

Abdul Sattar Abdul Kadar Shaikh

Vs

Union of India and Others

Writ Petition (Criminal) No. 532 of 1989

(B.C. Ray, K. Jayachandra Reddy JJ)

24.01.1990

JUDGMENT

JAYACHANDRA REDDY, J. -

1. This is an application under Article 32 of the Constitution of India seeking a writ of habeas corpus. The petitioner has been detained under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act of 1985 by an order of detention dated May 10, 1989 passed by the Commissioner of Police, Surat City. The petitioner earlier had filed a similar Writ Petition No. 302 of 1989 in this Court, which was dismissed on September 29, 1989. The present writ petition is filed for the same relief but on the basis of some grounds which, according to the petitioner, were not urged in that writ petition. The learned counsel submits that the petitioner is not an enlightened person and is not conversant with his constitutional rights and earlier he was not aware of the existence of some relevant documents namely :

1. Copies of the FIRs pertaining to the offences registered against the petitioner under the Bombay Prohibition Act in the years 1988 and 1989.
2. Copies of the FIR pertaining to the offences registered against the petitioner under Sections 147, 148, 149, 324, 506(2) Indian Penal Code.
3. Copies of the bail applications filed by the petitioner in the cases registered against him under the Bombay Prohibition Act, and Indian Penal Code and copies of the relevant bail orders whereby the petitioner was released on bail.

2. He further submits that these documents were relevant and material and when the petitioner made a request to supply all these documents, the same was rejected and according to the learned counsel the refusal amounts to violation of the petitioner's rights under Article 22(5) of the Constitution of India and therefore, the detention has to be held as illegal.

3. At this juncture, it is necessary to notice some of the annexures to the detention order filed by the Commissioner of Police. It is stated in his affidavit that copies of the FIRs of the offences registered have in fact been supplied to the detenu and that so far as the bail applications the detenu has been furnished the copies of the relevant extracts from the Arrest Register which also show that the petitioner was released on bail in respect of the criminal cases. He further stated that copies of all the documents, which were relied upon, have been supplied along with the grounds.

4. The main submission of the learned counsel is that even such documents which were not relied

upon or do not find the basis of the detention, if a request of supply is made by the detenu, have to be supplied to him and whether they are relevant to him or not, it is for the detenu to decide and not for the detaining authority to judge.

5. It is not in dispute that the petitioner made a request for the supply of these documents and the same was rejected by the detaining authority on September 30, 1989. So far as the FIRs are concerned it is stated in the affidavit-in-reply that the copies have been supplied to the detenu. At any rate, Annexure 'D' to the grounds of detention mentions the detail of papers supplied to the petitioner and from that we find that the copies of the complaints in each of these crimes and the statements of witnesses have been supplied. Annexure 'E' mentions the details of the five crimes registered against the petitioner. In the representation made by the petitioner and also in the Habeas Corpus Writ Petition No. 302 of 1989, as the matter of fact, the petitioner has referred to the details of all the crimes. Under these circumstances, we find it difficult to accept that firstly there was no supply of the copies of the FIRs and even otherwise the petitioner was in any way handicapped in making an effective representation.

6. Learned counsel, however, firmly contended that non-supply of the bail applications and the relevant orders thereon in spite of a request amounts to violation of Article 22(5) of the Constitution of India.

7. In the context of the scope of the limited submissions it is not necessary for us to refer to details of the grounds. We may also mention that validity of the grounds as such has not been challenged on any of the known grounds.

8. Article 22(5) confers two rights on the detenu namely the right to be informed of the grounds on which the order of detention has been made and secondly to be afforded an earlier opportunity to make a representation against the order. It is well settled that right to make a representation implied that the detenu should have all the information that will enable him to make a representation. No doubt, this right is again subject to the right of privilege given by clause (6). This takes us to the question whether any kind of failure to furnish documents or material asked by the detenu to be supplied per se renders the detention illegal on the ground that a reasonable opportunity has not been afforded. Incidentally we may mention that it is not the case of the petitioner that the documents mentioned or referred to in the grounds are not supplied. But the grievance of the petitioner is that the documents which he wanted have not been supplied and the same is illegal.

9. One of the rights contemplated under Article 22(5) is to afford the detenu an opportunity of making an effective representation. Whether such an opportunity has been afforded or not depends on the facts and circumstances of each case. As already mentioned in the affidavit-in-reply filed by the Commissioner of Police, it is stated that the FIRs were in fact supplied. Therefore the contention that the copies of the FIRs were not supplied is not beyond dispute. However, as we have already mentioned, the detenu was supplied the copies of the complaints and he was very much aware of the subject matter of the crimes on the basis of which FIRs were registered. In *Wasiuddin Ahmed v. District Magistrate, Aligarh* ((1981) 4 SCC 521 : 1982 SCC (Cri) 4) it has been held that where under Section 173(5). Code of Criminal Procedure, all the documents or relevant extracts thereto on which the prosecution relied on in criminal cases against the detenu were supplied to him, failure to furnish copies of FIRs filed against him would not deprive him of his right to make an effective representation.

10. Learned Counsel, however, relying on the decision of the Supreme Court in *Pushpa v. Union of*

India (1980 Supp SCC 391 : 1979 SCC (Cri) 1015) submitted that non-supply of the bail applications and the orders thereon also amounts to violation of Article 22(5). In Mohd. Hussain v. Secretary, Govt. of Maharashtra, Home Department (1982) Cri LJ 1848 : 1982 Cr LR (Mah) 354), all these decisions have been referred to by Sawant, J., as he then was, and he summarised the law laid down by the Supreme Court as follows : (Cri. LJ p. 1859).

(a) the copies of all the documents which are relied upon in or which from the basis of, the grounds of detention must be supplied to the detenu along with the grounds of detention; (b) the documents which are not relied upon or do not form the basis of the detention order but which are merely referred to casually or incidentally as and by way of narration of facts in the grounds of detention need not be supplied to the detenu; (c) however, even such documents, if the detenu requests for the same, have to be supplied to him, for whether they are relevant to his defence or not is for the detenu to decide and not for the detaining authority to judge."

11. The learned Judge on the facts and circumstances of that case also further observed that the court has to examine whether in a given case there is an infringement of the detenu's rights under Article 22(5) and for that purpose all the facts and circumstances pertaining to the case have to be considered. Ultimately the learned Judge in that case held that there was no infringement of the provisions of Article 22(5).

12. In the instant case the grounds were served on the detenu in time along with the documents relied upon. In addition the copies of the complaints and details of crimes were also mentioned in the annexures. That apart as mentioned in the reply of the government the detenu was also furnished the copies of the FIRs. The Arrest Register also inter alia showed that the petitioner was released on bail in respect of criminal cases mentioned in this extract. In fact the bail applications were filed by the detenu himself and he was very much aware of the contents of those bail applications and the orders made thereon. These documents were not relied upon by the detaining authority. When a request is made by the detenu for supply of these bail applications and orders refusing thereon are made, the court inter alia has to look into the question whether the detenu is in any way handicapped in making an effective representation by such refusal. No authority has been placed before us which goes to the extent of holding that a mere non-supply of any document whatever its nature may be, to the detenu per se amounts to the denial of an opportunity under Article 22(5). The detenu, as a matter of fact, made his representation. What is more, he filed a habeas corpus petition earlier in this Court and no grievance has been made about the non-supply of those bail applications or other documents for which he made a request later, in his special leave petition. In fact he has referred to the details of the crimes, their numbers registered against him. Further the nature of the crime also is referred to by him therein and he has also referred to the fact that bail applications were filed on his behalf and he was released on bail. We may also point out that though the principle of res judicata or constructive res judicata cannot be made applicable to a case of detention yet there should be some finality. The petitioner having failed in his earlier attempts has now again come forward with the present petition with a highly belated plea that some documents, though he made a request, have not been supplied. The request, as we find from the records, was made after this Court dismissed the Habeas Corpus Petition No. 302 of 1989. He, however, justifies the filing of the present petition on a plea that he was unaware of the existence of these documents. But as noted above his petition itself shows that he was aware of all these documents. Therefore, we do not see any bona fides in this plea of his. Under these circumstances, we are unable to say that the refusal to supply the documents requested by him amounts to violation of Article 22(5).

13. After a careful perusal of all the materials, we are satisfied that the detenu was afforded a full reasonable opportunity to make an effective representation. Consequently we see no merits in the submissions made on behalf of the petitioner. Accordingly, the petition is dismissed.

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