
(2016) 09 BOM CK 0155

In the Bombay High Court

Case No : Criminal Writ Petition No. 253 of 2016

Arjun Balkrishna Sonavane

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 26-09-2016

Acts Referred:

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)

Citation : (2017) ALLMRCri 869 : (2017) 2 BomCR(Cri) 142 : (2016) 6 MhLJCrI 316

Hon'ble Judges : Smt. V.K. Tahilramani and Mrs. Mridula Bhatkar, JJ.

Bench : Division Bench

Advocate : Mr. Bhushan V. Mahadik Advocate, for the Petitioner; Mrs. M.H. Mhatre A.P.P, for the State

Final Decision : Dismissed

Judgement

Smt. V.K. Tahilramani, J. (Oral)—Heard the learned counsel for the petitioner and the learned A.P.P. for the State.

2. The petitioner/detenu Arjun Balkrishna Sonavane has preferred this petition questioning the preventive detention order passed against him on 12.10.2015 by the Commissioner of Police, Solapur. The said detention order has been passed in exercise of the powers under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (No. LV of 1981) (Amendment-1996 and 2009) (hereinafter referred to as the "MPDA Act") as the detenu is a dangerous person whose activities are prejudicial to the maintenance of public order. The said order of detention is based on one C.R. i.e. C.R.No. 299 of 2015 of Faujdar Chawdi Police Station, Solapur. The said C.R. is under Section 385 read with Section 34 of IPC. In addition, the detention order is based on one non-cognisable case i.e. N.C. No. 706 of 2015 and two incamera statements of Witness "A" and Witness "B". The order of detention, grounds of detention along

with accompanying documents were served on the detenu on 12.10.2015.

3. Though a number of grounds have been raised in the present petition whereby the detention order has been assailed, however, the learned counsel appearing for the petitioner has pressed only four grounds before us which have been raised by way of amendment. They are ground nos. (ii), (v), (vi) and (viii).

4. The first ground i.e. ground (ii) of the amended grounds which is at page 12A of the petition, briefly stated is that the detaining authority has referred to C.R. No. 168 of 2014 wherein the incident occurred on 31.5.2014, hence, the detaining authority has relied on an old and stale incident and there is considerable delay in passing the order of detention. As far as this ground is concerned, the detaining authority has categorically stated in his affidavit that he has not taken C.R. No. 168 of 2014 consideration while issuing the order of detention. Thus, what is stated is that the detaining authority has not relied on the said C.R. for issuing the order of detention. Reference is made to C.R. No. 168 of 2014 and other two C.Rs. of the year 2014 in paragraph 4 of the grounds of detention just to give brief history of the petitioner. In fact, if the grounds of detention are perused in paragraph 1 itself, the detaining authority has clearly stated as under :

"I hereby communicate to you the grounds as mentioned in paragraph No. 5 below on which detention order has been made by me on this day against you, under sub-section (2) of section 3 of the said Act".

5. As is noticed earlier, the detention order is essentially founded on the incident relating to CR No. 229 of 2015, N.C. 706 of 2015 and the two in-camera statements and no other incident. Though in Paragraph 4 of the grounds of detention reference is made to a chart of criminal cases previously registered against the detenu, but those are not the cases which have been taken account by the detaining authority to form the subjective satisfaction required for the purpose of issuing the order of detention under Section 3 of the Act. In so far as the subjective satisfaction of the detaining authority is concerned, it is founded on the incident pertaining to CR No. 229 of 2015, N.C. 706 of 2015 and two in-camera statements. The preventive action against the detenu was necessitated on account of the material relating to these four incidents. As observed by the Apex Court in the case of Hasan Khan Ibne Haider Khan v. R.H. Mendonca, AIR 2000 SC 1146, facts in para 4 were only to show the past criminal history of the detenu and nothing more.

6. Thus, it is seen that C.R. No. 168 of 2014 has not at all been relied upon by the detaining authority to issue the order of detention. The law is well settled that if any document has not been relied upon by the detaining authority to issue the order of detention, the same cannot be taken consideration. We do not agree with the submission of the learned counsel for the petitioner that besides the material referred in para 5 of the grounds of detention, the detaining authority arrived at the subjective satisfaction to issue the order of detention also on the

basis of the facts alluded to in para 4 of the grounds of detention. Thus, it cannot be said that old and stale incident i.e. C.R. No. 168 of 2014 has been taken consideration by the detaining authority to issue the order of detention. In such case, it cannot be said that there is delay in passing the order of detention.

7. The second ground i.e. ground (v) which is raised, is at page 12B of the petition. In the said ground it is contended that the detaining authority has relied on C.R. No. 299 of 2015 wherein the incident is dated 6.9.2015. It is stated that the said incident is stale and old and hence, on the ground of inordinate delay in passing the order of detention, the detention order would be liable to be quashed.

8. As far as the issue of delay in issuing the detention order is concerned, mechanical calculation of the days and months cannot be made. The rule is that as long as live-link between the incident and the passing of order of detention is not snapped and as long as the alleged incident is not too remote to say that the propensity to indulge in future has ceased to exist, it cannot be said that there is delay in issuing the order of detention.

9. Delay by itself it not ipso facto fatal, however, if there is some delay in issuing the order of detention, two issues have to be kept in mind; the first is whether the delay has been satisfactorily explained and the second issue is whether the live-link between the prejudicial activities of the detenu and issuance of the order of detention has snapped. The time when the order is made or the live link between the prejudicial activity and the purpose of detention is snapped depends on the facts and circumstances of each case. Even in a case of undue or long delay between the prejudicial activity and the passing of detention order, if the same is satisfactorily explained and a tenable and reasonable explanation is offered, the order of detention is not vitiated. It is so observed by the Supreme Court in Licil Antony v. State of Kerala & Anr., Criminal Appeal No. 872 of 2014 @ SLP (Cri.) 988 of 2014 : 2014 (5) SCALE 100.

10. In a decision of the Supreme Court in the case of Olia Mallick alias Oliruddin Mallick v. The State of West Bengal, (1974) 1 SCC 594, there was delay of 5 months in issuing the detention order. The last incident in the said case occurred on 3.11.1971 and the detention order was issued on 29.3.1972. Despite this fact the Supreme Court upheld the order of detention.

11. In our opinion, mere delay in issuing the order of detention is not sufficient to hold that the detaining authority must not have been satisfied about the necessity of issuing the detention order. In the case of Olia Mallick (supra), it was held that since the activities of the petitioner marked him out as a member of a gang indulging systematically in the cutting of aluminium electric wire, the District Magistrate could have been very well satisfied, even after a lapse of 5 months; that it was necessary to pass the detention order to prevent him from acting in a manner prejudicial to the maintenance of the supply of electricity. In Olia Mallick (supra) it was further observed that "We are not, therefore, inclined to interfere in this matter merely because there has been a delay of 5 months

before the detention order was passed."

12. As far as the ground of delay is concerned, it is seen that the incident relating to C.R. No. 299 of 2015 is dated 6.9.2015. Thereafter a N.C. case was lodged against the detenu on 22.9.2015. In the meanwhile, statements of in-camera witnesses were also recorded. Thereafter Senior Inspector of Police of Faujdar Chawdi Police Station Solapur submitted a proposal on 23.9.2015 for detention of the detenu under the provisions of MPDA Act. After following the required procedure and after getting copies of the relevant material, the detaining authority has stated that after carefully scrutinizing and after going through the entire material placed before it, the detaining authority was subjectively satisfied that the activities of the detenu were prejudicial to the maintenance of public order and that the detenu is a dangerous person, hence, with a view to prevent the detenu from acting in similar prejudicial activities in future, the detaining authority issued the order of detention on 12.10.2015. In the present case the gap between the last incident and the detention order is not even a month. Looking to the facts of this case, in fact, the order of detention was issued as expeditiously as possible and it cannot be said that there was any delay in issuing the order of detention. Thus, this contention also fails.

13. The third ground raised by the learned counsel for the petitioner is amended ground (vi) which is at page 12B of the petition. In the said ground, it is stated that the detenu has been supplied with the compilation of documents containing some illegible documents. At page nos. 109 and 110 of the compilation of documents, there is a document purported to be an F.I.R. dated 26.6.2014 which is completely illegible and it cannot be read with normal vision. Thus, the learned counsel for the petitioner submitted that furnishing of illegible document affects the right of detenu to make an effective representation, hence, the order of detention is illegal and bad in law and liable to be quashed and set aside.

14. Page nos. 109 and 110 of the compilation of documents is the F.I.R. relating to C.R. No. 190 of 2014. We have perused the said document, photo copies of which have been annexed to the petition. We find that F.I.R. dated 26.6.2014 relating to C.R. No. 190 of 2014 is completely legible which is also the stand taken by the detaining authority. They can be read by a person having normal vision and it cannot be said that it amounts to non-furnishing of legible documents.

15. Furnishing of illegible documents amounts to non-furnishing or non-supply of a document. Even if it is assumed that the documents pertaining to F.I.R. dated 26.6.2014 are illegible, reference to the said F.I.R. appears in paragraph 4 of the grounds of detention and detaining authority in paragraph 1 of the grounds of detention has specifically stated that only paragraph no.5 and below are relied upon to issue the order of detention. Thus, the contents of paragraph 4 are not at all relied upon by the detaining authority to issue the order of detention. Hence, assuming that the said documents are illegible, non-furnishing of these documents would not affect the right of the detenu to make an effective

representation. It is no more *res integra* that non-furnishing of documents which are not relied upon by the detaining authority to issue the order of detention would not affect the right of the detenu to make an effective representation.

16. The Supreme Court in the case of *Kamrunnissa v. Union of India*, AIR 1991 S.C. 1640 has observed that "if document is only referred by the detaining authority but not relied upon by the detaining authority to issue the order of detention, then non-supply of such document would not affect the right of the detenu to make an effective representation.

17. The last contention raised by the learned counsel is amended ground (viii) which is at page 12C of the petition. It is stated that the original complainant Ashok Ahuja in C.R. No. 299 of 2015 has filed an affidavit stating that he does not even know the detenu and the detenu had never demanded any extortion amount from him. The detaining authority in the grounds of detention has clearly stated that people were afraid of the detenu and were not willing to come forward to give any complaint against the detenu. Though the detenu has indulged in acts of extortion, most of the victims are not willing to give complaint against the detenu. Only when assurance was given to witnesses, some of the witnesses i.e. Witness-A and Witness-B came forward to complain against the detenu. The complainant in C.R. No. 299 of 2015 was one person who picked up the courage to file the complaint against the detenu, however, it appears that intimidating tactics have been used by the detenu to show that he has not demanded any amount from Ashok Ahuja. As far as C.R. No. 299 of 2015 is concerned, even if the statement of complainant is not taken consideration, there are four eye witnesses who have clearly stated that the detenu and his associates entered the shop of the complainant Ashok Ahuja and demanded money. They abused the complainant and insisted that he has to give money. At that time, the detenu threatened that should he take out the weapon and show ? The detenu and his associates clearly created ruckus in the shop of complainant Ashok Ahuja, due to which, neighbouring shop keepers and businessmen shut down their shops. The statements of these four witnesses are part of the charge-sheet in the said case and copies of these statements have been furnished to the detenu. Hence, it cannot be said that in relation to C.R. No. 299 of 2015, there is no material to show that the detenu along with his associates entered the shop of the complainant, abused the complainant and demanded amount and created ruckus in his shop, due to which, the neighbouring businessmen shut their shops due to fear. Such an act clearly affects public order. Thus, this contention too fails.

18. Assuming for the sake of arguments that in view of affidavit of Ashok Ahuja, C.R. No. 299 of 2015 cannot be taken consideration, the detention order has been issued on the basis of three other incidents. Two incidents relating to in-camera witnesses "A" and "B" and one N.C. No. 706 of 2015. Thus, even if ground relating to C.R. No. 299 of 2015 is severed, there is sufficient material for the detaining authority to issue the order of detention under the provisions of MPDA Act. Section 5(A) of the MPDA Act states as under :

"5A. Grounds of detention severable.- Where a person has been detained in pursuance of an order of detention under Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly -

(a) Such order shall not be deemed to be invalid or inoperative merely because one or more of the grounds is or are-

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever...."

In view of Section 5A, ground relating to CR No. 299 of 2015 can be severed. After severing the same, also there was sufficient material before the detaining authority to issue the order of detention.

19. In view of the above, we are of the opinion that no good ground has been made out for quashing the order of detention, hence, petition is dismissed. Rule is discharged.