

BOMBAY HIGH COURT

In re Atmaram Shridhar Vaidya

Vs.

State (Bombay)

Criminal Appln. No, 807 of 1950

(Chagla, C.J. and Gajendragadkar, J.)

01.09.1950

JUDGMENT

Chagla, C.J.

1. The detenu was arrested on 21-4-1950, and an order under the Preventive Detention Act, 1950, was served upon him on that very date. The grounds were furnished to him on 29-4-1950, and the grounds are that he was engaged and was likely to be engaged in promoting acts of sabotage on railway and railway property in Greater Bombay. It is clear, by reason of the view we have taken in several cases under Section 491, Criminal P. C, that this is not a ground which would enable the detenu to make a representation to which he is entitled both under the Act and under the Constitution. We have now before us an affidavit of Mr. Chudasama, the Commissioner of Police, dated 30-8-1950. We appreciate the fact that, after our decision was given, Government decided to place all the materials before us so that we should be satisfied that what influenced the detaining authority in making the order was not any ulterior motive but that ample materials were at the disposal of the detaining authority which would justify the applicant's detention. We have looked at this affidavit and we have also looked at the particulars furnished to us by Mr. Chudasama. If these particulars had been furnished at the time when the grounds were furnished on 29-4-1950, very likely we would have come to the conclusion that the grounds were such as would have led the detenu to know exactly what he was charged with and to make a proper representation. It is unfortunate that the detaining authority did not think it right to do on 29-4-1950, what he is now doing on 26-8-1950. It is clear from this affidavit that the disclosure of these particulars would not have been against public interest; because, in para. 3 of the affidavit, Mr. Chudasama states that there are more facts relating to the activities of the detenu which he cannot disclose as being against public interest. Therefore, Mr. Chudasama did not think that the disclosure of particulars which he has now made would have in any way gone against public interest if such a disclosure had been made when the grounds were furnished on 29-4-1950. In all the matters which have come up before us, we have been distressed to find how

vague and unsatisfactory the grounds are which the detaining authority furnishes to the detenu; and we are compelled to say that in almost every case, we have felt that the grounds could have been ampler and fuller without any detriment to public interest. It is at least fortunate that the detaining authority has now realized that better particulars should be furnished to the detenu so that the Court could judge whether the grounds are such as come within the Act and the Constitution.

2. But a new and an important question arises for our determination; and that is whether it is permissible to the detaining authority to justify the detention by amplifying and improving the grounds originally furnished. We have pointed out that the grounds which have to be furnished, both under the Act and under Article 22, sub-Clause (5), of the Constitution, constitute a very important and vital safeguard for the subject. It is by reason of the furnishing of these grounds that it is made possible for the person detained to make a representation against the order of detention. The Constitution also provides that the detaining authority shall afford the detenu the earliest opportunity of making a representation against the order. Therefore, the point of time we have to consider is when the grounds were furnished and when an opportunity was given to the detenu to make a representation. If the grounds furnished were not such as to give him the opportunity which the Constitution makes it incumbent, then there is a clear contravention of the fundamental right of the subject and the subject is deprived of the constitutional safeguard given to him under Article 22, sub clause (5). In our opinion, it is not open to the detaining authority to furnish grounds in several installments, and the reason for this is obvious, because the grounds which are to be furnished are grounds which were in existence and on the basis of which the detention order was made by the detaining authority. Therefore, what has been furnished to the detenu now by the detaining authority on 26-8-1950, cannot constitute the grounds contemplated by Article 22 (5) of the Constitution. The only grounds which we have to consider and which were furnished in the purported compliance of Article 22 (5) were the grounds furnished to the detenu on 29-4-1950; and if those grounds were not such as to enable the detenu to make a proper representation, then there was a violation of the fundamental right and a contravention of the statutory provision. That violation and that contravention cannot be set right by the detaining authority by amplifying or improving the grounds already given. As we said before, the point of time at which we have to decide whether there was a compliance or not with the provisions of Article 22 (5) is 29-4-1950, when the grounds were furnished, and not when further and better particulars were given on 26-8-1950.

3. In our opinion, therefore, the detention under the order is not valid inasmuch as the grounds furnished were not in compliance with the constitutional and statutory provisions.

4. The result is that we must allow the application and order the detenu to be released.

5. Government to pay the costs of this application.

6. Leave granted to Government to appeal to the Supreme Court under Article 132 (1) of the Constitution,

Application allowed.