

(2002) 03 BOM CK 0098

In the Bombay High Court

Case No : Criminal W.P. No. 396 of 2001

Amit Rakesh Janbandhu

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 2, 2(1), 3, 3(1)
Penal Code, 1860 (IPC) — Section 299, 300, 301, 302, 303

Citation : (2002) BomCR(Cri) 561 : (2003) CriLJ 600 : (2002) 3 MhLj 90

Hon'ble Judges : V.M. Kanade, J; R.G. Deshpande, J

Bench : Division Bench

Advocate : S.A. Jaiswal, for the Appellant; S. Deopujari, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade, J.—By this petition, the petitioner is challenging the detention order dated 27-7-2001, issued by the Commissioner of Police, Nagpur, u/s 3 of The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drugs Offenders and Dangerous Persons Act, 1981 (hereinafter referred to as "the Act") and is seeking an order of quashing the said detention order by invoking the writ jurisdiction under Article 226 of the Constitution of India.

2. Facts:

The petitioner, a young boy aged about 18 years, was served with the order of detention, passed by Respondent No. 2 on 27-7-2001 along with the annexures and translation, in Nagpur Central Prison on 30-7-2001 through the Jail Authority. The Copy of the order of detention is annexed at Annexure 1 and the grounds of detention are annexed at Annexure 2 of the petition. In the grounds of detention, the Commissioner of Police has stated that since April 2001, the petitioner has been found to be engaged in the commission of violent and desperate acts such as robbing the people at the point of deadly weapons,

murder, attempt to murder etc. and, therefore, by virtue of the said acts, he has caused terror and feeling of insecurity in the minds of the peace loving and law abiding citizens residing in the area of Police Station M.I.D.C. Nagpur. In the detention order, the respondent No. 2 has given particulars of the offences which were considered for passing the detention order. In the said paragraph, three offences have been mentioned viz. Cr. No. 56/01 registered at Police Station, M.I.D.C. Nagpur, under Sections 302, 307 read with Section 34 of the Indian Penal Code, which complaint was lodged on 8-4-2001 and the alleged incident took place on 7-4-2001 at 23.15 hours at night. The particulars of the said offence have been mentioned in the said para No. 4 of the grounds which were served on the petitioner. The Charge-sheet in this case was filed on 4-7-2001. The second offence which has been considered is Cr. No. 57/01 registered at M.I.D.C. Police Station u/s 392 read with Section 34 of the Indian Penal Code. The said offence was registered on the complaint of the Bhikan s/o Parsadi Mandal on 8-4-2001 which was in respect of committing robbery at the point of deadly weapon. The charge-sheet in this case is filed before the Judicial Magistrate, First Class, Court No. 9 on 11-6-2001. The third offence which has been considered by the Respondent No. 2 is Cr. No. 104/01 registered at Gittikhadan Police Station u/s 392 read with Section 34 of the Indian Penal Code. The said offence was registered on 10-4-2001 on the complaint of Shri Laxman Kannyalal Kanojiya. The charge sheet in this case has been filed on 28-5-2001 before the Judicial Magistrate. First Class, Court No. 6 and is pending trial. Apart from these three Criminal Cases, the respondent No. 2 also relied on incamera statements of two witnesses, the details of which are given in para No. 5.1 and 5.2.

3. It is an admitted position that the petitioner is in jail from 13-4-2001 and has not preferred any application for bail till today. Respondent No. 2, in para 7 of the order, has observed as follows :--

"You are presently under Magisterial Custody in Jail in M.I.D.C. Police Station (i) Cr. No. 56/2001 under Sections 302, 307, 34 Indian Penal Code., (ii) M.I.D.C. Cr. No. 57/2001 under Sections 392, 34, Indian Penal Code, and (iii) Police Station Gittikhadan Cr. No. 104/2001 under Sections 392, 34 Indian Penal Code.

You are likely to be released on bail by the Court in the near future and are likely to engage yourself in unlawful activities prejudicial to the maintenance of public order again in the near future."

The Respondent No. 2 has further observed in para 9 of the order as follows :

"From the grounds stated in Para No. 4.1 to 7. I am fully satisfied that your activities are extremely prejudicial to the maintenance of public order. All the grounds stated in Para No. 4.1 to 7 individually and collectively are germane enough to satisfy me that with a view to preventing you from acting, in any manner extremely prejudicial to the maintenance of public order, it is necessary to detain you."

4. The Report, u/s 3(3) of the said Act, was submitted by the respondent No. 2 to the Government vide his letter dated 30-7-2001 and the same was received by the Department on 1-8-2001. The said proposal for approval to the detention order was examined and submitted to the concerned Desk Officer to the Deputy Secretary for his consideration on 1-8-2001. The Deputy Secretary considered and forwarded it to the Secretary (Preventive Detention) for consideration on 2-8-2001 which was thereafter forwarded to the Additional Chief Secretary (Home) for his consideration on 3-8-2001. The Additional Chief Secretary (Home) approved the detention order on 4-8-2001 and the approval order was issued on 4-8-2001. The approval order was served on the detenu on 6-8-2001 and was duly acknowledged by the petitioner. The reference was made to the Advisory Board on 4-8-2001 and the Advisory Board gave its opinion on 9-9-2001. The said opinion was received by the Department on 11-9-2001 and it was considered by the Additional Chief Secretary (Home) and the same was confirmed on 14-9-2001.

5. The petitioner filed the present petition on 19-12-2001 on the grounds (A) to (R) mentioned in the memo of the petition.

6. The Respondents have filed two affidavits; one affidavit has been filed on behalf of the Respondent No. 1 State of Maharashtra through the Secretary Preventive Detention, Home Department (Special) Mantralaya Mumbai 32 dtd. 25-1-2001 and second affidavit has been filed by the Respondent No. 2 dtd. 23-1-2002.

7. We have heard the learned counsel appearing on behalf of the petitioner and Respondents. We have perused the copy of the petition, Annexures thereto and the replies filed by the Respondents 1 and 2. It is submitted by the learned counsel appearing on behalf of the petitioner that there has been inordinate delay in issuing the order of detention and the said delay has not been explained by the Detaining Authority i.e. Respondent No. 2 in the reply which is filed by him. The learned counsel appearing on behalf of the petitioner, first made his submission on the ground (L) raised in the petition, which reads as follows;

"(L) . There is delay in passing detention order by Detaining Authority from the date of last offence dated 11-4-2001."

It is submitted that the last offence was committed on 10-4-2001 and the proposal for detention was sent to the Respondent No. 2 on 18-7-2001 and the order of detention was passed on 24-7-2001. He, therefore, submitted that no explanation has been given by the Respondent No. 2 as to why there was delay in forwarding the proposal from 10-4-2001 to 18-7-2001. He has invited our attention to the index of the various documents which were supplied to the petitioner. Shri Jaiswal, learned counsel appearing on behalf of the petitioner submitted that the entire investigation in all the three cases, was over by 15th April, 2001 and, therefore, there was no reason given for waiting upto 18-7-2001 for submitting the proposal. He further submits that while giving reply to the said

ground, the Detaining Authority has not properly explained as to why the said delay was caused and also has not explained as to whether this fact was examined by respondent No. 2 while passing the order of detention on 27-7-2001. He submitted that the last date of completion of substantial report being 15-4-2001, the order of detention has not been passed in the reasonable time and that there is a delay of 3 months and 8 days in passing the impugned order. The learned counsel appearing on behalf of the petitioner, invited our attention to Section 2(b)(1) which gives the definition of a dangerous person which reads as follows;

"dangerous person means a person, who either by himself, or as a member, or leader of a gang, habitually commits, or attempt to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959."

He submitted that the Detaining Authority is not bound by the regular law of evidence under the Evidence Act and, therefore, the question of waiting till the completion of the investigation, does not arise. He has further submitted that on the complaint being registered, the Detaining Authority is competent to take into consideration the date on which the complaint is filed. He, therefore, submitted that the last date on which the last complaint was filed, will have to be taken into consideration while counting the delay and, therefore, according to him, since the last complaint was filed on 10-4-2001 and the order of detention was passed on 27-7-2001, there was a delay of 3 months and 8 days in issuing the order of detention.

8. In support of the said contention, the learned counsel appearing on behalf of the petitioner, relied upon the Judgment given by the Division Bench of this Court in Criminal Writ Petition No. 327/01 decided on 24-1-2001 in the case of Vinand Dattaram Nakashe v. The State of Maharashtra and Ors. In the said case, the detenu was arrested on 12-6-2001 and was released on 26-6-2001 on bail. The proposal for detention was sent to the Detaining Authority on 18-6-2001. However, the order of detention was passed on 23-8-2001. The Division Bench came to the conclusion that satisfactory explanation was not given by the Detaining Authority as to why the order of detention was passed after lapse of 2 months from the date on which the proposal for detention was sent.

9. We are unable to accept the submissions made by the counsel appearing on behalf of the petitioner. In our view, the facts in the case of Vinand Nakashe v. State of Maharashtra, referred to hereinabove, are entirely different. In the present case, the proposal for detention was sent on 18-7-2001 and the Detaining Authority issued an order of detention on 27-7-2001. In our view, the ratio of the Judgment of the Division Bench of this Court, will not be applicable to the facts of the present case.

10. The learned counsel appearing on behalf of the petitioner further relied on

the Judgment reported in 1993(3) Supreme Court Cases (Cri) 392, in the case of Pradeep Nilkanth Paturkar v. S. Ramamurthi and Ors. He submitted that the Apex Court had, after taking into consideration the decision given by in the case of T.A. Abdul Rahman v. State of Kerala, held as follows :--

"Coming to the case on hand, the detention order was passed after 5 months and 8 days from the last case and more than 4 months from submission of the proposal. What disturbs our mind is that the statements from the witnesses A to E were obtained only after the detenu became successful in getting bail in all the prohibition cases registered against him, that too in the later part of March, 1991. These statements are very much referred to in the grounds of detention and relied upon by the detaining authority along with the registration of the cases under the Act."

The learned counsel, appearing on behalf of the petitioner, submitted that the facts of the present case were identical and that the Detaining Authority had taken more than 3 months and 8 days while passing the impugned order of detention and had not given sufficient explanation for the delay caused in issuing the order of detention. He invited our attention to the reply filed by respondent No. 2 to ground (L) raised in the petition. The reply reads as follows :

"The contentions made in this ground are denied. It is submitted that the last offence i.e. Crime No. 104/2001 registered by Police Station, Gittikhadan for the offences punishable u/s 392 read with Section 34 of Indian Penal Code was registered on 10-4-2001 and was charge sheeted on 28-5-2001. It is submitted that Crime No. 56/2001 registered by Police Station, MIDC for the offences punishable under Sections 302, 307 read with 34 of Indian Penal Code was charge sheeted on 4-7-2001. It is submitted that the proposal for detention was initiated by P.I., MIDC Police Station against the petitioner on 18-7-2001 and the detention order was passed on 27-7-2001. It is submitted that this shows there is live link of criminal activities of the petitioner and the detention order."

It is submitted that the filing of the charge sheet had nothing to do with the passing of the order of detention and the Detaining Authority was not bound to wait till the charge sheet is filed and that it was not an impediment for passing the order of detention. He, therefore, submitted that the delay ipso facto in passing of the order of detention after the incident, was not fatal to the detention of a person. However, if satisfactory and reasonable explanation is not given by the Detaining Authority, then on that ground the detention order was liable to be quashed. The learned counsel appearing on behalf of the petitioner also relied on the Judgment of the Apex Court reported in T.A. Abdul Rahaman Vs. State of Kerala and others, . He submitted that the Apex Court in the said Judgment has held that "if there was a delay in passing of the detention order, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the Detaining Authority leading to legitimate inference that the Detaining Authority was not really and genuinely satisfied as regards the necessity for detaining the detenu."

11. Shri Deopujari, learned A.P.P. appearing on behalf of the State, submitted that there was no delay in issuing the order of detention. He submitted that the investigation of the said case was over only on 28-5-2001 and after the enquiry was over, the Police Officer had sent the proposal for detention after examining the various cases filed against the petitioner and after applying his mind to the various incamera statements recorded by the Police the proposal was sent on 18-7-2001 and that the Detaining Authority had promptly after examining the entire material on record and after satisfying about the necessity to issue the order of detention, issued the said order on 27-7-2001 i.e. within 9 days from the said proposal forwarded by the Police Officer. He submitted that the reasonable time has to be given to the investigating agency and to the Detaining Authority for issuing the order of detention. He submitted that the said period cannot be counted mechanically but the facts and circumstances of each case will have to be taken into consideration. He relied on the Judgment of the Apex Court reported in 2000 All MR (Cri) 1070 in the case of Hasan Khan Ibne Haider Khan v. R.H. Mendonca and Ors., wherein the Apex Court had held that the enquiry was completed in the last part of February and the final order was passed on 12-4-1999. The Apex Court observed as follows;

"It cannot be said that there was undue delay and action was being taken in the routine manner, as after completion of enquiry, the matter had to be examined at various levels and finally the orders were passed by the Commissioner."

12. We have gone through the Judgments cited by the petitioner as well as the respondents. The law on the said point is quite well settled. The Apex Court in the case of Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others, has given guidelines for considering the delay in making the order of detention. The Apex Court has made it clear that the distinction has to be drawn between the delay in making the order of detention under the law relating to the preventive detention and the delay in complying with the procedural safeguard of Article 22(5) of the Constitution. In the case of T.A. Abdul Rahaman Vs. State of Kerala and others, , the Apex Court held as follows :

"The conspectus of the above decisions can be summarised thus : The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable re-examination as to why such a delay has occasioned, when called upon to answer

and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

In the said Judgment, the Apex Court also followed its earlier Judgment given in the case of *Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others*, , in which it is observed as follows :

"No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory requirement. But, no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case."

Similarly, the Apex Court also confirmed the observations made by it earlier in the case of *Gora Vs. State of West Bengal*, . Para 2 of the said Judgment reads as follows;

"There is, therefore, no hard and fast rule that merely because there is a time lag of about six months between the "offending acts" and the date of the order of detention, the causal link must be taken to be broken and the satisfaction claimed to have been arrived at by the District Magistrate must be regarded as sham or unreal. Whether the acts of the detenu forming the basis for arriving at a subjective satisfaction are too remote in point of time to induce any reasonable person to reach such subjective satisfaction must depend on the facts and circumstances of each case. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the "offending acts" and the order of detention. It is a subsidiary test evolved by the Court for the purpose of determining the main question whether the past activities of the detenu is such that from it a reasonable prognosis can be made as to the future conduct of the detenu and its utility, therefore, lies only insofar as it subserves that purpose and it cannot be allowed to dominate or drown it. The prejudicial act of the detenu may in a given case be of such a character as to suggest that it is a part of an organised operation of a complex of agencies collaborating to clandestinely and secretly carry on such activities and in such a case the detaining authority may reasonably feel satisfied that the prejudicial act of the detenu which has come to light cannot be a solitary or isolated act, but must be part of a course of conduct of such or similar activities clandestinely secretly carried on by the detenu and it is, therefore, necessary to detain him with a view to preventing him from indulging in such activities in the future."

The Apex Court in the case of *Ashok Narain Vs. Union of India (UOI) and Others*, held that delay in issuing order of detention was caused not due to any laxity on the part of the different agencies concerned, but was the result of full and

detailed consideration of the facts and circumstances of the case by the various department involved. The Apex Court, therefore, time and again has held that there cannot be a strait jacket chequered formula for the purpose of calculating the delay caused in issuing the order of detention. In our view, taking into the consideration the ratio of the various Judgments given by the Apex Court it is not possible to accept the contention raised by the learned counsel appearing on behalf of the petitioner that there was inordinate delay caused in issuing the order of detention. In our view, the Detaining Authority has to take into consideration the aims and object of the Act under which the order of detention is passed and the purpose of detaining the detenu under the provisions of the said Act will be a relevant factor while considering the fact about the delay being caused in issuing the order of detention. In the present case, the order of detention has been passed under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981. It has to be borne in mind that Section 2(a)(iv) of the said Act reads as follows :

"(iv) In the case of a dangerous person, when he is engaged, or is making preparation for engaging, in any of his activities as a dangerous person which affect adversely or are likely to affect adversely, the maintenance of Public Order."

13. Chapter 16 of the Indian Penal Code deals with the offences affecting life from Sections 299 to 377. Similarly, Chapter 17 of the Indian Penal Code deals with the offences against the property from Sections 378 to 462. The Detaining Authority has to arrive at the subjective satisfaction as to whether the detenu is acting in any manner prejudicial to the maintenance of the public order as envisaged in Section 2(a)(iv) of the said Act. The said Act does not lay down any particular period of limitation. However, the wordings of Section 2(a)(iv) clearly contemplates a situation when a dangerous person is either already engaged in any dangerous activity or is preparing himself or engaging in any such activities or is likely to engage himself in such activities. If the said section is construed in its proper perspective, it cannot be said that if the order of detention is passed within three months, there is unreasonable delay caused in issuing the order of detention. In any case, it cannot be said that within 3 months live link is snapped. In our view, the order of detention cannot be passed in mechanical manner by the Detaining Authority. It cannot be said that merely because the period of 3 months was over, there has been a laxity on the pan of the Detaining Authority in issuing the order of detention. The submission of the learned counsel appearing on behalf of the petitioner that the delay of 3 months and 8 days caused in passing the order of detention is fatal and that on the said ground the order of detention is liable to be quashed, cannot be accepted.

14. The learned counsel appearing on behalf of the petitioner thereafter relied on Ground (C) as raised by him in the Petition. Ground (C) reads as follows :

"As per para 9 to 11 of the Copy of grounds subjective satisfaction is recorded in such a way as if the petitioner is on bail and out. The subjective satisfaction was

required to be recorded that in such and such cases i.e. 3 cases he is in Magisterial Custody and, therefore, he was automatically prevented from acting in manner prejudicial to the maintenance of public order but whole demeanor of Detaining Authority shows that as if he is out and on bail. So subjective satisfaction is not recorded according to law it is submitted that recording subjective satisfaction when in jail or on bail are different and Law is clear on this point with Supreme Court. So on this count alone the order is liable to be set aside."

15. The learned counsel appearing on behalf of the petitioner submitted that it is an admitted position that the petitioner had not made any application for bail and, therefore, there was no question of there being any cogent material before the Detaining Authority to suggest that the petitioner was likely to be released on bail. The petitioner, therefore, submits that since there was no cogent material before the Detaining Authority to suggest that the petitioner was likely to be released on bail, the subjective satisfaction which was arrived at by the Detaining Authority was based on extraneous consideration. The learned counsel for the petitioner in support of the said submission relied on the Judgment reported in 2002 All MR (Cri.) 394 in the case of Junaid Abdur Rashid Shaikh v. M.M. Singh and Ors., given by the Division Bench of this Court. The Division Bench after considering the facts of the case held as follows :

"The question is whether there was cogent material before the detaining authority at the time when he passed the detention order. Merely because the co-detenu was actually granted bail from the Sessions Court after the detaining authority had issued the impugned detention order against the detenu does not mean that there was cogent material for him to conclude that the detenu was likely to be released on bail in near future. We dare say that the explanation of the detaining authority is prompted by the circumstance that the co-detenu had been granted bail subsequently. We wish to emphasise that the expression cogent material as used in the Chelawat's case (supra) means that material which is subsisting at the time when the detaining authority issues a detention order and does not include the material which sees the light of the day after he has issued the detention order; such as the co-detenu being released on bail in the instant case."

The learned counsel for the petitioner submitted that in the instant case there was no question of petitioner being released on bail as admittedly he had not even preferred any application for being released on bail. The learned counsel appearing on behalf of the petitioner further relied upon the Judgment of this Court reported in Nasibullah Khan Vs. M.N. Singh and Others, . The learned counsel appearing on behalf of the State submitted that merely because of the detenu was in custody, there was no bar for issuing the order of detention. He submitted that the Apex Court in the case of Dharmendra Suganchand Chelawat and another Vs. Union of India and others, , had laid down the guidelines on the question as to when the order for detention could be validly passed against a

person in custody. The Apex Court had held that it is necessary that the grounds of detention must show that (1) the detaining authority was aware of the fact that the detenu is already in detention and (2) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. While construing the expression "compelling reasons" the Apex Court had further held that "there must be cogent material before the Detaining Authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from the custody in near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody, he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities. The learned A.P.P. appearing on behalf of the State also relied upon the Judgment of the Apex Court reported in Judgments Today 1994 (1) SC 350 in the case of Veeramani v. State of Tamil Nadu, wherein the Apex Court had held that "the detention order could be validly passed, if the authority passing the order, is aware of the fact that he is actually in custody and that he had reason to believe on the basis of the reliable material that there was a possibility of his being released on bail and that on being so, releasing the detenu would in all probabilities indulge in prejudicial activities and if the authority had passed any order after recording his satisfaction, same cannot be struck down." He further submitted that in the grounds issued by the Detaining Authority in para 7, the Detaining Authority has clearly mentioned that the Detaining Authority is aware that the petitioner was in Magisterial Custody in the various cases and that he had further held that the petitioner was likely to be released on bail by the Court in the near future.

16. We are unable to accept the contention raised by the learned A.P.P. appearing on behalf of the State. From the ratio of the various Judgments cited by both the parties it is very clear that though the Detaining Authority had every right to validly issue an order of detention in respect of the detenu who is already in custody, it was necessary that there should be cogent material on record to suggest that the detenu was likely to be released on bail in the near future. In the present case, it is an admitted position that the petitioner had not made any application for bail. There was, thus, no question of petitioner being released on bail. Though the last charge-sheet was filed on 28-5-2001 even thereafter the petitioner had not filed any application for bail. There was, thus, no cogent material on record to suggest that the petitioner was likely to be released on bail. In our view, therefore, in the absence of there being any cogent material and special material which was subsisting at the time when the Detaining Authority passed the order of detention indicating that the detenu is likely to be released on bail, the order of detention cannot be sustained and has to be set aside.

17. In the result, we allow this petition, quash and set aside the impugned order of detention and direct that the detenu Amit Rakesh Janbandhu be released forthwith unless wanted in some other case and make the Rule absolute.

C. C. expedited.