

(1998) 09 BOM CK 0125

In the Bombay High Court

Case No : Criminal Writ Petition No. 21 of 1998

Shri Shadab Khan

APPELLANT

Vs

Shri R.H. Mendonca and others.

RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3

Citation : (1999) 5 BomCR 76 : (1998) CriLJ 4348 : (1999) 1 MhLj 63 : (1999) 3 RCR(Criminal) 448

Hon'ble Judges : vishnu Sahai, J;N. Arumugham, J

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; R.L. Patil, Assistant Public Prosecutor, for the Respondent

Judgement

Per Vishnu Sahai, J

1. Through this petition, preferred under Article 226 of the Constitution of India, the petitioner seeks to challenge the detention order dated 16th December, 1997 issued by the respondent No. 1 R.H. Mendonca, Commissioner of Police, Brihan Mumbai detaining him under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (No. LV of 1981) Amendment 1996. The detention order along with the grounds of detention bearing the same date, true copies of which are annexed as Exhibits A and B respectively to the petition, was served on the petitioner on 1st January, 1998.

2. We have heard Mr. U.N. Tripathi for the petitioner and Mr. R.L. Patil Additional Public Prosecutor for the respondents. Since this petition would succeed on a legal ground (Ground No. 6-A of the petition) we are not adverting to the prejudicial activities of the petitioner contained in the grounds of detention.

3. Ground No. 6-A in short is that the copies of some illegible documents were

supplied to the petitioner and consequently, he was precluded from making an effective representation under Article 22(5) of the Constitution of India and therefore his continued detention is rendered illegal in law. To substantiate his submission, Mr. Tripathi invited our attention to copies of documents filed at pages 42 to 48, 59 to 60 and 62 of the petition. We have perused the originals of the said documents also and we find merit in the submission of Mr. Tripathi that portions of the said documents are illegible. That being so, in our view, the petitioner was precluded from making an effective representation, under Article 22(5) of the Constitution of India and the impugned detention order would have to be quashed.

In this contention, Mr. Tripathi invited our attention to the decision of the Supreme Court rendered in the case of Manjit Singh Grewal alias Gogi v. Union of India and others, reported in 1990 (Supp.) Supreme Court Cases 59 and a Division Bench decision of our Court rendered in the case of Smt. Sonia Naresh Sukhwani v. State of Maharashtra and others, Criminal Writ Petition No. 1742 of 1994 decided on 27th January 1995.

In the former decision, the Supreme Court has held that if the documents are illegible then it is not necessary to go into the question whether they were vital or material.

In the latter decision to which one of us (Vishnu Sahai, J.) was a party, this Court held that if portions of documents supplied are illegible then the right of making an effective representation under Article 22(5) of the Constitution of India is violated.

4. We wish to emphasise that the right of the detenu to make a representation under Article 22(5) of the Constitution of India stipulates the right of making an effective representation and not a illusory one. And when illegible copies of documents are supplied to the detenu, as is the case here, the right to make an effective representation is whittled down to an illusory one. And this is in clear violation of the mandate of Article 22(5) of the Constitution of India.

Since in the instant case the detenu's right of making an effective representation under Article 22(5) of the Constitution of India was violated, his continued detention is rendered illegal in law and the detention order would have to be set aside.

5. In the result, this petition is allowed. The impugned detention order is quashed and the petitioner Shadab S/o Siddiq Khan, who is in custody, is directed to be released forthwith unless wanted in some other case. Rule is made absolute.

6. Petition allowed.