

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION*

WRIT PETITION NO. 600 OF 2018

Mohan Manik Deshefti ... Petitioner.

V/s.

The Commissioner of Police and others ... Respondents.

Mr.Udaynath Tripathi a/w Ms.Jayshree U.Tripathi, for the petitioner.

Mr.J.P.Yagnik – APP for State.

***CORAM : S.C. Dharmadhikari and
Prakash D. Naik, JJ.***

28 March, 2018.

P.C. :-

As prayed for leave to amend cause title of the Petition is granted.

2. By this Petition under Article 226 of the Constitution of India, the petitioner challenges the order of detention passed by the detaining authority, on 7 December 2017. The detaining authority is the Commissioner of Police, Solapur. The detention is under Maharashtra Prevention of Dangerous Activities Act(MPDA), 1981.

3. Mr.Tripathi would submit that the order of detention is challenged on several grounds but presently, the petitioner confines his arguments to ground 6(e) of the Writ Petition appearing at page 8 and 9. That would show as to how the continued detention of the detenu is vitiated. This ground reads as under -

'6(e) The Petitioner says and submits that a representation of the detenu was sent to the State Government on 02.01.2018, by his lawyer on his behalf with dual prayer i.e. for revocation of the order of detention as well as to supply to the detenu certain documents requested for in the said representation of the detenu. The Petitioner says and submits that a communication dated 10.01.2018 was received intimating the detenu that the prayers made so in the said representation has not been granted by the Government and the said representation is rejected. The Petitioner says and submits that inspite of specific written request made in the representation demanding certain documents to enable the detenu to make effective representation. The State Government has neither considered the request of the detenu nor supplied the documents. As such the detenu's right to make effective representation guaranteed under Article 22(5) of the Constitution of India is violated. The order of detention is illegal and bad in law liable to be quashed and set-aside'.

4. Mr.Tripathi would submit that the representation contained two prayers. The first one was to revoke the detention order and the second one was that in the absence of copies of the relevant documents being supplied the petitioner could not make an effective representation.

5. Since Mr.Tripathi relies upon the contents of the representation made through the Advocate, we deem it fit and proper to reproduce the following statements in the representation.

'-You are requested to furnish true copies of both the statements where witnesses have signed as well as recording office has put dates below his signature to enable the detenu to make effective representation at the earliest.

- The detenu says and submits that the detaining authority has referred to and relied on 2 in-camera statements of witnesses 'A' and 'B' which are found at page 77 and 79 of the compilation of documents. It is pertinent to note that in both the statements there are no signature of the witness even there are no date put below the signature of the Recording Officer Shri Kamlakar Patil, Senior P.I. M.I.D.C. Police Station, Solapur. Such camera statements are not authentic and valid for considering them for detention of the detenu. The order of detention is illegal and bad in law liable to be revoked and set-aside. You are requested to furnish real and true copies of statements of page 77 and 79 to enable the detenu to make effective representation.

- The detenu says and submits that there are various pages in the compilation of documents i.e. at page 429, 481, 456 and 505 wherein various discrepancy and variance is found. For example at page 429 of the compilation whereas a notice under 41(1)(a) issued to Rakesh Gurunath Rathod bears no date of notice nor the date put by the signing authority. It is surprising to note that in this C.R. No.343 of 2017, which is wrongly shown as C.R. No.343 of 2016. Further, the incident took place

at 13.05 hrs on 01.06.2017 whereas the notice shows that noticee is to remain present on 01.06.2017 morning at 11:00 O'clock at M.I.D.C Police Station which is inconsistence with the particulars of F.I.R. A part of the said notice is also illegible. The detenu submits that notices issued in other 3 C.Rs. also are found inconsistent with the particulars of F.I.R. This shows total non-application of mind of the Sponsoring Authorities. The detaining authority is requested to furnish correct particulars of these documents to enable the detenu to make effective representation. The order of detention is illegal and bad in law liable to be revoked and set-aside'.

6. Mr.Tripathi would urge that the affidavits filed in reply to the petition do not deal with this ground at all. They purport to deal with a ground by which the detenu is allegedly questioning the delay in deciding the representation. In other words, the affidavit in reply in these proceedings, far from dealing the ground as reproduced above, raises issue of delay in consideration of the petitioner's representation. Mr.Tripathi would submit that, that is not the ground on which the continued detention is challenged. The continued detention is challenged on specific ground namely denial of the right to make effective representation. That right according to Mr.Tripathi is part and parcel of Article 22 clause 5 of the Constitution of India. That right is clearly denied in this case. There is no reply according to Shri Tripathi to this aspect of the matter. Hence the continued detention is illegal.

7. Mr.Yagnik on the other hand, would submit that the reply affidavit deals with this ground completely. The reply affidavit discloses as to how the representation was expeditiously dealt with and the authorities did not find any substance in the complaint of the petitioner - detenu that correct and true copies of the statements of the witnesses which were recorded in-camera were not supplied. In fact, everything was supplied at the time of issuance and passing of the detention order and secondly, even the corrigendum or corrected documents were supplied through the Jail Superintendent. In these circumstances, Mr.Yagnik would submit that the petition be dismissed.

8. For properly dealing with the rival contentions, we must refer to the constitutional safeguards as enshrined in Article 22 of the Constitution of India. Article 22 (5) read as under -

When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order

9. A perusal of this clause would indicate that the person is to be communicated the ground on which the order of detention has been made and he has to be afforded the earliest opportunity of making a representation against the order. The opportunity of making a

representation against the order is not an empty formality. The opportunity to make a representation means effective representation. The representation to be effective therefore must be comprehensive in nature. If merely the grounds of detention are communicated but the true copies of the relied upon documents are not supplied, all the true and correct translations of these documents in a language known to the detenu are not supplied, then, the right is as good as denied.

10. When ground 6 clause (e) which has been reproduced above is dealt with, in so far as the detaining authority is concerned, in the affidavit in reply that ground is purported to be dealt with in paragraph no.10. That is dealt with in the following words -

'10 With reference to para 6(e) of the ground, it is submitted that the representation of the detenu dated 02.01.2018 regarding revocation of the order of detention and supplying of documents was received in the MPDA desk on 06.01.2018. Thereafter the remarks were called from us, i.e. Commissioner of Police, Solapur vide letter dated 06.01.2018. As 07.01.2018 was Sunday therefore on 08.01.2018 Sponsoring Authority called and they prepare the details on 09.01.2018, which is forwarded by them to Detaining Authority were received on same day i.e.10.01.2018 vide letter dated 09.01.2018. The concerned Assistant Section Officer Submitted file containing remarks of Detaining Authority along with the representation of the detenu to the Section Officer on 10.01.2018. The Section Officer endorsed it on 10.01.2018 and forwarded it to the Additional Chief Secretary (Home) considered the representation of the

detenu and the remarks of the detaining authority and rejected the representation on 10.01.2018 by applying his mind. The rejection of representation was communicated to the detenu vide letter dated 10.01.2018. Thus the Representation of the detenu regarding revocation of the order of detention and supplying of documents was considered by the State Government. Hence the contention of the petitioner raised in this paragraph is not true and denied in toto'.

11. In somewhat identical terms even the State Government deals with this ground at page 75 and 76 of the paper-book. Reply of the State Government in para 2 is as under -

'2 With reference to para 6(e) of the Petition, it is submitted that the representation of the detenu dated 02.01.2018 regarding revocation of the order of detention and supplying of documents was received in the MPDA desk on 06.01.2018. Thereafter the remarks were called from Detaining Authority, Commissioner of Police, Solapur vide letter dated 06.01.2018. The Detaining Authority was asked to submit its remarks immediately. The remarks of Detaining Authority were received on 10.01.2018 vide letter dated 09.01.2018. The concerned Assistant Section Officer submitted file containing remarks of Detaining Authority along with the representation of the detenu to the Section Officer on 10.01.2018. The Section Officer endorsed it on 10.01.2018 and forwarded it to the Deputy Secretary (In-charge) on the same day. Deputy Secretary (In-charge) endorsed it on 10.01.2018 and forwarded it to the Additional Chief Secretary (Home) on the same day. The Additional Chief Secretary (Home) considered the representation of the detenu and the remarks of the detaining authority and rejected the representation on

10.01.2018 by applying his mind. The rejection of representation was communicated to the detenu vide letter dated 10.01.2018. Thus the Representation of the detenu regarding revocation of the order of detention and supplying of documents was considered by the State Government as expeditiously as possible. Hence the contention of the petitioner raised in this paragraph is not true and denied in toto'.

12. When we asked Mr.Yagnik as to how this could be said to be an explanation, leave alone an answer to the above reproduced ground, all that he could submit is that the authorities found no substance in this representation and proceeded to reject it.

13. We are not as much on the rejection of the representation. We were seeking a reply or an explanation as to why both the prayers in the representation are not answered by the State Government while rejecting the representation and in the affidavit filed in reply to the present petition. The only answer is that there are reasons for not supplying the documents styled as a copy of the in-camera statement with signatures of the witnesses. That would mean disclosing their identity. Once again this argument belies the contents of the representation and particularly the prayers. The prayer is that though the person recording these in-camera statements has not placed the date and time below his signature on the said in-camera statements, therefore the petitioner to question the genuineness and authenticity of these statements or the incidents referred therein,

then, is unable to make effective representation. He does not know whether there is indeed any signature of the recording officer below the in-camera statements and if there is a signature of the recording officer, then, on what date and at what time the same was placed, was his prayer in the representation. There is absolutely no answer to it much less in satisfactory terms. If as held by the Hon'ble Supreme Court the affidavit filed in reply to the Writ Petition styled as Habeas Corpus petition or a petition challenging the order of preventive detention is evasive or does not deal with leave alone deny the statements or the grounds on which the detention order is challenged, then, in this case the continued detention is rendered illegal. In the present case the petitioner - detenu specifically requested to furnish true copies of both the statements where witnesses have signed as well as recording officer has put dates below his signature. To expect the detenu to make effective representations at the earliest, is then too much. It is conceded that even after this representation, copy of which is at Exhibit 41 to 43 is rejected, a second representation may be made or there is no embargo or prohibition in making successive representations. The petitioner requested to furnish correct and true copies of the statements at page 77 and 79 of the compilation of documents to enable him to make effective representation.

14. Then the petitioner stated that there are various pages in the

compilation of documents namely page 429, 481, 456 and 505 wherein various discrepancies and variance is found, that is how the illustration has been given and the detaining authority was requested to correct particulars of these documents to enable detenu to make effective representation. It was expected of the detaining authority and particularly the State Government that it deals with this prayer in the representation. We find that it has not been dealt with. We are also not furnished any particulars as to when the corrigendum or corrections were made and when the copies of the same were supplied to the detenu. It is in these circumstances that we are of the firm opinion that the continued detention of the petitioner is rendered illegal and unconstitutional. It is stated and vaguely that page no.429 of the ground of detention is nothing but a mere typing mistake. That as well as the date on the notice nor the date put by the signing authority, when the corrigendum has been made by the sponsoring authority and served on the petitioner in the Yeravada Central Prison, is not clarified to us. We also do not see how this can be a reply to the prayers in the representation particularly, the request therein as noted above.

15. In the circumstances, we have no alternative but to quash and set aside the detention order. Rule is made absolute in terms of prayer clause (b). The detenu shall be released forthwith if not required in any other case. In the view that we have taken, we have

not allowed Mr.Tripathi to argue the other grounds on which the order of detention is challenged.

(Prakash D. Naik, J.)

(S.C.Dharmadhikari, J.)