
(1981) 08 BOM CK 0055

In the Bombay High Court

Case No : Criminal Application No. 1113 of 1981

Sabira Begum Habibullah Shaikh

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 24-08-1981

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Citation : (1982) 1 BomCR 103

Hon'ble Judges : S.W. Puranik, J; C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : Dhun N. Canteenwala, for the Appellant; H.A Solkar, Public Prosecutor, for respondent Nos. 1, 2 and 4, V.N. Lokur, for the Respondent

Judgement

C.S. Dharmadhikari, J.—In this writ petition for seeking a writ of Habeas Corpus, the petitioner is challenging the order of detention dated 9th April, 1981, detaining one Harun Habibullah Shaikh, under the provisions of the National Security Act (hereinafter referred to as "the Act"). It is not necessary to make a detailed reference to the various averments made in the petition, in view of the admitted position that the petitioner did not know the English language. It is alleged by the petitioner that the detenu even did not know Marathi language thought he could sign in the Devnagari script and the only language he could understand is Urdu. It is the case of the petitioner that the grounds of detention were neither supplied nor explained to him in the Urdu language and, therefore, it is intended by Shri Canteenwala, the learned Counsel appearing for the petitioner, that the detention order is ab initio void, as it did not offer reasonable opportunity to the detenu to make necessary representation.

2. In the affidavit filed in reply, it is not disputed that the detenu did not know the English language. However, according to the Detaining Authority, the contents of the grounds were explained to him in Marathi. It was then contended that since the detenu had signed in Marathi it could be presumed that he knew Marathi. Thus, in substance, the submission of the Detaining Authority is based

only on the signature made in Marathi by the detenu and it is on that basis. It is contended that there was no violation of the provision of Article 22(5) of the Constitution.

3. It is not possible for us to accept this contention of the Detaining Authority, more so in view of the pronouncement of the Supreme Court in *Nainmal Partap Mal Shah Vs. Union of India (UOI) and Others*, *Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others*, and *Surjeet Singh Vs. Union of India (UOI) and Others*, . As a matter of fact, similar argument was advanced before the Supreme Court in *Nainmal's* case. It was contended therein that the detenu had signed number of documents in English and, therefore, it must be presumed that he was conversant with English. Negating this contention, it was observed by the Supreme Court that this is an argument based on pure speculation when the detenu has expressly stated that he does not know English. Merely because he might have signed some documents in English, it can be presumed in absence of cogent evidence that he had working knowledge of English. In our opinion, these observations aptly apply to the present case also. Further it may be observed that the Detaining Authority is making a confusion between the language and the script. The signature is made in Devnagari script and on that basis alone, it cannot be said, in the absence of any material on record that the detenu knew the Marathi language. Since the grounds of detention as well as the relevant material was not supplied to the detenu in the language he knew, obviously, he had no opportunity to make an effective representation and as such the said opportunity was denied to him. Hence, it will have to be held that his detention is illegal.

4. In the result, therefore, the rule is made absolute and the respondents are directed to release the detenu from detention forthwith if not required in any other case.