

(1999) 07 BOM CK 0041

In the Bombay High Court

Case No : Criminal Writ Petition No. 1629 of 1998

Smt. Meena Deepak Sonde

APPELLANT

Vs

Shri B.S. Mohite and another

RESPONDENT

Date of Decision : 22-07-1999

Acts Referred:

Arms Act, 1959 — Section 25(1), 34
Bombay Police Act, 1951 — Section 135, 37(1)
Constitution of India, 1950 — Article 22(5)
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)

Citation : (2000) 5 BomCR 156 : (1999) 3 MhLj 541

Hon'ble Judges : Vishnu Sahai, J;T.K. Chandrasekhara Das, J

Bench : Division Bench

Advocate : Shirish Gupte, M.K. Kocharekar and Ms. K.K. Pradhan, for the Appellant; Rajiv Patil, Additional Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—Through this writ petition preferred under Article 226 of the Constitution of India, the petitioner who has described herself as wife of the detenu Deepak Virappa Sonde has impugned the detention order dated 17-10-1998 passed by the First Respondent Mr. B.S. Mohite, Commissioner of Police, Thane, detaining the detenu under sub-section (1) of section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (Mah. Act No. LV of 1981). The detention order along with the grounds of detention also dated 17-10-1998 was served on the detenu on 17-10-1998 itself. True copies of the detention order and the grounds of detention are annexed as Annexures A and C respectively to this writ petition.

The prejudicial activities of the detenu necessitating the issuance of the impugned detention order are contained in the grounds of detention but, since in our view, a reference to them is not necessary for deciding this petition, we are not adverting to them.

2. Although in this writ petition a large number of grounds have been pleaded, but since in our judgment, this writ petition deserves to be allowed on Ground 6 (xxiii) which has been pleaded by way of an amendment, we are not adverting to the other grounds. The said ground in short is that para 5(a) of the grounds of detention shows that the Detaining Authority has relied upon an offence registered at Hill Line Police Station vide C.R. No. I-34/98 u/s 307/34 and sections 25(1)(a)(c) of the Arms Act r/w sections 37(1) & 135 of the Bombay Police Act in passing the impugned detention order and although the detenu had been granted bail in the said C.R. vide a reasoned order dated 24-4-1998 passed by the learned Additional Sessions Judge, Kalyan but, the full text of the bail order was not forwarded by the Sponsoring Authority to the Detaining Authority and instead the operative part of the said bail order was placed by the Sponsoring Authority before the Detaining Authority.

The contention of Mr. Gupte learned Counsel for the petitioner is that a Division Bench of this Court of which one of us was a member (Vishnu Sahai, J.,) in the case of Sameer Suleman Shama v. State of Maharashtra & others, reported in 1997 Bom.C.R.(Cri) 559 1997 AllM.R.(Cri) 347: 1997(1) Mah.L.J. 427 : 1997(1) L.J. 186 has held that if the detenu is on bail at the time of the passing of the detention order and if the bail order is a reasoned order, the full text of the bail order and not the operative part alone should be placed before the Detaining Authority.

To substantiate his contention, Mr. Gupte invited our attention to para 14(iii) of the said decision which reads thus :---

"In a case where bail has been granted without giving reasons placing of an operative part of the order granting bail which indicate the fact that bail has been granted and the terms and conditions on which the bail has been granted, may be sufficient. But in a case where in the application for bail the detenu urges grounds in support of his plea for bail and the Court grants bail by a reasoned order, copy of the complete order of the Court granting bail and the bail application on the basis of which that order has been made, are vital and material for recordings subjective satisfaction regarding preventive detention of the person concerned".

3. We have examined the affidavit 66 the Detaining Authority dated 22-7-99 and we find that the correctness of the said ground has not been rebutted in it.

4. Since in the instant case, the bail order was a reasoned one and only its operative part and not the complete text was placed before the Detaining Authority and only the operative part was supplied to the detenu, the impugned detention order would be vitiated on a dual count :---

(a) on account of the non-placement of the complete text of a vital document, the subjective satisfaction of the Detaining Authority would be vitiated on the vice of non-application of mind; and

(b) on account of non-supply of the complete text of a vital document the detenu's right to make a effective representation under Article 22(5) of The Constitution of India has been impaired.

5. For the said reasons, in our view, the impugned detention order cannot be sustained.

6. In the result, we allow this writ petition; quash the impugned detention order; and direct that the detenu Deepak Virappa Sonde be released forthwith unless wanted in some other case

Rule is made absolute.

7. Petition allowed.