

(2000) 04 RAJ CK 0035

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 4776 of 1999

Ramzan Khan

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 24-04-2000

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(5), 226
National Security Act, 1980 — Section 3(2)

Citation : (2000) CriLJ 3406 : (2000) 2 WLC 765 : (2000) 2 WLN 229

Hon'ble Judges : N.N. Mathur, J; D.N. Joshi, J

Bench : Division Bench

Advocate : L.D. Khatri, for the Appellant; S.S. Bhandawat, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

N.N. Mathur, J.—By way of this Habeas Corpus Petition filed under Article 226, petitioner Ramzan Khan through his father Bhai Khan has challenged the order of detention dated 27-6-1999 passed under Sub-section (2) of Section 3 of the National Security Act, 1980, hereinafter referred to as "the Act", and the orders of the State Government dated 6-7-99 and 13-8-99 confirming the order of detention.

2. It is alleged that the petitioner is a resident of village Kishangarh, District Jaisalmer, which is situated at Indo-Pak International Border. His activities have been anti national. There has been entry in the Crime Note Book of village Nachna and record in the history sheet of the file of the petitioner where there has been mention of the fact that he has been indulging in spying activities and sending information of public importance to the Intelligence Agencies of the Pak through telephone etc. There is an adverse report in the C.I.D. (B.I.) report Intelligence and report sent by the C.I.D. (SSB), Jaipur and also the B.S.F., G. Branch report, received from the Home Ministry, Govt. of India. By order dated 6-7-99, the State Government has confirmed the order of detention passed by

the District Magistrate, Jaisalmer. By order dated 13-8-99, the petitioner has been directed to be detained for the period 27-6-99 to 26-6-2000.

3. Learned counsel Mr. L.D. Khatri appearing for the petitioner has challenged the detention order primarily on the ground that there is violation of the constitutional right of the petitioner as enshrined in Article 22(5) of the Constitution of India, inasmuch as that the photo copy supplied to the petitioner as M-I is in English language. The translation of the said document has not been supplied to the petitioner. Thus, the petitioner has been deprived of making effective representation to the higher authorities. Learned counsel for the petitioner has placed reliance on two decisions of the Apex Court viz., *Kubic Dariusz v. Union of India* reported in : AIR 1990 SC 605 : 1990 Cri LJ 796 and *Powanammal Vs. State of Tamil Nadu and Another*,

4. On the other hand, it is submitted by Dr. Bhandawat, Addl. Advocate General that though document M-I is in English language but this document was translated and read over to the petitioner in his own language and the petitioner understood the same and put his signatures. He has invited our attention to document M-I containing the endorsement ("S.i.c) Along with the reply, the endorsement made by the detenu has been submitted as Ex. R.3. It is pointed out that M-I is a photostat copy of the F.I.R., lodged by the Director, B.S.F. G. Branch. The details about the F.I.R. are mentioned in Hindi in the complaint of S.P., Jaisalmer and a copy of the same was made available to the petitioner in time. It is submitted that no prejudice has been caused to the petitioner as he was made known about the contents of the F.I.R. in Hindi language.

5. We have considered the rival contentions. Admittedly, no translation of the document M-1 has been supplied to the detenu Ramzan Khan. It is also not in dispute that he does not know English language. Dealing with the identical contention, the Apex Court in *Kubic Darusz Vs. Union of India (UOI) and Others*, referring to its earlier decision in *Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others*, observed as follows Para 6 of AIR, Cri LJ :

It was held that there was no sufficient compliance with the mandate of Article 22(5) of the Constitution which required that the grounds of detention must be communicated to the detenu. "Communicate" is a strong word. It requires that sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenu in writing in a language which he understands, so as to enable him to make a purposeful and effective representation. If the grounds are only verbally explained to the detenu and nothing in writing is left with him in a language which he understands. then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed. This follows from the decisions in *Harikisan Vs. The State of Maharashtra and Others*, and *Hadibandhu Das Vs. District Magistrate and Another*, .

6. Thus, the law relating to the preventive detention is well settled. The

safeguard embodied in Article 22(5) extends not only to provide the grounds of detention and the material in support thereof in the language understood by the detenu but also to supply their translation in script or language, which is understandable to the detenu. Failure to do so amounts to denial of right of being communicated the grounds and of being afforded the opportunity of making representation against the detention.

7. In the instant case, there is not only simple reference of document M-1 but the detaining authority has relied upon the said document while recording the satisfaction to detain the petitioner u/s 3(2) of the Act. It is unfortunate that the detention of a person with most notorious record is required to be quashed by the Court of law because of laxity on the part of detaining authority. While dealing with the cases of preventive detention, a balance has to be struck with regard to constitutional safeguards because the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law and at the same time, care has to be taken that the purpose and the object of the Act is not defeated on the basis of a hypertechnical approach" to the observance of the procedure. It is also to be remembered that the constitutional safeguards and the rights under Articles 21 and 22 of the Constitution of India, cannot be sacrificed at the altar of the preventive detention under the Act. The detaining authority and the other authorities, who have been given the job of detention under the Prevention Act are expected to be knowledgeable and careful in their action. In spite of the fact that by catena of decisions, it has been settled by all the Courts in this Country that the document on which the reliance is placed, a copy of the same should be supplied in the language, which the detenu knows, the District Magistrate, Jaisalmer has not bothered to ensure the compliance thereof.

8. Consequently, the petition is allowed. The continuance of the detention of the petitioner under the order dt. 27-6-99 and the subsequent orders under the Act are quashed and set aside. Petitioner Ramzan shall be released forthwith, if he is not required in any other case.