

Babar S/O Mohammad Ali

Vs.

State of Maharashtra

Writ Petition No. 30 of 1974

(Y. V. Chandrachud, H. R. Khamma JJ )

06.08.1974.

JUDGMENT

CHANDRACHUD, J. -

1. The Commissioner of Police, Bombay, has passed an order of detention against the petitioner in exercise of the powers vested in him under Section 3(1)(b) read with Section 3(2)(c) of the Maintenance of Internal Security Act. Section 3 of the Act of 1971 invests the Commissioner of Police with power to make an order of detention with a view to making arrangements for the expulsion of a foreigner from India. The detention order states that the petitioner is a national of Pakistan, that he was staying in Bombay illegally and unauthorisedly, that orders for his expulsion from India were being issued and that until arrangements for his expulsion were made it was necessary to detain him. This order is challenged in this petition under Art. 32 of the Constitution.

2. Learned Counsel for the petitioner contends that there is no evidence to show that the petitioner is a Pakistani national and therefore the order of detention is illegal. We see no substance in this contention. The Bombay Police had first arrested the petitioner in 1957 in a theft case which resulted in a conviction on April 15, 1958. He was arrested again on July 20, 1950 under Section 54, Criminal Procedure Code. On inquiry into his antecedents it was discovered that he was convicted twice by a court in Pakistan on November 20, 1954 and May 17, 1956. He was thereafter convicted by a Court in Bombay on April 15, 1958 under Section 380, Penal Code. It is clear from these convictions that the petitioner was in Pakistan till about the middle of 1956 and that he entered India some time before April, 1958. The petitioner admitted after his arrest in Bombay that in 1953 he had gone to Lahore unauthorisedly and that after serving out the sentence imposed on him in the second trial held in Lahore he came to India without any travel documents. It is clear from the affidavit filed by the Assistant Commissioner of Police, Special Branch (I), C.I.D., Bombay, that the petitioner entered India surreptitiously by crossing the Indo-Pakistan border near Attari Road. The petitioner stated before the immigration authorities in India that he was born at Amritsar in 1933 but he was unable to produce any proof regarding his birth in Amritsar or that he was domiciled in India when the Constitution came into force on January 26, 1950.

3. The petitioner was prosecuted under Rule 3 read with Rule 6, Passport (Entry into India) Rules, 1950 for having entered India unauthorisedly and in that trial he was convicted on March 17, 1960 by the learned Chief Presidency Magistrate, Bombay. An order of deportation was thereafter passed against the petitioner on June 3, 1963 and he was deported in pursuance of that order on June 11, 1963 through the Munabow Check Post, Rajasthan.

4. On September 28, 1963 the petitioner was again arrested in Bombay for offences under Sections

380 and 454, Penal Code. It is obvious that after being deported the petitioner entered India without any travel documents. He was prosecuted once again for breach of Rules 3 and 6, Passport (Entry into India) Rules, 1950 and was sentenced to two months rigorous imprisonment on December 14, 1963. The same court convicted him under Sections 380 and 454, Penal Code and sentenced him to two years rigorous imprisonment.

5. Another deportation order was issued against the petitioner on October 5, 1964. On November 17, 1965 the petitioner was taken to the office of Deputy Commissioner of Police after his release from jail and since due to political conditions the petitioner could not be deported to Pakistan, he was interned under the provisions of Foreigners Internment Order, 1962. During the internment, the petitioner opted for his repatriated to Pakistan and accordingly he was repatriated on December 25, 1965.

6. The petitioner once again entered India without any travel documents and was arrested by the Bombay Police on April 25, 1967 for an offence under the Bombay Prohibition Act. The case was with-drawn and the petitioner was ordered to be deported on August 14, 1967. This order was carried out by deporting the petitioner through the Check Post at Barmer.

7. The petitioner was found in Bombay once over again on February 28, 1970 and was arrested under Rule 3 of the Passport Rules, 1950. He was released on bail on the sum of Rs. 1000 but he jumped bail and could not be traced for many months. He was arrested on November 6, 1970, was prosecuted once again for illegal entry into India and was convicted and sentenced by the learned Additional Chief Presidency Magistrate, Bombay. In the meanwhile it was discovered that he was enlarged on bail in a Sessions case but had jumped bail there also. He was put up for trial before the Sessions Court, Greater Bombay, and was sentenced to two years rigorous imprisonment in Sessions Case No. 81 of 1971.

8. On his release from jail on February 15, 1972 the petitioner was put arrest under Section 151, Criminal Procedure Code, with a view to preventing him from going underground and acting in any manner prejudicial to the security of the country. On the 16th a deportation order was passed against the petitioner, which is challenged in this petition. The petitioner could not be deported immediately after the order of deportation was passed as the Indo-Pakistan border was sealed. Be expelled from India.

9. The order of detention passed by the Commissioner of Police was approved by the State Government on August 25, 1972 and thereafter the matter was referred to the Advisory Board as required under Section 10 of the Maintenance of Internal Security Act, 1971. The opinion of the Advisory Board is on the record before us from which it is clear that the Board had taken into consideration all the relevant aspects of the matter before being satisfied that the detention was justified.

10. These facts leave no doubt that the detaining authority had ample material on which to come to the conclusion that the petitioner is a Pakistani national. The petitioner was once repatriated to Pakistan on his own request and the various deportation orders passed against him on prior occasions went uniformly unchallenged. The parents of the petitioner and all the members of his family have migrated to Pakistan and it is not unlikely that the petitioner himself had done likewise. He seems to have returned to India surreptitiously more in quest of crime than in assertion of a right.

11. We therefore dismiss the petition and discharge the Rule.

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