
(2017) 04 BOM CK 0261
In the Bombay High Court
Case No : 83 of 2017

Akshay Atmaram Rathod,

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-04-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 224](#),
[Section 225](#) - Resistance or obstruction by a person to his
lawful apprehension - Resistance or obstruction to lawful apprehension of another
person

Citation : (2017) 04 BOM CK 0261

Hon'ble Judges : B.P. Dharmadhikari, V. M. Deshpande

Bench : DIVISION BENCH

Advocate : M.N. Ali, V.A. Thakare

Judgement

1. Heard Shri M.N. Ali, learned counsel for the petitioner and Shri V.A. Thakare, learned A.P.P. for respondents.
2. By present Writ Petition, the petitioner questions the correctness and legality of the orders passed by Respondent no.2- the District Magistrate, Yavatmal dated 11.09.2016, by which the District Magistrate, while exercising powers under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slum Lords, Bootleggers, Drug Offenders, Dangerous Person and Video Pirates Act, passed an order thereby directing detaining of petitioner. The petitioner also questions the orders passed by respondent no.1 dated

14.10.2016, by which the State Government has exercised the powers under 12(1) of the aforesaid Act, confirmed the order of detention passed by the District Magistrate, and thereby directed detention of petitioner for a period of one year from the date of detention.

3. Learned counsel for the petitioner has broadly submitted the following three points - That there is no live link in between the last offence registered against the petitioner on 25.02.2016 and order of detention dated 11.09.2016. Another submission of learned counsel is that, copies of in-camera statements are not supplied to the petitioner and that causes serious prejudice to the petitioner for making representation to various authorities. Another contention that is raised by the petitioner is in respect of delay of 19 days while considering the representation given by the petitioner. He therefore, submits that petition needs to be allowed.

4. Per contra, learned A.P.P. on behalf of respondents submit that the gist of in-camera statements is already mentioned in the grounds of detention. He further submits that other activities of petitioner are also considered by the Detaining Authority, such as he pointed out a Crime No.148/2009 under Sections 224 and 225 of the Indian Penal code, wherein it is alleged that the petitioner by misleading police authorities has escaped from their legal custody.

5. Present Writ Petition can be allowed only on the ground of non-supply of documents namely, in-camera statements recorded by the police authorities to the petitioner, and therefore, it has caused serious prejudice to the petitioner in making effective representation to the Authorities. Two in-camera statements are recorded on the very same date i.e.

03.09.2016. Learned A.P.P. has made us available the original in-camera statements for our perusal. Perusal of the same shows that both the statements were verified by the Sub Divisional Police Officer, Yavatmal. The verification as noted on both these in-camera statements reads as "verified. Sd/- S.D.P.O., Yavatmal".

6. From the aforesaid it is crystal clear that the Sub Divisional Police Officer does not indicate anything as to how he was satisfied about the statements of those witnesses whose identify is not disclosed as to why there is nurturing fear in their mind in respect of present petitioner. There is no material available on record, on in-camera statements also does not show that those statements were placed before the Detaining Authority before passing of the order of detention.

7. The submission of learned A.P.P. Shri Thakare, that non supply of those documents does not vitiate the entire order, since the gist of those statements is already incorporated in the order of detention. We ourselves have gone through minutely in detail the in-camera statements. In order to conceal the identity of those two witnesses, we are not making any elaborate discussion in respect of these in-camera statements and the gist of statements as available in the order of detention, however, we do not have any hesitation to record in this judgment that the gist of the statements as noted in the order of detention materially differs from the actual statements of both these two witnesses. Therefore, in our view, submission of learned A.P.P. in that behalf cannot be accepted.

8. Since the in-camera statements were not supplied to the petitioner while serving order of detention and grounds of detention, according to us that has materially affected the

valuable right of the petitioner to make representation to various authorities, including the Detaining Authority. Further there is total non-application of mind on the part of the verifying authority as to how the statements which were verified to suggest that the persons whose statements are recorded in-camera nurture fear in their mind in respect of petitioner. Along with that, it is clear that the copy of verified statements were not before the Detaining Authority.

9. It is to be noted that last of the criminal activity as alleged against the petitioner is of May, 2016, whereas the order of detention is passed after a period of 4 months therefore, there is no live link in between the activities of petitioner and the order of detention.

10. The cumulative effect of the aforesaid discussions leads us to pass the order quashing the order of detention which is subsequently approved by the State Government, hence, we pass the following order.

ORDER

(1) Writ Petition is allowed.

(2) The order of detention passed by the respondent no.2 District Magistrate, Yavatmal dated 11.09.2016 together with the order of approval passed by the State Government dated 14.10.2016 against the petitioner under Section 3 (1) of the Maharashtra Prevention of Dangerous Activities of Slum Lords, Bootleggers, Drug Offenders, Dangerous Person and Video Pirates Act, is hereby quashed and set aside.

(3) The petitioner be set at liberty, if his custody is not required by State in any other offence/matter.

(4) Rule is made absolute in aforesaid terms, with no order as to costs.