

(1982) 09 BOM CK 0038

In the Bombay High Court

Case No : Criminal Writ Petition No. 375 of 1982

Ashok Shridhar Joshi

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 03-09-1982

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3(2)

Citation : (1983) 1 BomCR 440

Hon'ble Judges : V.V. Joshi, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : V.G. Pradhan, for the Appellant; N.D. Hombalkar, Public Prosecutor, for the Respondent

Judgement

V.V. Joshi, J.—On 29th May, 1982, the respondent No. 2 with a view to preventing the petitioner-detenu from acting in any manner prejudicial to the maintenance of public order made an order u/s 3(2) of the National Security Act, 1980 (hereinafter referred to "the Act") directing that the petitioner be detained under the said Act. This detention order was served on the petitioner, along with the grounds of detention and copies of documents relied upon and referred to in the grounds of detention, along with the Marathi translation thereof on the same day. It is not disputed, that on 29th of May, 1982 when the petitioner-detenu was served with the detention order, grounds of detention and the concerned documents, the petitioner was already in police custody, having been arrested on 6th April, 1982 in connection with an offence of murder registered as C.R. No. 141 of 1982 of Bhandup Police Station. However, the petitioner was ordered to be released on bail on 1st July, 1982. The order of detention dated 29th May, 1982 is challenged in this writ petition.

2. The petitioner is a resident of Ashok Nagar, Kanjur village, Bhandup (East), Bombay. The grounds of detention are five in number :---

(i) The first ground relates to an incident dated 27th May, 1979 in which the

petitioner along with his associates is stated to have assaulted one Krishnakant Damodar Padave, a resident of Ashoknagar, Kanjur village, Bhandup, with an iron rod. A criminal case u/s 324, 114 I.P.C. was registered against the petitioner and his associates. This criminal case was compounded on 20th July, 1981 and the petitioner was consequently acquitted.

(ii) The second ground relates to an incident of 30th June, 1979 which took place in Kanjur village, Bhandup in a quarrel between one Vilas Tatoba Ghag and the petitioner's associate one Charlie. The petitioner is alleged to have given a knife blow to Vilas Tatoba Ghag and an offence C.R. No. 303 of 1979 was registered against the petitioner and his associates under sections 324, 427, 114 I.P.C. and the case is still sub judice.

(iii) On 1st July, 1979 i.e. the next date after the incident referred to in ground No. (ii), the petitioner and his associates are stated to have abused and threatened Vilas Tatoba Ghag on account of his complaint to police the earlier day, and thereafter to have again given blows with a Rampuri knife to Vilas Tatoba Ghag. In respect of this incident a C.R. No. 307 of 1979 was registered against the petitioner and his associates under sections 143, 144, 146, 148, 149 and 326 I.P.C. and the said case is still sub judice.

(iv) On 8th January, 1982 the petitioner and his associates are stated to have assaulted one Ramesh Poojari in Kanjur village, Bhandup, by giving him blows with a sword. This led to registration of C.R. No. 10 of 1982 under sections 324, 114 I.P.C. against the petitioner and his associates. This case is stated to be under investigation.

(v) The last incident is dated 6th April, 1982 when the petitioner and his associates are alleged to have committed the murder of one Umaji Babaji Koyande in Nehru Nagar, Kanjur village by assaulting him with swords and hockey sticks. The incident led to the registration of C.R. No. 141 of 1982 under which the petitioner was arrested on 6th April, 1982 and was subsequently directed to be released on bail on 1st July, 1982.

3. Shri Pradhan for the petitioner has contended that the impugned detention order does not indicate awareness on the part of the Detaining Authority of the fact that the petitioner was on the date of the passing of the detention order was already in custody nor does the detention order or the grounds of detention disclose any compelling reasons for which the Detaining Authority considered it necessary to pass the preventive-detention order against the petitioner in spite of the fact that he was already in custody of the police. In this respect Shri Pradhan pointed out that the grounds of detention contained an endorsement at the bottom addressing the communication containing the grounds to the petitioner's address recorded there as "Snehabandh Co-operative Housing Society, Ashok Nagar, Kanjur village, Bhandup (East), Bombay", although admittedly on 29th May, 1982 the petitioner was already arrested and in police custody. According to Shri Pradhan this itself was indicative of non-application of

mind on the part of the Detaining Authority and vitiated the order of detention. In this respect Shri Pradhan has placed reliance on the observations of the Supreme Court in *Vijay Kumar Vs. State of Jammu and Kashmir and Others*,

4. We are not inclined to accept this contention of Shri Pradhan. In the affidavit dated 9th August, 1982 filed by respondent No. 2 it is stated in paragraph No. 4 that the petitioner was arrested on 6th April, 1982 and "he was served with the order of detention while he was in custody, with the prior permission of the concerned Court." Further in paragraph 8 of that affidavit it is denied by respondent No. 2 that he was not aware of the fact that the petitioner was in a jail. It is further stated in that paragraph that with full knowledge that the petitioner might be released on bail in C.R. No. 141 of 1982 after the period of 90 days and thereafter it shall be very difficult to get his whereabouts to get him served with the detention order, that the detention order was served on the petitioner when he was in jail. We find the awareness of the Detaining Authority of the fact that the petitioner was in custody on the date of detention order, is actually reflected in ground (v) of the grounds of detention where there is a clear mention that the petitioner was arrested on 6th April, 1982. In these two respects, therefore, the present case differs from the case of *Vijay Kumar Vs. State of Jammu and Kashmir and Others*, cited (*supra*) in which case (i) there was nothing in the detention order to indicate the awareness of the Detaining Authority that the detenu was already in jail and yet the order of detention was required to be made and (ii) there was nothing in the affidavit of the Deputy Secretary to the Government of Jammu and Kashmir, Home Department, to suggest that the Detaining Authority was aware of the fact that detenu was already in jail and still it was considered necessary to pass the detention order.

5. Shri Pradhan for the petitioner further contended that the first three grounds in the grounds of detention pertain to incident of the year 1979 nearly three years prior to the date of the detention order. All these three grounds were, therefore, stale grounds. The criminal case in respect of the first ground (relating to the incident of 27th May, 1979) of Bhandup Police Station was compounded on 20th July, 1981 and the petitioner was acquitted nearly ten months before the passing of the impugned detention order. The live link available with this incident was, therefore, already snapped on the date of the detention order. It was further contended that all these grounds of detention related to assaults on individuals and pertained to the sphere of law and order and not public order with which the alleged grounds had no nexus.

6. We are not inclined to accept the contention of Shri Pradhan that grounds Nos. (ii) and (iii) are stale. Though admittedly they pertain to incidents of the year 1979. The criminal cases arising from the incidents which form the basis of these grounds are still pending. In that view these two grounds, constituting links in the chain of activities of violence on the part of the petitioner continuing even in the year 1982 cannot be considered to be stale grounds with their live links already snapped on the date of the detention order.

7. However, we feel that cannot be said in respect of the first ground relating to the incident of 27th May, 1979 and the contention of Shri Pradhan that this is a stale ground will have to be accepted. Admittedly the criminal case arising out of that incident was compounded on 20th July, 1981, nearly ten months prior to the date of the detention order, and the petitioner was acquitted. This clearly snapped the live link of this ground and, this ground was, therefore, a dead and stale ground on the date on which the detention order was passed. The respondent No. 2 has filed an additional affidavit on 1st September, 1982 wherein it is affirmed in paragraph 2 that the very fact that the Criminal Case under C.R. No. 249 of 1979 was compounded itself shows "as to how the petitioner pressurise the persons, the complainants, to get the criminal cases against him compounded." It is further affirmed in the same paragraph "I further say that the detenu Ashok Shridhar Joshi was constantly threatening the witnesses not to give evidence against him in the matter of Cri.R. No. 249 of 1979. I further say in view of this threatening by the detenu, witnesses were not coming forward to depose against the detenu and, therefore, C.R. No. 249 of 1979 was compounded.

8. We are not impressed by these allegations in the additional affidavit filed by respondent No. 2. Since the offence involved was u/s 324 I.P.C. we believe it must have been compounded with the permission of the Criminal Court. There is nothing to indicate whether the prosecution opposed the prayer for permission to compound the case. The documentary material on the basis of which it is contended that the petitioner detenu was constantly threatening the witnesses in that criminal case has not been indicated, nor copies thereof have been furnished to the detenu. It would be, seen therefore, that these contentions in additional affidavit of respondent No. 2, not mentioned in ground No. (i) of the grounds of detention are clearly an afterthought.

If ground No. (i) was a stale ground on the date of passing of the detention order, its inclusion in the grounds on which the detention order is based would invalidate the detention order and render the detention of the petitioner detenu illegal. Grounds of detention must be pertinent and not irrelevant, proximate and not stale, precise and not vague. Irrelevance, staleness and vagueness are vices any single one of which is sufficient to vitiate an order of detention. See Shiv Parsad Bhatnagar Vs. State of M.P. and Another, . It is also now well settled that inclusion of a single extraneous or irrelevant ground in the grounds of detention, vitiates the detention order because one does not know how the irrelevant or extraneous grounds have affected the subjective satisfaction of the Detaining Authority.

9. In this case we find there is another even stronger circumstance which goes to vitiate the detention order. In the additional affidavit filed by the respondent No. 2 on 1st September, 1982 it is disclosed in paragraph No. 3 that apart from the three incidents of the year 1979 which formed the basis of grounds Nos. (i) to (iii), there were three criminal offences of the year 1977, and one of the year

1978 registered against the petitioner detenu, these being C.R. Nos. 108 of 1977, 118 of 1977, 353 of 1977 and 277 of 1978. It is further averred in paragraph 4 of the additional affidavit of respondent No. 2 that externment proceedings were instituted against the petitioner detenu in August, 1979 and he was externed from Greater Bombay and Thane District for a period of two years vide order dated 24th July, 1980. This Court, however, set aside the order of externment on 7th October, 1981. Then it is averred in paragraph 5 of the additional affidavit of Detaining Authority i.e. respondent No. 2. "These two cases (C.R. No. 10 of 1982 and 141 of 1982) on which grounds Nos. (iv) and (v) of detention order are based were taken into consideration by me along with his past record and order of detention was passed on 29th May, 1982.....I, therefore, say that the activities of the detenu which are narrated hereinabove are prejudicial to the maintenance of public order in the said areas." If the past activities of the petitioner giving rise to these four criminal offences registered in 1977 and 1978 and the externment proceedings against him were taken into consideration by the respondent No. 2 before passing the impugned detention order, we feel, the detention order is vitiated on two counts. First because these past activities of the petitioner pertaining to the years 1977 and 1978, and the externment proceedings against him were not enumerated in the grounds of detention although admittedly the detention order was passed after taking them into consideration. Secondly, the copies of documents pertaining to the prior activities of the petitioner were not furnished to him to enable him to make any effective representation. This case then assumes the aspect of non-disclosure of all the grounds on consideration of which the detention order was passed. This would be violative of the Constitutional provisions of Article 22(5), please see in this respect the observations of the Supreme Court in paragraph 3 of the reported judgment, Dharman Raj Banshi Vs. State of West Bengal, , in Mohd. Alam Vs. State of West Bengal, and in Bablu Das Vs. The State of West Bengal,

10. Shri N.D. Hombalkar for the respondents has relied upon the observation of the Supreme Court in paragraph 20 of the reported judgment in Wasiuddin Ahmed Vs. District Magistrate, Aligarh, U.P. and Others, . These observations are as under :

"20. No doubt, the Constitutional imperatives of Article 22(5) enjoin the disclosure of all the basic facts and materials which have been taken into account by the Detaining Authority in making the order of detention, but this right of the detenu is subject to the provisions of Article 22(6). Article 22(6) of the Constitution provides that nothing in Clause (5) shall require an authority making an order of detention, to disclose facts which such authority considers to be against the public interest. Under Article 22(6), the District Magistrate was, therefore, not bound to disclose the intelligence reports and it was also not necessary for him to supply the history-sheet, if any. In Khudiram Das Vs. The State of West Bengal and Others, the Court, in somewhat similar circumstances, held that the non-disclosure of the history-sheet had not the effect of invalidating the order of detention."

11. There is not a whisper in the present case of non-disclosure of any part of the material taken into consideration by the Detaining Authority for passing the detention order, on the ground of such disclosure being against public interest. The non-disclosure of the past criminal activity of the petitioner detenu in the years 1977 and 1978, similar in nature to the criminal activity which formed the basis of grounds Nos. (i) to (ii) for the subsequent years, and the non-disclosure of the externment proceedings taken against the petitioner, could obviously not be in public interest within the meaning of section 3(2) of the Act or of Article 22(6) of the Constitution.

12. In our view the impugned detention order against the petitioner cannot be sustained. It is, therefore, unnecessary to consider the other contentions of Shri Pradhan.

13. However, to allay all fears of the authorities against the petitioner's activities in future prejudicially effecting the maintenance of public order, the petitioner-detenu has voluntarily given an undertaking in writing to this Court as under :

"I undertake as a law abiding citizen not to disturb the peace and tranquility in my locality for the next two years. I shall not change my residence without informing the local Police Station."

He has also given his residential address in the undertaking. The said undertaking given by the petitioner detenu to this Court will be placed on record of this case.

14. Rule is made absolute and the petitioner-detenu is directed to be set at liberty forthwith unless required in connection with any other case.

15. Detenu has filed an application through his Advocate today before us seeking directions to the Inspector of Police, Bhandup Police Station to take the above detenu in his custody from the precincts of this Hon"ble Court and to take the detenu to the Bhandup Police Station where, in the course of this evening, the bail bond of the detenu and his surety would be executed in terms of the order dated 15-7-1982 passed by the Metropolitan Magistrate, XXVIIth Court, Mulund, Bombay. We have granted this application as prayed for. The Jail guard and Inspector of Police, Bhandup Police Station to take the detenu to Police Station, Bhandup, wherein he should be permitted to execute the necessary bond as per the order of the Metropolitan Magistrate dated 15th July, 1982.