

(2017) 04 BOM CK 0254
In the Bombay High Court
Case No : 64 of 2017

Anil s/o Ramesh Manglani,

APPELLANT

Vs

State of Maharashtra,

RESPONDENT

Date of Decision : 18-04-2017

Acts Referred:

[Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981](#), [Section 3\(2\)](#) - Power to make orders detaining certain persons

Citation : (2017) 04 BOM CK 0254

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

Bench : DIVISION BENCH

Advocate : A.B. Moon, A.S. Ashirgade

Final Decision : Allowed

Judgement

1. Heard Shri A.B. Moon, learned counsel for the petitioner and Shri A.S. Ashirgade, learned A.P.P. for respondents.
2. Order of detention dated 21.09.2016 passed by respondent no.2 Commissioner of Police, Nagpur City dated 21.09.2016 under Section 3 (2) of the Maharashtra Prevention of Dangerous Activities of Slum Lords, Bootleggers, Drug Offenders, Dangerous Person and Video Pirates Act, is questioned by petitioner on three grounds. First contention is, two offences viewed as relevant for ordering detention could not have been considered as the same appears to have been

fabricated only for the purpose of detention. Second contention is, reliance upon two in-camera statements shows total non-application of mind as its verification done by the Assistant Commissioner of Police, has not been appropriately evaluated and there is nothing on record to show that those in-camera statements were personally looked into by the Detaining Authority. Last contention is, there is no live link, in as much as for state events the order of detention has been mechanically passed without understanding the importance of time factor. At every stage there is unreasonable delay.

3. Shri Moon, learned counsel for the petitioner fairly states that though translation of relevant documents were received by the petitioner, for want of proper legal advise, petitioner could not make any representation and order of detention in turn came to be approved by respondent no.1 on 03.11.2016. He is relying upon Division Bench judgment of this Court reported at 2014 All MR (Cri) 940 (Shahnawaj Khan Ismail Khan .vrs. The State of Maharashtra and another).

4. Shri Ashirgade, learned A.P.P. appearing for respondents relies upon reply - affidavits filed separately by respondent no.1 and respondent no.2. He has also produced original in-camera statements of Witness-A and Witness-B. Our attention is also drawn to consideration in paragraph no.9 of the order of detention dated 22.09.2016 to urge that the in-camera statements and its verification has been duly evaluated by respondent no.2 Detaining Authority. Learned A.P.P. submits that thus, there is no jurisdictional error or perversity and hence, there is no case made out for intervention in writ jurisdiction.

5. In so far as the consideration of in-camera statements by the Detaining Authority in the present matter is concerned, we find that it is not in dispute that following observations by the Detaining Authority in paragraph no.9 appear in bold letters even in the original order.

"These witnesses have given statements before Police Inspector, Police Station, Pratapnagar, Nagpur. Then Assistant Commissioner of Police, Sonegao Division, Nagpur has verified the statements. I, detaining authority have verified from the Assistant Commissioner of Police, Sonegao Division, Nagpur and he has confirmed that whole facts of the statements are verified and to the best of his knowledge it is true and correct. The gist of the statements recorded in-camera is as follows :-"

5. We have perused the original in-camera statements which were taken out from sealed envelope. Both the in-camera statements are recorded in presence of senior police inspector on 11.06.2016. In in-camera statement of Witness-A, he speaks of an event which has taken place about 20 days prior in the month of May, 2016. In-camera Witness-B speaks of an event which has taken place in first half of month of May, 2016. These in-camera statements are verified by the Assistant Commissioner of Police on 30.06.2016. He has mentioned that he has verified the statements and conducted inquiry into the episode and adjacent area. He found that there was terror spread by the detainee in that area. After this remark by him, there is signature of Deputy Commissioner of Police, Zone-1, Nagpur City on 26.07.2016.

6. This material when read along with portion reproduced supra, clearly shows that respondent no.2 has applied his mind properly. Though on original in-camera statements there is no endorsement by respondent no.2, that he has seen those statements, we find that contents thereof are reproduced in paragraph no.9.1.1 and paragraph no. 9.2.1 in

the impugned order by that authority. Those contents therefore negate the contention raised by the petitioner. In this respect along with portion reproduced supra, material on record is sufficient to hold that Detaining Authority has applied mind properly qua, those in-camera statements.

7. The other arguments mostly pressed into service is about absence of live link and unreasonable delay in passing the detention order. In Writ Petition ground (I) specifically raises this aspect. Respondent no.2 has replied to it in paragraph nos. 5, 6 and 7 of the reply affidavit before this Court.

8. Offence looked into in paragraph no.8.1.1 is reported on 23.05.2016. The incident is alleged to have taken place on 22.05.2016. In other offence looked into in paragraph no.8.2.1, complaint with police is lodged on 24.05.2016, and it is in connection with incident dated 22.04.2016. On the strength of these two offences, proposal for externment was drawn on 17.06.2016. By that date, two in-camera statements were also available with the respondents. Thus, period taken from 17.06.2016 upto 21.09.2016 falls for appreciation before this Court.

9. The in-camera statements are verified by the Assistant Commissioner of Police on 30.06.2016. After that verification, nothing transpired in the matter and only development is putting of his signature by the Deputy Commissioner of Police on those in-camera statements on 26.07.2016. Thus, office of Deputy Commissioner of Police has taken period of about 26 days for putting one signature on in-camera statements. Thereafter, file was forwarded to the Detaining Authority and Detention Cell received it on

09.08.2016. Thus, as observed by this Court in its reported judgment (supra), the file has taken time of about 14 days only to travel from one office to other in Nagpur city. Thereafter, typing of documents, translations etc. was over by 08.09.2016. Thus, after 09.08.2016, period of about 30 days is taken by the Detention Cell to process the papers further. The matter was then placed for consideration of the Detaining Authority by Joint Commissioner of Police, Nagpur City by making appropriate endorsement on 12.09.2016. The Detaining Authority has passed the impugned order on 21.09.2016.

10. When the Division Bench judgment (supra), is perused there in paragraph no.10 gap of almost 3 ? months is found unreasonable. In paragraph no.11, the judgment of Hon"ble Apex Court which finds time of 15 days taken for completing translation is relied upon and has been quoted. Following said Division Bench judgment we find that here after verification of in-camera statements on 30.06.2016, no effective steps appear to have been taken till 08.09.2016. Thus, entire month of July, August and more than a week of the month of September, 2016 are lost and there is no explanation pointing out why such long time was taken to process the file when the proposal itself was moved on 17.06.2016. From the date of proposal, order of detention is coming up after more than three months. After last of the offence, it is passed after four months.

11. In this situation, we accept the contention of petitioner that there is no live link in order of detention and the offences looked into. In view of above discussion we proceed to pass the following order.

ORDER

- (1) Writ Petition is allowed.
- (2) The order of detention passed by the respondent no.2 Commissioner of Police, Nagpur City dated 21.09.2016 under Section 3 (2) of the Maharashtra Prevention of Dangerous Activities of Slum Lords, Bootleggers, Drug Offenders, Dangerous Person and Video Pirates Act, is 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.