

(2014) 04 BOM CK 0235

In the Bombay High Court

Case No : Criminal Writ Petition No. 539 of 2013

Bhupendra

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 2(b1), 8

Citation : (2014) ALLMR(Cri) 2959

Hon'ble Judges : C.V. Bhadang, J;B.R. Gavai, J

Bench : Division Bench

Advocate : A.B. Moon, Advocate for the Appellant; B.H. Dangre, I/c Public Prosecutor, Advocate for the Respondent

Final Decision : Allowed

Judgement

C.V. Bhadang, J.—The petitioner is challenging the order dated 03/5/2013 passed by the 2nd respondent under the provisions of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (for short, "the Act"), whereby the petitioner has been directed to be detained for a period of two years. In this case, on the basis of a proposal sent by the Sponsoring Authority, the 2nd respondent passed the impugned order on 03/5/2013 and on the same day the grounds in support of the order of detention were communicated to the petitioner in compliance with Section 8 of the Act. From the perusal of the grounds, it would appear that apart from the past history as set out in paragraph 4 of the grounds (which, according to the Detaining Authority, have not been considered while issuing the order), two instances dated 24/10/2012 and 25/10/2012 have been considered and relied upon. The Detaining Authority has also taken into consideration the statements of two witnesses recorded in camera in reaching the subjective satisfaction for passing the order.

2. We have heard the learned Counsel for the petitioner and the learned Public

Prosecutor for the State. Perused the impugned order and the record.

3. It is submitted by the learned Counsel for the petitioner that the petitioner cannot be said to be a "dangerous person" within the meaning of Section 2(b1) of the Act. He submitted that the subjective satisfaction recorded by the Detaining Authority in that regard is misplaced. He also submitted that the nature of the allegations in respect of two incidents dated 24/10/2012 and 25/10/2012 cannot be said to involve threat to public order. It is submitted that the statements of two witnesses recorded in camera are also vague as they lack in material particular such as day, date and time of the alleged incidents involving the petitioner. Lastly, it is submitted that the impugned order would be vitiated on account of non consideration of the applications and the orders by which the petitioner was released on bail in respect of two incidents relied upon. Learned Counsel for the petitioner placed reliance in this regard on the decision of the Hon"ble Apex Court in the case of Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others, and on the decision of the Division Bench of this Court in the case of Niyazuddin @ Sonu Sirajuddin Ansari Vs. State of Maharashtra and Another, He, therefore, urged that the petition be allowed.

4. On the contrary, it is submitted by the learned Public Prosecutor that the offences registered in respect of the incidents dated 24/10/2012 and 25/10/2012 clearly fall within the requirements of Section 2(b1) of the Act and would involve a threat to the public order having regard to the place where they are committed. It is also submitted that the statements of the witnesses recorded in camera contain sufficient particulars as to the place and time of the incidents. It is also contended that the Detaining Authority has made a reference to the release of the petitioner on bail in the two offences as would be apparent from the grounds communicated. It is, therefore, submitted that the subjective satisfaction recorded cannot be said to be misplaced. It is, therefore, urged that the petition be dismissed.

5. We have considered the circumstances and rival submissions made. We find that the petition will have to succeed on the last mentioned ground namely, non placing of the applications for bail and the orders passed thereon, before the Detaining Authority. The Hon"ble Apex Court in the case of Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others, has inter alia held that non placing of the bail orders where under the detenu was released on bail would vitiate the subjective satisfaction of the Detaining Authority. It is true that in the grounds communicated to the petitioner, there is mention of the petitioner being released on bail. However, it has been fairly conceded by the learned Public Prosecutor that the applications for grant of bail and the orders passed thereon were not placed before the Detaining Authority. In the case of Niyazuddin (supra), the Division Bench of this Court was on the point of the subjective satisfaction being vitiated by consideration of material, which was not at all in existence as there was no single offence found to be registered against the petitioner for the alleged activities. Be that as it may. In the present case, in view of the undisputed

position that the applications for bail and the orders passed thereon were not placed before the Detaining Authority, the impugned order would be vitiated on account of non-consideration of the material, which was relevant for arriving at the subjective satisfaction, particularly in the face of the law laid down by the Hon"ble Apex Court in the case of Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others, For this reason, we are of the opinion that the petition deserves to be allowed. Accordingly, the petition is allowed.

In the result, the detention of the petitioner is held to be illegal.

The impugned order dated 3/5/2013 detaining the petitioner is quashed and set aside.

The petitioner is directed to be set at liberty forthwith, if not required in any other case.

The rule is made absolute in the above terms. No order as to costs.