
(1988) 02 BOM CK 0019

In the Bombay High Court

Case No : Criminal Writ Petition No. 91 of 1987

Siraj Khan

APPELLANT

Vs

L. Himingliana and others

RESPONDENT

Date of Decision : 18-02-1988

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3

Citation : (1988) 02 BOM CK 0019

Hon'ble Judges : M.M. Qazi, J;Loney, J

Bench : Division Bench

Judgement

Qazi, J.—The petitioner has challenged the impugned order dated 9th October, 1987 passed under sub-section (1) of S. 3 of the Conservation of Foreign Exchange and Preventive of Smuggling Activities Act, 1974. Several challenges have been raised by the petitioner, but in our view it is not necessary to enter into all those challenges since the petition can be disposed of in view of the challenge raised in ground (f), wherein the petitioner has alleged that he was released on bail on 1st July, 1987 by the Metropolitan Magistrate on certain conditions. He contented that he complied with the said conditions and was on bail. His grievance is that the fact that he complied with the conditions and that he was on bail was a vital fact, which would have affected the subjective satisfaction of the detaining authority in one way or the other and, therefore, it was obligatory on the part of the sponsoring authority to place before the detaining authority the said fact. He has further contented that it was equally obligatory on the part of the detaining authority to consider the said material fact in depth before invoking the drastic powers of preventive detention without trial. According to him, since the above facts were not taken into consideration by the detaining authority, the impugned order is vitiated. Though the return has been filed on behalf of the respondents and two affidavits have been placed on record, the one sworn in by Mr. S. S. Kelkar, Desk Officer, Home Department (Special), and the other sworn in by Mr. L. Himingliana, Secretary (II) to the Government

of Maharashtra, Home Department, Bombay, but there is nothing in these two affidavits to show that the sponsoring authority had informed the detaining authority that the petitioner fulfilled the conditions of bail and was actually on bail. There is also nothing in the two affidavits to show that the detaining authority took into consideration the conditions on which bail was granted and the fact that the petitioner actually complied with these conditions.

2. In this connection, Mr. Kotwal has relied on the decision of this Court in Criminal Writ Petn. No. 288 of 1987 decided on 9th July, 1987, Smt. Bharati Manoharlal Ahuja v. State of Maharashtra. The relevant portion of the said decision reads thus -

"The foregoing, does not show any awareness on the part of the detaining authority as regards the condition of daily attendance imposed upon the petitioner. Nor does it appear that he was informed of the petitioner complying with the condition of daily attendance. These were matters of vital importance. The primary fact of the sex of the petitioner coupled with the imposition of the condition of daily attendance upon her, required the detaining authority to exercise great caution before passing an order for preventive detention. A fact of vital importance having been withheld from the detaining authority before it passed the order of detention, the said order cannot be sustained. On this short ground we allow the petition and quash the detention."

The same view has also been taken by this Court in Criminal Writ Petn. No. 1204 of 1986 decided on 17th June, 1987 Shri Ashok Bhikaji Guravo v. State of Maharashtra.

3. Mr. Kotwal also invited our attention to the challenge raised in ground (j) of the petition, wherein it is contended that the remand application was placed before the detaining authority wherein some hand written endorsements also appeared which were incomplete, and illegible and unreadable, and did not make out any sense. On the basis of this, the petitioner contended that supply of illegible and unreadable documents amounted to non-supply of the said documents, which violated Art. 22(5) of the Constitution of India, and it was because of this that he was not able to make any effective representation to the detaining authority as well as to the State of Maharashtra. We have gone through this document. On the left side of this document there appears to be the order passed by the Magistrate, releasing the detenu on certain conditions. It is almost impossible to read the entire order. Some important words are completely missing. We are fully satisfied that the order of the Magistrate is unreadable and illegible. Mr. S. S. Ahmed submitted that a part of the order which is not readable dealt with the conditions on which bail was granted and since the detenu availed of the bail by complying with the conditions, there was no question of any prejudice to the detenu. This, in our view, is no answer to the argument of Mr. Kotwal that the document which was supplied to the petitioner was illegible and unreadable and hence it would amount to non-supply of document. In this connection Mr. Kotwal invited our attention to the observations of the Supreme

Court reported in Mehrunissa Vs. State of Maharashtra, , the relevant portion of which reads thus :-

"....., but Shri O. P. Rana learned counsel for the State of Maharashtra, urged that the copies of the documents were not supplied to the detenu as the detenu was already aware of the contents of the document. That is hardly an answer to the submission made on behalf of the detenu. The detenu was entitled to be supplied with copies of all material documents instead of having to rely upon his memory in regard to the contents of the documents."

4. Thus, in our, view, the petition has to be allowed on both the challenges referred supra. We accordingly allow the petition and quash and set aside the impugned order. The petitioner detenu is directed to be released forthwith unless he is required in any other case.

5. Petition allowed.