

(1999) 03 BOM CK 0031

In the Bombay High Court

Case No : Criminal Writ Petition No. 845 of 1998

Soud Ahmed Jubber Khan

APPELLANT

Vs

Shri O.P. Bali and others

RESPONDENT

Date of Decision : 10-03-1999

Acts Referred:

Arms Act, 1959 — Section 25(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
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 323

Citation : (2000) 5 BomCR 317 : (1999) 3 MhLj 261

Hon'ble Judges : Vishnu Sahai, J; Smt. Ranjana Desai, J

Bench : Division Bench

Advocate : S.V. Marwadi, for the Appellant; R.L. Patil, Assistant Public Prosecutor, for the Respondent

Judgement

Smt. Ranjana Desai, J.—One Soud Ahmed Jubber Khan brother of the detenu Jameer Ahmed Khan @ Don has filed the present petition challenging the order of detention dated 12th May, 1998 issued under the provision of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (Mah. Act No. LV of 1981). The order of detention is issued with a view to preventing the detenu from acting in any manner prejudicial to the Maintenance of Public Order. The detention order dated 12th May, 1998 and the grounds of detention in support thereof bearing the same date were served on the detenu on 13th May, 1998 along with the translated version thereof in Hindi.

2. In this petition, rule was issued on 13th July 1998 and the rule was made returnable within six weeks. However, on behalf of the respondents, no affidavit is filed. When the petition was taken up for hearing, Mr. Rajiv Patil learned Additional Public Prosecutor requested this Court that the State may be given time to file affidavit in reply. Our attention was drawn by Mr. Marwadi, learned

Counsel appearing for the petitioner to the order of the Supreme Court dated 23rd February 1999 where the Supreme Court has made the following observations :--

"We would very much appreciate if the High Court of Bombay would hear the matter and dispose of the writ petition without further delay. The Registrar of the High Court of Bombay is directed to bring it to the notice of the Hon"ble Chief Justice of the High Court of Bombay of the aforesaid observations of this Court so that the writ petition can be heard and disposed of within a period of at least one month from today. With the above observations, this SLP is disposed of."

We are informed that the detenu has already undergone eight months period of detention. In view of the above order of the Supreme Court we have declined to grant any time to the State to file affidavit in reply. Affidavit if any ought to have been filed much earlier.

3. In the grounds of detention, the detaining authority has relied upon four cases.

They are :---

1. C.R. No. 149/1997 under sections 325, 323, 147, 148 149 I.P.C. r/w section 25(1)(a) of Arms Act.
2. C.R. No. 73/1995 under sections 334, 504, 506, 34 I.P.C.
3. C.R. No. 39/1998 under sections 385, 387, 34 I.P.C. and;
4. C.R. No. 23/1998 under sections 143, 452, 506(2) I.P.C.

Apart from this, two in-camera statements have also been relied upon. Mr. Marwadi learned Counsel appearing for the petitioner has urged several points in support of his contention that the order of detention deserves to be set aside. In our opinion, his contention that the detenu has been supplied with a wrong translation of the grounds of detention, affecting his right to make an effective representation goes to the root of the matter and therefore, we propose to deal with the same.

4. Mr. Marwadi urged that para 5 of the grounds of detention records the subjective satisfaction of the detaining authority. In the first translation of the grounds of detention, which was supplied to the detenu, the material portion of the said paragraph was not translated at all. The said material portion reads thus : --

"Action taken against you under the existing law of land and even preventive action taken proved to be ineffective to curb your violent and terracing activities."

By letter dated 16th May, 1998 the detenu was informed by the Sr.P.I. Central Police Station Ulhasnagar that the Hindi translation of the grounds of detention supplied to him is riot proper and the detenu was being supplied with correct translation. Along with the said letter, a second translation of the grounds of detention was supplied to the detenu.

5. Mr. Marwadi urged that in the second translation the material portion to which we have made a reference hereinabove, is wrongly translated and in fact, a diametrically opposite version is supplied to the detenu. Whereas the English version says that action taken against the detenu under the existing law of land and even preventive action proved to be ineffective so as to curb his terracing activities, in the translated version, it is stated that the action taken against the detenu under the existing law of land and even the preventive action has proved to be effective. Besides, in para 5 admittedly there are two blanks. The chapters under which the activities of the detenu fall have been left blank and even the relevant provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981 are also not mentioned though they are mentioned in the English version of the grounds of detention.

6. In this connection. Mr. Marwadi has relied upon Vijay Kumar Dharna alias Koka Vs. Union of India and others, where the Supreme Court was considering the Gurumukhi translation of the grounds of detention. The Supreme Court has observed that in the Gurumukhi version of the detention order, it was stated that the detention order had become necessary with a view to preventing the detenu from smuggling goods and from abetting the smuggling of goods. However, in the grounds of detention the detaining authority has recorded his satisfaction that he was satisfied that it was necessary to detain the detenu with a view to preventing him from concealing, transporting, smuggled goods as well as dealing in smuggled goods. The Supreme Court came to the conclusion that on account of this variance, the detenu was not able to effectively represent his case before the concerned authorities.

7. Mr. Marwadi has also drawn our attention to Robert Anthony Chindore v. A.K. Agarwal 1996(3) All.M.R. 81 wherein the grounds of detention formulated by the detaining authority, the detaining authority has not disclosed satisfaction reached by him that the detenu was likely to indulge in such activities in future. It was held that as the subjective satisfaction of the detaining authority regarding the necessity of detention was not stated in the grounds of detention, the order of detention gets vitiated and the detenu's right to make an effective representation under Article 22(5) of the Constitution of India is violated. Mr. Marwadi urged that the ratio of the said case will be applicable to the facts of the instant case because in the instant case the satisfaction recorded by the detaining authority in the original grounds of detention is wrongly translated in Hindi. Hindi version supplied to the detenu is defective. Since Hindi is the only language which the detenu is conversant with, there is a breach of the provision of Article 22(5) of the Constitution of India.

8. Mr. Patil learned Additional Public Prosecutor however, urged that if para 5 is read as a whole it is apparent that the subjective satisfaction arrived at by the detaining authority is conveyed to the detenu. Word to word translation is not possible. He contends that there is a minor mistake in the translation which does

not vitiate detention order. He has also drawn our attention to para 6 of the grounds of detention wherein the detaining authority has again recorded his subjective satisfaction and the said para is properly translated and conveyed to the detenu. Therefore, according to Mr. Patil, no prejudice is caused to the detenu.

9. We are, however not inclined to accept the submissions advanced by Mr. Patil the learned Additional Public Prosecutor for more than one reason. Firstly, the translation supplied to the detenu along with the grounds of detention was admittedly defective. In the first translation the relevant portion which we have quoted hereinabove, was totally absent. This is admitted by the Sponsoring Authority by addressing a letter dated 16th May 1998 to the detenu. A fresh translation came to be supplied to the detenu. In the fresh translation, in para 6 there are blanks and the material portion is wrongly translated. In fact completely different meaning is conveyed to the detenu. In these set of circumstances, we are of the opinion that Mr. Marwadi is right in his submission that the detenu's right to make an effective representation against the order of detention guaranteed under Article 22(5) of the Constitution of India gets affected. Though it is possible that in a given case a minor error or omission in translation may not vitiate the detention order. But, the facts of this case are gross. The mistake in translation is admitted by the Sponsoring Authority. Fresh translation came to be supplied to the detenu. In the first translation, material portion is omitted. In the second translation, it is completely wrongly translated. There are also blank and omissions. From the totality of these facts, the possibility of the detenu getting confused cannot be ruled out. We are also of the opinion that the ratio of the judgment of the Supreme Court in Koka's case (supra) is applicable to the facts of the present case. In this view of the matter, the detention order will have to be quashed and set aside.

10. In the result, the order of detention dated 12th May 1998, Annexure. A to the petition is set aside. The detenu shall be released forthwith unless wanted in some-other case.

Rule is made absolute accordingly.

11. Petition allowed.