
(2012) 01 BOM CK 0001

In the Bombay High Court

Case No : Criminal Writ Petition No. 3840 of 2011

Amin Mehboob Shaikh

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 20-01-2012

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Income Tax Act, 1961 — Section 143(1)(a), 154, 2, 288, 32AB
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 14, 3(1)

Citation : (2013) 2 BomCR(Cri) 783

Hon'ble Judges : Khanwilkar A.M., J;Ketkar R.G., J

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; M.H. Mhatre, Assistant Public Prosecutor, for the Respondent

Judgement

Khanwilkar A.M., J.—Rule. Rule made returnable forthwith, by consent. Learned APP waives notice. This petition takes exception to the detention order bearing No. PHM/MPDA/SR/01/2010 dated 27th July, 2011 issued u/s 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 (hereinafter referred to as the said Act for the sake of brevity) by the District Magistrate, Pune against the petitioner.

2. The petition raises several grounds. However, in our opinion, it is not necessary to elaborate all the grounds except to refer to ground 6(c) of the writ petition. It is stated that the Detaining Authority has referred to and relied upon the criminal case registered against the petitioner which is evident from the grounds of detention served on the Detenu. However, except the FIR and crime register copy of the five C. Rs., no other material was placed before the Detaining Authority. According to the petitioner, the documents such as Statements of witnesses, Bail Applications, Bail Orders, Remand Applications, Identification parade Report, Land Record documents, Panchnamas, Medico-Legal documents, Statement of the Accused etc. which are all vital documents, were

neither placed before the Detaining Authority, nor the copies thereof are furnished to the Detenu alongwith the grounds of detention.

3. In response to this ground, the Detaining Authority has filed affidavit, which states as follows:

With reference to para 6(c) of the petition, there is no any provision made under the said Act that the detenu-petitioner should be supplied with the statements of witness, Bail Applications, Bail orders, Remand Applications, Identification Parade Report, Land Record Documents, Panchnamas, Medico-Legal Documents, Accused Statements etc. Even otherwise, the detenu-petitioner is well aware of the registration of 5 criminal cases against him and the documents thereof are being supplied to him by the concerned courts in due course of time and not by me. I say that petitioner himself filed bail application and order on those are to be collected by the detenu-petitioner from the concerned courts and not from me as the Detaining Authority. I say that the grounds on which the order has been made, were communicated to the detenu-petitioner by me immediately. I say that same ground also raised before the State government by the petitioner/detenu by representation dated 1.12.2011 and the same was rejected by the State Government vide order dated 16.12.2011 and the same was communicated to the detenu and therefore, it cannot be said that any right of the detenu is prejudiced for making effective representation. Therefore, the contention of the petitioner that the "grounds" are not furnished to him nor placed before me as the Detaining Authority, are not true and correct and hence denied. Therefore, the contenting of the detenu-petitioner that copies of such documents should be furnished to the petitioner are not true and correct. I say that I have passed the detention order after my subjective satisfaction and personally applied my mind on the records and material placed before me. I further say that I have considered all the material i.e. pages 1 to 179 which are supplied to the detenu and myself have prepared the grounds of detention and my subjective satisfaction is based on the documents which are relied by me and as it is the documents which are claimed by the detenu in the present petition are not relied by me therefore, same are not vital document. I say that I have furnished all the documents which are stated in the grounds of detention and same are communicated to the detenu/petitioner. The order of detention therefore, cannot be said to be illegal and bad in law. The petitioner is not at all deprived of making effective representation and not violation of his right under Article 22(5) of the Constitution of India.

4. From the above affidavit, it is amply clear that the documents referred to in paragraph 6(c) of the Petition, which according to the petitioner are vital documents were not placed before the Detaining Authority at all. It is admitted by the learned APP during the hearing before us, position that the proposal sent by the Sponsoring Authority consisted only FIR, crime register, remand application and the order of remand application and no other document Even the vital documents, such as bail application, bail order passed in favour of the

petitioner were not placed before the Detaining Authority. If so, it would vitiate the entire decision making process and more particularly the subjective satisfaction reached by the Detaining Authority.

5. It will be useful to refer to the decision in the case of Abdul Sathar Ibrahim Manik Vs. Union of India and others, . In paragraph 12 of the said judgment, the Apex Court has recapitulated the legal position. Clause 6 of paragraph 12 reads thus:

In a case where detenu is released on bail and is at liberty at time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.

(Emphasis supplied)

6. A priori, in a case, where the Detenu is released on bail and is at liberty at the time of passing of the order of detention then, the Detaining Authority has to necessarily rely upon the bail order, as that would be a vital document. In such a case, the bail application or atleast the order granting bail, should necessarily be placed before the Detaining Authority and then the copies thereof should also be supplied to Detenu.

7. In the present case, the Detenu was arrested in connection with Cr. No. 110/10, on 20th April, 2010, and produced before the Magistrate. On the same day, he was released on bail. Apart from this, the petitioner was granted bail in C.R. Nos. 119/10, 160/10, 265/10, 47/11. Admittedly, the proposal for Detention was forwarded by the Sponsoring Authority on 2nd June, 2011, on which date, the Detenu was already on bail. Admittedly, neither the applications for bail or for that matter, orders of bail in the case of Detenu were made part of the proposal and placed before the Detaining Authority. In view of the aforesaid decision of the Apex Court, it will necessarily follow that the subjective satisfaction recorded by the Detaining Authority has vitiated, and the continued detention of the Detenu illegal.

8. The learned APP relied upon the decision of our High Court in the case of [Shri. Rashid Kapadia Vs. Medha Gadgil and others)², to which, both of us are party being Criminal Writ Petition No. 3253 of 2011 decided on 4th January, reported in 2012 B.C.I. (soft) 46, to contend that even in that case, copy of the bail application was neither placed before the Detaining Authority, nor supplied to the Detenu. This argument clearly overlooks that, in that case, order of bail passed in favour of the Detenu was made part of proposal and was placed before the Detaining Authority. It contained reasons on which the Detenu was granted bail. Hence, this decision is of no avail to the respondents.

9. During the course of hearing, we have come across several other fatal irregularities committed by the Detaining Authority. The learned APP had to

concede that the Detaining Authority had no experience of handling detention matters in the past. This being the first detention order passed by him. We have noticed that the grounds of detention served on the Detenu are not indexed. Further, the Detenu was supplied even the proposal of the Sponsoring Authority. We have also noted other irregularities, which we do not think it necessary to be highlighted in this order except to observe that even the basic vital formalities in handling detention cases has not observed by the Sponsoring Authority or the Detaining Authority in the present case. We express our deep concern that the officer(s) who have no basic knowledge of handling detention cases have been straight away authorised to exercise that authority. The powers that be cannot remain oblivious to the fact that an order of detention is a drastic order. It has the effect of impacting liberty of a person. It is issued as preventive action and not for punitive purpose. We hope and trust that the Authorities would take notice of this and ensure that the officials who are entrusted with the work of passing detention orders, are properly trained and advised about the basic precautions to be observed by the authority, before issuing Detention orders.

10. While parting, we may refer to a note which was produced before us. When the matter was heard yesterday and the hearing was in progress, it was observed that the State can exercise powers u/s 14 of the Act. In deference to the said observation, learned APP sought adjournment to take instructions from the concerned Authority. As aforesaid, today, the learned APP has produced office note, which gives an impression as if, the Court wanted the State to exercise that power. Further, the concerned officer has noted that since the matter is in the jurisdiction of High Court, it would not be proper for the State Government to exercise the power vested in it u/s 14 of the Act. In the first place, it was completely inappropriate to go on record that the Court has suggested the State to revoke the impugned detention order. For, during the hearing attention of the learned APP was drawn to section 14, which could be invoked by the State. That does not mean that the Court made suggestion to the State to revoke the order. Similarly, the other opinion noted in the said note that the power u/s 14 of the Act cannot be exercised as matter is pending before High Court, even that is doubtful. It is not necessary to dilate further on this aspect, as we have allowed the petition. In these circumstances, we allow this petition. Rule is made absolute in terms of prayer Clause (c). The same reads thus:

That the order of detention being D.O. No. PHM/MPDA/SR/01/2010 dated 27.07.2011 issued u/s 3(1) of M.P.D.A. Act, 1981 by the District Magistrate, Pune against the detenu, be quashed and set aside and on quashing the order of detention the detenu be released forthwith.