MANU/MH/0042/1951

Equivalent Citation: AIR1951Bom30, (1951)53BOMLR65, ILR1951Bom190

IN THE HIGH COURT OF BOMBAY
FULL BENCH

Criminal Appln. No. 482 of 1950

Decided On: 04.10.1950

Appellants: **In Re: Pandurang Kashinath More**
Vs.
Respondent:

Hon'ble **Judges:**
Chagla, C.J., Gajendragadkar and Dixit, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: K.T. Sule and A.S.R. Chari, Advs.

For Respondents/Defendant: C.K. Daphtary, Adv. General and H.M. Choksi, Government Pleader

Subject: Criminal

Subject: Constitution

Catch Words

Mentioned IN

Acts/Rules/Orders:
Preventive Detention Act, 1950 - Sections 3(3) and 7; Constitution of India - Articles 21 and 22(5)

Cases **Referred:**
Murat Patwa v. Province of Bihar, A.I.R. (85) 1948 Pat. 135, 49 Cr. L. J. 132; S.G. Sardesai v. Provincial Govt., A.I.R. (86) 1949 ALL. 395, 50 Cr. L. J. 687; M.R.S. Mani v. District Magistrate, A I.R. (87) 1960 Mad. 162, 51 Cr. L.J. 525; Greene v. Secretary of State for Home Affairs, (1942) A.C. 284, 1941-3 ALL. E.R. 888; Rex v. Secretary of

State for Home Affairs; Greene, Ex parte, (1942) 1 K. B. 87; The Queen v Price, (1858) 8 Moore P. C. 203

Case Note:
Preventive Detention Act (IV of 1950), Sections 3(3), 7 - Constitution of India, Article 21--Detention order--Grounds for detention served upon detenue twenty days after service of order--Whether such delay renders order invalid--Report by subordinate authority to State Government when to be furnished--Meaning of expression "forthwith"--Report to Stale Government made after grounds furnished to detenue--Whether non-compliance with mandatory provisions of statute--Construction.

Section 7 of the Preventive Detention Act, 1950, lays down no limit of time for furnishing grounds of detention to the detenue. The time taken for the furnishing of the grounds must, however, be a reasonable time, reasonable in the circumstances of each case. Non-compliance with this provision renders the order of detention invalid. When the Court has to consider on any particular application as to whether the time taken by the authority in furnishing the grounds was reasonable or not, the Court must look to the particular circumstances of the case before it.

Article 21 of the Constitution of India does not merely deal with the initial deprivation of personal liberty, but it also deals with the continuance of the deprivation of personal liberty. Therefore, both the deprivation of liberty and its continuance must be according to procedure established by law. Where, therefore, after a person has been detained grounds are not furnished within a reasonable time, his detention becomes invalid under Article 21, as he is being deprived of his liberty contrary to the procedure established by law.

Murat Patwa v. Province of Bihar [1948] A.I.R. Pat. 135, F. B., S.G. Sardesai v. Provincial Government [1949] A.I.R. All. 395 and M.R.S. Mani v. District Magistrate [1950] A.I.R. Mad. 162, referred to.

Greene v. Secretary of State for Home Affairs [19421 A.C. 284, discussed.

The expression "forthwith" used in Section 3(3) of the Preventive Detention Act, 1950, does not in the context mean "instanter", but it has practically the same significance as the expression "as soon as may be" used in Section 7 of the Act. It is, therefore, essential that the report to be furnished by the subordinate authority under Section 3(3) of the Act should be furnished as soon as possible. It is a question of fact as to whether in a particular case the subordinate authority has complied with this mandatory provision of the Act and a non-compliance with this provision would result in the detention being invalid.

The Queen v. Price (1853-4) 8 Moore P. C. 203, 213, referred to.

The furnishing of the grounds and particulars by the subordinate authority to the State Government under Section 3(3) of the Preventive Detention Act, 1950, after the grounds have been furnished to the detenue, is a departure from the scheme laid down under the Act, but this departure is purely procedural and cannot he characterised as a substantial non-compliance with a mandatory provision of the statute.

JUDGMENT

Chagla, C.J.

1. This is an application under Section 491, Criminal P. C. The detenu was detained on 9-7-1949, under Section 2(1)(a), Bombay Public Security Measures Act, 1947. An order under Section 3, Preventive Detention Act, 1950, was served upon him on 26-2-1950, and the grounds for his detention were served upon him on 18-8-1960,:

2. Mr. Sule's contention on behalf of the applicant is that in furnishing the grounds twenty days after the service of the order there was a substantial non-compliance with Section 7 of the Act and also with Article 22(5) of the Constitution. The section and the article provide that when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. Therefore the grounds have to be communicated to the detenu as soon as may be and it is the furnishing of the grounds as soon as may be that gives to the detenu the earliest opportunity of making a representation. It is undoubtedly true that this section and the provision in the Constitution affords a very valuable and important safeguard to the detenu. The reason for including this provision in the Act and in the Constitution will be immediately apparent. It is necessary, when a citizen is detained without a trial and without being heard on the charge that is levelled against him, that he should be given the earliest opportunity of making a representation which can be considered by Government. If through some mis-adventure he was wrongly detained, the Government can immediately set him free and, therefore, the Constitution thought it fit to provide that this safeguard should be included in every law which was enacted for the detention of persons without a trial. There is no limit of time laid down in Section 7 of the Act. In a certain measure and degree it is left to the executive, but the time taken for the furnishing of the grounds must be a reasonable time, reasonable in the circumstances of each case, and, therefore, when the Court has to consider on any particular application as to whether the time taken by the authority in furnishing the grounds was reasonable or not, the Court must look to the particular circumstances of the case before it. It is impossible to lay down a definite and unchangeable yardstick by which the Court must judge as to whether the time taken in a particular case was reasonable or not.

3. On the other hand, it has been contended by the Advocate General that if the order of detention is valid, a non-compliance with the provision of the Act which deals with what the authority has to do after the person has been detained does not render the order of

detention invalid. With respect to the Advocate General, there is an obvious fallacy underlying this argument. What is being challenged in this application is not the validity of the order, but the validity of the detention, and in order that the detention should be valid and should be upheld by the Court, not only must the order of detention be valid, but there must be a substantial compliance with all the provisions of the statute. Three High Courts in India have taken the same view of Section 7 or the corresponding provisions in the Provincial statutes, and these Courts are the High Court of Patna (see Murat Patwa v. Province of Bihar A. I. R. (85) 1948 Pat. 135 : (49 Cr. L. J. 132 F.B.), the High Court of Allahabad (see S. G. Sardesai v. Provincial Govt., MANU/UP/0196/1948 and the High Court of Madras (see M. R. S. Mani v. District Magistrate A I.R. (87) 1960 Mad. 162: (51 Cr.L.J. 525).

4. As against this array of authorities, the Advocate-General has strenuously relied on the well known case of Greene v. Secretary of State for Home Affairs, (1942) A. C. 284 : (1941-3 ALL. E.R. 888). In that case the grounds were furnished as they had to be furnished by the Home Secretary and the particulars were furnished by the Advisory Committee and there was some discrepancy between the grounds furnished by the Home Secretary and the particulars furnished by the Advisory Committee, and the detention of Greene was challenged, among other grounds, on the ground that in furnishing incorrect particulars there was a non-compliance with para. 5 of Regn. 18B, Defence (General) Regulations. Lord Macmillan, dealing with this point in his speech, states (p. 298):

"The mistake, the occurrence of which your Lordships deplore, does not in any way affect the validity of the detention order which is the answer to the appellant's application. It affects the due observance of the procedure prescribed for the further consideration of the case of a person who is ex hypothesis under lawful detention. Consequently the mistake affords no ground for invalidating the detention order and does not help the appellant in his present application."

Basing his argument on these observations the Advocate-General contends that the detention of the detenu was lawful and any mistake in or departure from a mandatory provision of the statute would not render the detention invalid. It is true that the observations of Lord Macmillan are weighty and they deserve the greatest respect. But even the observations of so eminent a jurist as Lord Macmillan must be understood and appreciated in the context of the facts which the learned Law Lord had to consider.

5. Now these facts more clearly appear in the judgment of the Court of appeal, which judgment on this point was entirely approved of by the House of Lords. The judgment of the Court of appeal is reported in Bex v. Secretary of State for Home Affairs; Greene, Ex parte, (1942) 1 K. B. 87. Scott L. J. at p. 106 points out that Greene appeared before the Advisory Committee and he never complained of the discrepancy between the particulars furnished to him and the grounds stated by the Secretary of State. It was further found that he possessed a document which is described as "B. G. I." which was originally served on him and from which he knew the grounds on which the detention was made. It was also found that most of the particulars furnished to him by the Advisory Committee fell within the grounds furnished by the Secretary of State, and in the trial Court

Humphreys J. held on affidavit that when Greene appeared before the Committee he was in fact not prejudiced by the mistake made in the particulars furnished to him. Scott L. J. looked upon this particular mistake as an error of procedure and even with regard to errors of procedure Scott L. J. points out that there may be serious errors of procedure which may vitiate the detention, and he refers to Budd's case which was reported in London Times, 28-5-1941, where a particular error of procedure induced the Court to release the applicant. Therefore, with very great respect to Lord Macmillan, it would not be true to say as a general proposition that no non-compliance with the mandatory provision of the statute would result in the detention being invalid provided the order of detention was valid. It would be entirely erroneous to suggest that the particular provision in the Apt with which we are dealing is a mere matter of procedure. As we started by saying, in our opinion, it is a most important and valuable right that the subject has been afforded in order to vindicate his innocence if he has been wrongly detained and the Courts must be vigilant to see that the mandatory provisions of this section are carried out in the spirit in which they were intended, both by the Legislature and by the Constituent Assembly. There is a further answer to the Advocate-General's argument and that answer is furnished by the Constitution itself. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. This article, in our opinion, does not merely deal with the initial deprivation of personal liberty, but it also deals with the continuance of the deprivation of personal liberty. Therefore, both the deprivation of liberty and its continuance must be according to procedure established by law. Therefore, even though when the detenu was deprived of his personal liberty that deprivation was according to procedure established by law, if we find that that deprivation was continued contrary to the procedure established by law, we must hold that Article 21 has been contravened, and, in our opinion, if after a person has been detained grounds are not furnished within a reasonable time, his detention becomes invalid as he is being deprived of his liberty contrary to the procedure established by law.

6. Turning to the facts of this case, we have the affidavit of Mr. Chudasama, the Police Commissioner, and he gives the reasons why there was a delay in this case of twenty days in furnishing the grounds. He points out in his affidavit that detention orders of a large number of detenus were reconsidered at about the same time and with heavy pressure of work which the Commissioner of Police and his office had to do particularly in view of a great increase in crimes and serious and intense underground and other activities of dangerous nature carried on against the Government in Greater Bombay, the grounds could not be furnished earlier than 18-8-1950. There is nothing on the face of this affidavit which would induce us to hold that the statements made in it by the Commissioner of Police are not correct. If those statements are correct, then it seems to us that the time taken by the detaining authority in furnishing grounds under the circumstances of this case was not unreasonable. But we should like to warn Government and the detaining authority that there is nothing more important in the administration of the State than the safeguarding of the liberty of the individual, and the Commissioner of Police and the State should realise that there can rarely be more important work than the work of furnishing grounds to the detenus who have been deprived of their liberty and who are entitled to know on what grounds they have been deprived of their liberty. Therefore, although in this particular case we are upholding the detention and coming to

the conclusion that the delay of twenty days was not unreasonable we should not be understood to have laid down that in every case a delay of twenty days will be condoned. We see no reason why the detaining authority should not furnish the grounds within a week or ten days of the detention of the detenu.

7. There is another ground on which this detention has also been challenged, and the other ground is that there is a non-compliance with Section 8(8) of the Act. That sub-section lays down that when an order is made by a subordinate authority be shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the necessity for the order. This again, we agree with Mr. Sule, is a very important and valuable safeguard afforded to the citizen. It must be remembered that in England during the worst days of war when England was fighting with her back to the wall, no order of detention was ever made except by the Home Secretary. It was the Home Secretary alone who had to apply bis mind to each case and to arrive at a satisfaction that the person whom he intended to detain was guilty of a prejudicial act. Under our law it is left to subordinate officers to deprive citizens of their liberty. But the Legislature in its wisdom has provided a safeguard and that safeguard is that a subordinate authority should immediately report to the State Government the grounds on which he has made the order and the particulars on which the order was based. This provision finds a place in the statute in order to enable the Government itself and presumably the Minister in charge of the portfolio to apply his mind to the action taken by a subordinate authority. Therefore it is essential that this report should be furnished by the subordinate authority as soon as possible. The Legislature has used the expression "forthwith," but we agree with the Advocate General that "forthwith" cannot in the context mean "instanter." It would rather have the meaning which has been given to this expression by the Privy Council in The Queen v Price, (1858) 8 Moore P. C. 203 at p. 218 referred to in Murat Patwa v. Province of Bihar A. I. R. (35) 1948 Pat. 185 at p. 188 : (49 cr. L. J. 132 F. B.).

'The word 'forthwith', when used in an Act of Parliament, has been construed to mean 'in a reason-able time'; as soon as the party who is to perform the act 'can reasonably perform it'."

Therefore "forthwith" has practically the same sign ficance as the other expression used in Section 7, as soon as may he," and again it is a question if fact as to whether in a particular case the subordinate authority has complied with this mandatory provision of the statute. In our opinion, a non-compliance with this provision would result in the detention being invalid.

8. Now in this particular case, the affidavit of Mr. Chudasama shows that the grounds and particulars were furnished by the Commissioner of Police on 20 8-1. 50. Mr. Sule has argued that the scheme of the Act makes it clear that the grounds and particulars by the subordinate authority should be furnished to the State Government before the grounds are furnished to the detenu. Mr. Sule seems to be right because it may be that in a particular case, on the grounds and particulars being furnished to the State Government; the State

Government may take a different view from the view taken by the subordinate authority and may release the detenu, in which case no question of furnishing grounds to him would arise. Further, it is also clear that although the furnishing of the grounds to the detenu may take some time, no time need be taken as far as the furnishing of the grounds and particulars under Section 3 (8) is concerned, because whereas in the case of the former the grounds would have to be formulated and the detaining authority would have ho consider what materials should be held back in public interest, no such question would arise in the case of the latter. As far as the time taken is c 'ncerned, we do not see any reason to disbelieve what has been stated by Mr. Chudasama in the affidavit that the peculiar circumstances prevailing at that time and the pressure of work made it impossible for him to comply with the provisions of Section 3 (8) earlier than he did. With regard to the other point raised by Mr. Sule that in furnishing these grounds and particulars after the grounds had been furnished to the detenu, there was substantial non-compliance with the Act, we regret that we cannot uphold that contention. It is true that there is a departure from the scheme laid down under the Act, but in our opinion, this departure is purely procedural and cannot be characterised as a substantial non-compliance with the mandatory provision of the statute.

9. The result, therefore, is that although we uphold Mr. Sule on the interpretation he has put upon the two provisions of the Act, we are of the opinion that on the facts of this case we cannot come to the conclusion that the detention of the applicant is bad and that he is entitled to be released. Having dealt with these two points, certain points on the merits of the application still survive which it is unnecessary for this Full Bench to consider. Therefore the application will go back to the Division Bench dealing with habeas corpus application for its disposal.