brother Shree Sayed Ismail Sayed Mehboob were arranging queue of customers for kerosene oil in front of Rationing Shop No. 26/D-61, Idgah Maidan, Jogeshwari (E), Bombay. At that time you along with your associates Abdul Rauf and two others went there and started putting persons in front of the queue. Shri Sayed Khwaja objected to this when your associate Abdul Rauf took out razor

from the hip pocket of his pant and gave a blow of it on the back of Shri Sayed Khwaja. You took out a razor from the hip pocket of your pant and gave a blow of it on the thigh and finger of Shri Sayed Khwaja. Your two unknown associates assaulted Shri Sayed Khwaja with first blows. Shri Sayed Khwaja along with his brother Sayed Ismail went to Jogeshwari Police Station from where Shri Sayed Khwaja was sent to Dr. R.N. Cooper Hospital, where he was admitted for treatment. In this connection a case u/s 326/114 Indian Penal Code was registered against you and your said associates at Jogeshwari Police Station vide C.R. No. 267/82. After commission of this offence you were at large."

"II. On 2-6-1982 at about 7.45 p.m., Shri Ramesh Raghavan Mudbadri, R/o Guruswami Chawl, Prem Nagar, "L" Block Jogeshwari (West), Bombay-60 and his uncle Shri Mahabal were standing in front of their room. At that time you along with your associates Mohammed Rafique and one unknown person went running there. You were carrying a spade, your associate Mohammed Rafique was armed with an axe and your unknown associate was armed with a gupti. On seeing you and your associates the said Ramesh Raghavan and his uncle Shri Mahabal rushed inside the room and latched the door from inside. Thereafter you and your said associates started abusing the father of Ramesh Raghavan. You and your said associates then started banging the door with a hard substance with the result the inner latch of the door was broken and the door opened. At that time your associate Mohammed Rafique assaulted Ramesh Raghavan with the axe on his shoulder. Thereafter, you and your associate Mohammed Rafique again threatened Ramesh Raghavan saying that "Thum Aur Thumhare Bapko Jaanse Maar Dalenga". Thereafter you and your said associates went away. Shri Ramesh then went to Jogeshwari Police Station from where he was sent to Dr. R.N. Cooper Hospital for treatment. After the treatment in the said hospital, Ramesh was allowed to go. In this connection a case u/s 506(ii), 324/114 Indian Penal Code was registered against you and your said associate at Jogeshwari Police Station vide C.R. No. 404/82. After the commission of the offence you were at large."

"III. On 10-9-1982 at about 7.30 p.m. Shri Sayed Imtiaz Hussein, Special Executive Magistrate, R/o Imtiaz Hussein Chawl, Idgar Maidan, Janata Colony, Premnagar Jogeshwari (E), Bombay-60 along with his friend Shri Abdul Latif Ansari was walking along an open place near Ramgud corner, New Andheri plot, Jogeshwari (E), Bombay. At that time you along with your associates Mohammed Rafique " Rafique Patil, Rauf and Shendya surrounded Shri Sayed Imtiaz Hussein. You and your associate Rafique Patil took out revolvers and your associate Rauf asked Sayed Hussein and demanded as to why he (Sayed Hussein) was giving information about goondas from the locality of Jogeshwari to the Police. At the same time your associate Shendya caught hold of the shirt of Sayed Imtiaz Hussein and your associate Rafique Patil put the revolver on the chest of the said Sayed Imtiaz Hussein. On this Sayed Hussein told you and your said associates that he had not done anything when you threatened Sayed Imtiaz Hussein," If he (Sayed Hussein) approaches the Police for giving information, you all would finish

him." On seeing people coming from the opposite direction, you and your said associates ran away from the place. Shri Sayed Imtiaz then went to Jogeshwari Police Station and narrated the above facts. Therefore, a case u/s 506(II)/114 Indian Penal Code was registered against you and your said associates at Jogeshwari Police Station vide C.R. No. 635/82. After commission of this offence you were at large."

"IV. On 22-9-1982 at about 00-10 hours Shri Jaya Anna Pujari, a pan bidi shop-keeper, residing in his own hut near main gate of Idgar Maidan, Jogeshwari (E), Bombay-60 and his younger brother Shri Shankar Pujari were sleeping there. At that time you along with your associates Abdul Rauf " Jamaludding and one unknown person went there and asked Shri Jaya Pujari to give four pan patties. Shri Jaya Pujari told you all that his shop was closed and he could not give pan patties. Over this you and your said associates got annoyed and started knocking down wooden planks of the said pan bidi shop. Shri Jaya then opened his pan shop when two glass jars containing chocolates were broken by you and your said associates. You and your said associates further dashed the cash drawer on the ground inside the shop due to which the cash was scattered on the ground. Your associates and you then took out knives and threatened Jaya Pujari with dire consequences to kill him by means of knife if he would not serve you and your said associates 4 pan patties. When the brother of Jaya Pujari, Shri Shankar Pujari shouted for help, you and your said associates ran away. You pointed out a revolver at Jaya Pujari while running away. Shri Jaya Pujari then went to Jogeshwari Police Station and reported the matter as above. Therefore, a case under sections 427, 506(II) & 114 Indian Penal Code was registered against you and your said associates at Jogeshwari Police Station vide C.R. No. 662/72. After the Commission of this offence you were at large."

"V. On 14-2-1983 at about 23-45 hours Shri Jawanmal Chimanlal Shah, a partner of D.L. Kothari & Co. situated at 56, Second Bhoiwada, 2nd floor, Bombay- 4 along with his servants (1) Machlala Wanaji Shah, (2) Dalpat Keshav Solanki, (3) Mukesh B. Shah and Chhaganlal Teraji were present in the said Company. At that time four persons appeared in front of the said Company and one of them told Shri Jawanmal Shah, that they are from Income Tax Department and they have to search the said office premises. Shri Jawanmal Shah demanded their identity cards but the said 4 persons entered the said office premises and took out knives and pointed out towards Jawanmal Shah and his abovenamed servants. Thereafter the intruders told Shri Jawanmal Shah to open the doors and drawers of the safe and to hand over whatever amount therein. Shri Shah and his said servants got frightened. Shri Machlala Wanji opened the drawers of the safe and handed over bundles of G.C. Notes of Rs. 53,000/- to the intruders. The G.C. Notes were of Rs. 100/- each denomination. The intruders then searched two black colour suit cases and 3 rexin hand bags but could not get anything from them. The intruders had cut the telephone wires and threw the hand sets on the ground. As Shri Jawanmal Shah was trying to contact his other partners, one of the intruders, assaulted Shri Shah on his head

with the handle of the knife. The intruders then took away the wrist watch of citizen make of Shri Jawanmal Shah. So the intruders took away the wrist watch of Chhaganlal Taraji. Thereafter the robbers left the place. Injured Shri Jawanmal Shah was treated at J.J. Hospital and allowed to go. In this connection a case under sections 397, 130 & 114, Indian Penal Code was registered at V.P. Road Police Station vide C.R. No. 89/83."

"VI. On 25-5-1983 at about 03-30 hours the Officers and men of Detection Crime Branch, C.I.D. Bombay while on patrol in Kurla area, noticed 3 persons, moving in a suspicious manner and hiding their faces near Saibaba Mandir near Kurla Railway Station, Platform No. 9. The C.I.D. Officers and men surrounded them from all the sides and accosted them. It was then found that you along with your associates Gul Hamid Mohammed Rafique and Abdul Rauf were the persons noticed moving in suspicious manner. You and your said associates were searched in the presence of panchas and the following articles were found.

(i) Gul Hamid Mohomed Rafique. He was found carrying a blue coloured Singapore Airlines hand bag in his right hand. The said bag was found containing :---

a) One country made pistol, 12 bore, having reddish coloured Sunmica on the grip on both sides.

b) Tiffin box of alluminium, having 2 shelves contg. 22, 12 bore ordinance factory-made long range cartridges of special having mark K.F. 12" Special, made in India.

(2) Nasim " Ballu Sardar Jafari (i.e. yourself)---

He was found in possession of one plastic bag red, white and black colour having shop mark "Milan", J.P. Road, Andheri (W) containing :---

a) Air Pistol MOD NO. 18, DEBCO Calcutta.

b) Gupti having double edge having wooden grip, length of blade 11" and grip 5" in length.

c) Clasp knife having mark RG 2445 SITA on one side grip and Special GITA on other side with picture on both sides and brass grip length of blade is 5" and grip 5 1/2" in length.

(3) Abdul Rauf Gafoorkhan. He was found in possession of :

a) One iron hook.

b) One dagger with leather cover having length of blade 5" and grip 4 1/2" length.

c) One button knife having 6" blade and 7" grip in length. No special marks found.

Therefore, you and your above said associates were arrested under 25 Arms Act

read with 37(a)- XXII-51. During the course of interrogation by DCB CID, Bombay you admitted that you along with your associates Rafique, Kadir and Pathan have committed robbery in respect of cash of Rs. 53,000/- from D.L. Kothari & Co., 2nd Bhoiwada, Bombay- 4 on 14-2-1983 at about 11-45 p.m. (the case referred to at Sr. No. 5 above). On 2-6-1983 in an identification parade you were identified by (1) Complainant Shri Jawanmal Shah and (2) witness Shri Chhaganlal Teraji Purohit and on 7-6-1983 in an identification parade you were identified by witness Shri Manchlal Wanji as one of the gangsters who committed robbery in respect of Rs. 53,000/- on 14-2-1983 at D.L. Kothari & Co., 2nd Bhoiwada, Bombay -4."

3. Mr. Khan, learned Advocate appearing on behalf of the detenu raised three contentions before us in support of this petition, although number of points were made in the petition. Thus the first contention raised by Mr. Khan is that the Detaining Authority has referred to and relied upon a previous detention order of 1981 which can be done but the earlier detention order must be placed before the Detaining Authority which is not done in the instant case and hence the impugned detention order is bad in law. To bring home his point Mr. Khan relied upon an unreported judgement of this Court in Writ Petition No. 73 of 1982 in case of Smt. Sohoni Kantilal Jain v. State of Maharashtra, passed by Rege and Jamdar, JJ. on 18-6-1982. We are afraid the authority cited by Mr. Khan does not help him for the simple reason that in the said case the earlier detention order, unlike in the present case, was not mentioned just as narration of facts about the detenu's past conduct and antecedent history. Further, in that case the impugned detention order was passed after taking into consideration the facts and circumstances of the past record of the detenu. But in the instant case the past record of the detenu was not taken into consideration while passing the impugned order and also the earlier record of the detenu had not influenced the mind of the Detaining Authority. What was stated by the Detaining Authority while introducing the grounds of detention in our case was to this effect:

"You were detained under the National Security Act, 1980 (No. 65 of 1980) on 17-6-1981 vide Detention Order No. 36/P.C.B./ZONE-VII/1981 dated 16-6-1981 with a view to preventing you from acting in a manner prejudicial to the maintenance of public order. You were, however, released on a technical ground by the Honourable High Court, Bombay on 15-9-1981. After your release you have again revived your activities and committed the following offences."

This shows that the mention of the detention order of 1981 was made only as and by way of narration of facts which facts were not taken into consideration by the Detaining Authority at the time of passing the impugned order. In this connection the Commissioner of Police who is the Detaining Authority has in his affidavit clarified that :

"With reference to para 4(A) of the petition, I say that the Detaining Authority has merely referred to the previous detention order dated 16-6-1981 issued against the petitioner. I say that in the said matter Hon"ble High Court had

released the petitioner on a technical ground. I deny that the Detaining Authority had relied upon the previous detention order. I say that the perusal of the order would show that the Detaining Authority has relied upon six incidents which have taken place after the petitioner was released by the Hon"ble High Court on 15-9-1981 in the said detention matter. I deny that the mind of Detaining Authority was influenced by extraneous and irrelevant facts and that the order of detention is bad in law and vitiated. I say that it was not necessary to place the said detention order or the judgment before the Detaining Authority in any event, since the petitioner was merely released on technical grounds it would not have in any way helped the petitioner. I say that it is not necessary to place the detention order or the judgment before the Detaining Authority."

Thus, the simple narration of the facts as regards the detention order of 1981 in the opening paragraph of the grounds of detention, as above, constitutes only the background and not one of the grounds of detention on which the impugned order was passed. We may here usefully refer to a Supreme Court ruling in case of Dhananjoy Das Vs. District Magistrate, Darrang and Another, wherein it was observed :

"It cannot be said that there can be no preamble or introductory para in the grounds of detention. There is no bar to have introductory paragraphs in the grounds. Whether a particular paragraph in the grounds amounts only to a preamble or introduction is to be determined on the facts and circumstances of each case and it is open to the Court to come to its own conclusion whether that paragraph is only an introductory para or contains the grounds on the basis of which the Detaining Authority had the subjective satisfaction for passing the order of detention."

We, therefore, feel that the grounds of detention when read as " whole, in our case, leave no manner of doubt in our mind that paragraph 1 in the grounds of detention was only by way of introduction or as a preamble. And thus we find no substance in the argument of Mr. Khan that the earlier detention order should have been placed before the Detaining Authority.

4. Mr. Khan then referred to incident No. 6 and submitted that the petitioner and others were found in possession of certain arms and instruments of assault in Kurla area and not in Jogeshwari or Bhoiwada areas which would involve the problem of "law and order" and not "public order" because according to the Detaining Authority as a result of the petitioner's activities, the peace-loving citizens within the jurisdiction of Jogeshwari and Bhoiwada were experiencing sense of insecurity and were living under constant shadow of fear which activities were prejudicial to the maintenance of public order. He further submitted that there was no material before the Detaining Authority to come to a conclusion that people from Jogeshwari and Bhoiwada areas were feeling insecure because of the Kurla incident. We are unable to persuade ourselves to agree with this submission of Mr. Khan because all the grounds of detention should be read as a whole and when incident No. 6 is read with incident No. 5, it assumes importance

and relevance. Incident No. 6 very much connects the petitioner and his associates as to what had happened in Bhoiwada area on 14-2-1983 at about mid-night as mentioned in incident No. 5 i.e., they had committed robbery of Rs. 53,000/- which fact they admitted when arrested in respect of incident No. 6. The difference between "law and order" and "public order" has been succinctly explained by the Supreme Court in case of Ashok Kumar Vs. Delhi Administration and Others,

"The true distinction between the areas of "public order" and "law and order" lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order."

Thus, reading incident Nos. 5 and 6 together we are more than satisfied that the acts of the petitioner were of such grave and dangerous nature that they definitely involved public order. Even tempo of public life is bound to be disturbed by such acts.

5. And the last contention raised by Mr. Khan is that the petitioner was not supplied with the Hindi translation of the statements dated 15-2-1983 and 2-6-1983 of one Chhaganlal Purohit concerned in incident No. 5 which prevented the petitioner from making effective representation under Article 22(5) of the Constitution of India. Mr. Khan further submitted that all the papers relied upon and considered by the Detaining Authority were supplied to the detenu except the translated copies of the statements of Chhaganlal. It is no doubt true that copies of these two statements of Chhaganlal duly translated in Hindi were not supplied to the detenu who known only Hindi as he had studied upto VII standard in Hindi. We fail to understand why the Detaining Authority failed to do so. But it is important to note that all the relevant documents, translated in Hindi, as regards incident No. 5 were supplied to the detenu. These documents consist of the first information Report lodged by Jawanmal Chimanlal Shah, his further two statements, panchnama as to the identification parade of the accused person involved in that case, statement of Machlala Shah and further statement of the said Machlala Shah. Therefore, we are of the opinion that no prejudice can be said to have been caused to the detenu for non-supply of two duly translated statements of Chhaganlal. He could very well make a representation under Article 22(5) of the Constitution of India with the help of all the other documents furnished to him in Hindi in respect of incident No. 5. The scope and ambit of Article 22(5) of the Constitution of India which reads; "when any person is

detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order;" was well explained by the Supreme Court, in a case like the present one, recently in *State of Punjab and Others Vs. Jagdev Singh Talwandi*, as under:---

"Having given our anxious consideration to this question, it seems to us impossible to accept the view of the High Court that sufficient particulars of the first ground of detention were not furnished to the detenu so as to enable him to make an effective representation to the Detaining Authority, that is to say, a representation which on being accepted may give relief to him. This is not a case in which the ground of detention contains a bare or bald statement of the conclusion to which the Detaining Authority had come, namely, that it was necessary to pass the order of detention in order to prevent the detenu from acting in a manner prejudicial to the interests of public order. The first ground of detention with which we are concerned in this appeal mentions each and every one of the material particulars which the respondent was entitled to know in order to be able to make a full and effective representation against the order of detention. That ground mentions the place, date and time of the alleged meeting. It describes the occasion on which the meeting was held, that is, the "Shaheedi Conference". It mentions the approximate number of persons who were present at the meeting. Finally, it mentions with particularity the various statements made by the respondent in his speech. These particulars mentioned in the grounds of detention comprise the entire gamut of facts which it was necessary for the respondent to know in order to make a well-informed representation. The inadequacies from which the supplementary particulars furnished to the respondent along with ground No. 1 suffer, cannot affect the position because they do not introduce any obscurity in the facts stated in that ground or detract from the substance of the allegations mentioned in that ground. The argument of the respondent that he could not make an effective representation on behalf of ground No. 1 because of the inadequacy of data in the particulars supplied to him has therefore to be rejected."

In our opinion, therefore, the documents which were supplied to the detenu were sufficient to enable him to make an effective representation which on being considered might give him relief.

6. In this view of the matter, we find no merits in this writ petition which fails. Rules is accordingly discharged.