

---

**(1987) 01 BOM CK 0057**

**In the Bombay High Court**

**Case No : Criminal Writ Petition No. 82 of 1986**

Sharad Joshi

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

---

**Date of Decision :** 21-01-1987

**Acts Referred:**

National Security Act, 1980 — Section 3(1)

**Citation :** (1987) 2 BomCR 651

**Hon'ble Judges :** W.M. Sambre, J; M.M. Qazi, J

**Bench :** Division Bench

**Advocate :** Ram Jethmalani and S.A. Bobde, for the Appellant; B.P. Jaiswal, Public Prosecutor and R.S. Padhye, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

M.M. Qazi, J.—The petitioner has been detained vide order dated 9th December, 1986 passed by the District Magistrate. Wardha in exercise of his powers under sub section 2 of section 3 of the National Security Act, 1980 with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order. There were several challenge that have been raised by the petitioner in support of his contention that the impugned order is liable to be quashed. One of the contentions strongly pressed before us was that the detaining authority was not aware of the order passed by this Court in W.P. No. 75/86 and 76/86 decided on 8-2-1986. These two writ petitions were filed by the petitioners and others challenging their arrest on 6-12-1986 at Wardha u/s 107 of the Code of Criminal Procedure. The two petitions were allowed on 8-12-86 and the petitioner and others were directed to be released forthwith. It is important to note here that the petitioner had given an undertaking in the said petition to the effect that none would be compelled to get his clothes stamped, that none would be forced to alight from any women passengers were involved, there would be present woman volunteers. Thus there can be no doubt about the relevancy of these proceedings and yet it appears that the District Magistrate,

Wardha who passed the impugned order on 9-12-1986 was not made aware about these proceedings. This challenge is raised precisely by way of amendment in ground No. XVII of the petition. The relevant portion of the ground reads thus :---

"XVII. The petitioner submits that the order of detention and/ or continued detention of the petitioner is illegal, unconstitutional and void for inter alia, the following reasons :---"

I. That all the steps required by law for the continued validity of the detention have not been taken and the procedure established by law is thus violated. The respondents are called upon to disclose three steps taken upto date, the dates on which they were taken and the authority which took them.

II. That the order of detention was made without application of mind to highly relevant facts which were never placed before the detaining authority shows no awareness thereof as it is manifest from the grounds of detention, inter alia, the following vital facts have not been considered:---

(a) The fact of the petitioner's arrest on the 6th of December, 1986.

(b) The reasons for which the petitioner was arrested and detained.

(c) That the authorities concerned did not consider it a fit case for invoking the provision of the National Security Act.

(d) The challenge to the said detention in the High Court and the nature of the said challenge.

(e) Statement made by the petitioner's Counsel about the nature of the movement and the manner in which it was sought to be pursued in the future.

(f) Circular/press Note published by the detainees and filed in W.P. No. 76/86 as Annexure-A.3

(g) The detailed order made by the learned judges.

(h) The necessity for invoking the National Security Act after the petitioner's release.

(i) That there was no suggestion that the petitioner had acted in any manner inconsistent with the statement made on his behalf before the High Court.

... ..

The District Magistrate has filed an Affidavit on 14-7-87 in answer to ground No. XVII. Para 28 of the affidavit reads thus:---

"The arrest of the detenu on 6-12-86 was extensively published through the media viz. news-papers. Radio and Television throughout the State and outside. So also the release of the detenu by this Hon'ble Court on 8-12-86 was widely published similarly. When these facts were known to a citizen in the remotest

village it is illogical, improbable and unrealistic to impute absence of knowledge of these events to the detaining authority. As a District Magistrate the detaining authority is vitally concerned with the public order situated in the District and has to keep constant watch on such events and such development. The Superintendent of Police, Wardha in his report dated 9-12-86 had made reference to these events and development in the following words:--"

"Hence it is necessary in the interest of maintenance of public order and normal life in the district, to resort to preventive detention of Shri Sharad Anant Joshi under the extra-ordinary provision of the National security Act 1980 since the ordinary course open to the administration is not expected to be expedient or sufficient to meet the threat posed by him and his followers."

Even Mr. Jaiswal, P.P. Who appeared for the District Magistrate did not assert in his argument that the order passed by this Court on 8-12-1986 in the two writ petitions was placed before the District Magistrate while passing the impugned order. He only contended that since the matter of detention of the petitioner on 6-12-1986 was extensively published through the media viz. newspapers, radio and television throughout the State, the District Magistrate must have also been aware about the order passed by this Court in the said writ petitions, and, therefore he must be deemed to have taken into consideration the same while passing the impugned order. It is difficult to appreciate the logic of this argument. We are dealing with the situation where a citizen has been detained without any trial because of the extra ordinary provisions of the National Security Act. In a case like this we cannot simply go on assuming things in favour of the detaining authority while scrutinising the legality of the order of detention. It is now well settled that every condition which is otherwise relevant has got to be proved by the State by cogent evidence. There is no reference in the detention order or the grounds that the District Magistrate was aware about the order of this Court passed in the two writ petitions on 8-12-86. There is no dispute that the agitation was launched by the petitioner and his supporters from 7-12-86 in the entire State of Maharashtra and as a precautionary measure he was arrested on 6-12-1986, and therefore, the two writ petitions referred to supra came to be filed in this Court. Thus there can be no doubt that the proceedings referred to above were very much relevant particularly in view of the undertaking recorded therein and it was necessary that the same should have been placed by the authorities before the detaining authority while passing the impugned order. After going through the affidavit of the District Magistrate dated 14-1-1987 and after hearing the Counsel on this aspect we are fully satisfied that the aforesaid material was not placed before the District Magistrate while passing the impugned order and, therefore, the same was not taken into consideration. This indicates a total absence of application of mind on the part of the detaining authority.

2. We may here usefully refer to the decision reported in *Anant Sakharam Raut Vs. State of Maharashtra and Another*, . In the said decision the Supreme

quashed the order of detention on the short ground that there was not mention in the order of detention about the fact that the petitioner was an under-trial prisoner, that he was arrested in connection with the 3 cases that the applications for bail were pending and that he was released on 3 successive dates in 3 cases. In our view, the ratio of this decision is that the detaining authority must be made aware about the relevant events which immediately preceded the order of detention. We have already shown above that the proceedings in the two writ petitions which preceded immediately the present impugned order were very much relevant and, therefore, the same should have been placed before the District Magistrate, Wardha while passing the impugned order. Since the petition has to be allowed on this short ground alone, it is not necessary for us to refer to various other challenges which were raised before us.

3. In the result the petition is allowed. The impugned order dated 9-12-1986 passed by the District Magistrate, Wardha, detaining the petitioner under sub-section (2) of section 3 of the National Security Act, 1980 is hereby quashed and set aside. Since the petitioner is already on bail, the bail bonds stands cancelled.