

(1948) 04 BOM CK 0012
In the Bombay High Court
Case No : Cron Side Petition No. 62 of 1948

Anwari Begum Gulzarkhan

APPELLANT

Vs

Commissioner of Police

RESPONDENT

Date of Decision : 07-04-1948

Acts Referred:

Bombay Public Security Measures Act, 1947 — Section 3

Citation : AIR 1949 Bom 82 : (1948) 50 BOMLR 593

Hon'ble Judges : Bhagwati, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bhagwati, J.—This is a petition filed by the wife of the detenu asking that the detenu should be released. The detenu was arrested at 7 p.m. on March 9, 1948, and the detention order was served on him at 10 a.m. on March 11, 1948, together with a notice u/s 3 of the Bombay Public Security Measures Act, 1947, specifying the grounds and particulars of his detention.

2. It has been contended by counsel for the petitioner that the grounds are vague and outside the ambit of the Act, with the result that the detention order is bad in law. He has analysed the grounds into five specific grounds, viz. (1) that the detenu is a known mawali of Falkland Road locality, (2) that he is a trafficker in opium, (3) that there are a number of mawalis under him, (4) that he extorts money from prostitutes and (5) that he is also responsible for stabbing cases on Falkland Road. He has contended that grounds Nos. 1 and 3 that he is a known mawali and that there are a number of mawalis under him are vague inasmuch as the word "mawali" has no definite or certain connotation. He has also contended that being a trafficker in opium and extorting money from prostitutes, howsoever reprehensible these acts may be, are certainly not acts within the ambit of the Act which is intended only to detain persons who are acting in a manner prejudicial to the public safety, the maintenance of public order or tranquillity of the province or any part thereof. As regards the last ground, he

has contended that there is nothing in the notice u/s 3 of the Act to show that he was acting in that manner at or about the time when the order for detention was made against the detenu. These are the grounds on which the detention order has been challenged.

3. As regards grounds 1 and 3, I may say that the word "mawali" has a well known connotation and is not vague. It connotes a person who is a bully and also a person who is a menace to the peace and tranquillity of the part of the city where he may happen to be the person in power. There is nothing vague about it and a person who fairly answers the description perfectly well knows what that term means. As regards grounds 2 and 4, if they stood by themselves, they may or may not necessarily lead to the conclusion that the activities of the detenu in that manner may be prejudicial to the public safety or the tranquillity of the city. When, however, they are taken in conjunction with the other grounds that have been mentioned, viz. grounds 1 and 3, they do not leave any doubt that the activities of the detenu in that behalf would certainly lead to a position which will be prejudicial to the public safety or the tranquillity or the peace of the part of the city wherein the detenu carries on his activities. As regards ground No. 5, there is nothing in the notice which would by any stretch of imagination be taken as referring to some acts of the detenu in the past. The only reasonable interpretation of this ground in the notice is that he is acting in that particular manner and is concerned with and is responsible for stabbing cases on Falkland Road. That has connection not with any remote past but has connection with what happened in the immediate past or recently before the order of detention was made against the detenu. Under all these circumstances I have come to the conclusion that the grounds of the detention order are not vague or bad in law and that they sufficiently comply with the requirements of the Act.

4. The next ground which has been urged by counsel for the petitioner against this order is that the detenu was arrested at 7 p.m. on March 9, 1948, that the detention order was in fact signed by the Deputy Commissioner of Police on March 10, 1948, and that it was served on the detenu at 10 a.m. on March 11, 1948. He has contended that having regard to these facts it is abundantly clear that the detention came first and the satisfaction which is the essential pre-requisite of a valid order u/s 2 (1) of the Act being made against the detenu came later. He has, therefore, contended that the facts of this case bring it within the observations of the Appeal Court, in the appeal decided by the learned Chief Justice and myself, in the case of Balasaheb Shankarrao Fansalkar (1948) Crown side Appeal No. 1 of 1948. The learned Chief Justice in that appeal observed that the satisfaction of the detaining authority was a pre-requisite of the detention of the detenu and that satisfaction must come first and detention must come subsequently. These observations of the learned Chief Justice really point out the sequence of events which has got to be followed in order that the detention of a detenu may be considered legal and valid. One has, however, got to bear in mind that there is nothing in the terms of Section 2(1) of the Act which prescribes that the order for detention should be an order in writing. The only thing which is

enacted there is that the detaining authority should be satisfied that the detenu is acting in a manner prejudicial to the public safety, the maintenance of public order, or the tranquillity of the Province or any part thereof, and if he is so satisfied, he may make an order directing that the detenu be detained. There is nothing in the terms of this section to lay down that the detention order should be an order in writing and that it cannot be an oral order passed by the detaining authority after taking into account all the circumstances of the case which go to satisfy him that the detenu is acting in the manner prescribed by Section 2(i) of the Act before a valid detention order can be made by him against the detenu. This being the position, wherever it is pointed out by a petitioner in the case of a particular detenu that the arrest of the detenu was made at a particular point of time which is anterior to the order of detention being in fact served upon him. the onus lies on the detaining authority to satisfy the Court by proper materials put before the Court that in fact the satisfaction came before the actual arrest of the detenu was effected under his order and that the detention of the detenu was in pursuance of and in consequence of such satisfaction on his part within the meaning of Section 2(1) of the Act. Unless and until the detaining authority satisfies the Court in this behalf, the detention order which on prima facie appearances is signed and served after the actual arrest is liable to be set aside.

5. In the case before me, I have got the affidavit of Vishnu Gopal Kanetkar made by him on April 7, 1948, wherein he says in para. 2 thereof :

On 9th March 1948 the detenu was directed to be arrested in view of the information and matters relating to the detenu which had been placed before me on full consideration of which I was satisfied that he was acting in a manner prejudicial to the public safety and tranquillity of Greater Bombay. Accordingly the detenu was apprehended and detained.

These facts are not challenged by counsel for the petitioner. As a matter of fact even though I hinted to him that it was open to him to require the deponent of this affidavit Vishnu Gopal Kanetkar to be present in Court in order that he may cross-examine him as to the correctness of the statements which he had made in this para. 2 of his affidavit, no such application was made to me by counsel for the petitioner, with the result that I am entitled to take the statements made by Vishnu Gopal Kanetkar in para. 2 of his affidavit as correct. Taking them as correct, I am also bound to come to the conclusion that as a matter of fact before the order for arrest and detention of the detenu was made by him on March 9, 1948, he had materials before him on which he was satisfied that the detenu was acting in a manner prejudicial to the public safety and tranquillity of Greater Bombay and that the detenu was arrested in accordance with the order which he passed on March 9, 1948. What followed was merely putting on record the order which he had orally made on March 9, 1948. What is stated in the stereotyped terms of the order dated March 10, 1948, that he, the Deputy Commissioner of Police, "hereby directs" does not go counter to the statements which he has made in his affidavit and does not detract from the position which

has been taken up on behalf of respondent No. 1 in the arguments of this petition before me.

6. I have, therefore, come to the conclusion that the order for detention which was made against the detenu was not invalid or bad in law, but that the detenu was rightly detained under a proper and valid order made by the authority invested with power in that behalf. The petition made for the release of the detenu, therefore, fails and must be dismissed. Each party will bear and pay his own costs of this petition.