

(1982) 01 BOM CK 0008

In the Bombay High Court

Case No : Criminal Writ Petition No. 580 of 1982

Birju Makadwala alias Birju Satva

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 04-01-1982

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (1982) 1 BomCR 960

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

Bench : Division Bench

Advocate : A. Kulkarni, for the Appellant; N.D. Hombalkar, Public Prosecutor, for the Respondent

Judgement

V. V. Joshi, J.—By this writ petition, the petitioner-detenu has challenged the order date 17th May, 1982 made u/s 3(2) of the National Security Act, 1980 under which he has been detained since 17th May, 1982.

2. The ground of detention served on the detenu mention three grounds on which he has been detained. Shri Kulkarni for the petitioner-detenu has contended that none of the grounds has any nexus with public order. The second contention is that there has been unexplained delay in considering the representation made by the detenu to the State Government.

3. The third ground of detention is based on an incident dated 5-2-1982 under which the petitioner-detenu and his three unknown associates are alleged to have assaulted one Prakash Narayan with bamboos. This incident led to the registration of C. R. No. 84 of 1982 of Vokola Police Station under sections 326-114 I.P.C. We have been referred to the documentary material on which this ground of detention was based. The first information report in respect of this offence mentions as motive for the assault, "sudden quarrel". We fail to see in view of this entry in the F.I.R. how this ground could be said to have any nexus with the maintenance of public order. We may here refer to the observations of the Supreme Court in para 7 of the reported judgment in Jaya Mala Vs. Home

Secretary, Government of Jammu and Kashmir and Others, as under :---

"7. In respect of each set out in the ground, F.I.R. has been lodged. If every infraction of law having penal sanction by itself is ground for detention, danger looms large that the normal criminal trials, and criminal courts set up for administering justice will be substituted by detention laws, often described as lawless law. There is not the slightest suggestion that witnesses are not forthcoming in respect of the alleged infraction of law. Why the normal investigation was not pursued is a question difficult to answer. If in respect of the incident of January 10, 1981, a charge could have been laid u/s 307 I.P.C., on the face of it a serious charge, the detenu as accused could have been arrested and if he moved for bail the same could have been legally resisted. The incident dated August 1, 1981, at best discloses a threat and the offence could at best be one u/s 504 and section 506, I.P.C. It is not made clear in the return why normal procedure of investigation, arrest and trial has been found adequate to thwart the criminal activities of the detenu. It is not for a moment suggested that power under the Preventive Detention law cannot be exercised where a criminal conduct which could not be easily prevented, checked or thwarted would not provide a ground sufficient for detention under the Preventive Detention laws. But it is equally important to bear in mind that every minor infraction of law cannot be upgraded to the height of an activity prejudicial to the maintenance of public order. Non-application of mind of the Detaining Authority becomes evident from the frivolity of grounds on which the detention order is founded."

4. If ground No. 3 is thus found to be extraneous and irrelevant this alone is sufficient to vitiate the detention order, since one cannot ascertain in what manner and to what extent, the irrelevant and extraneous ground could be said to have affected the subjective satisfaction of the Detaining Authority.

5. In this view it is not necessary to consider the other contention of Shri Kulkarni. The petitioner has today voluntarily given us undertaking in writing that within seven days from today, he shall execute a personal bond in the sum Rs. 2,000/- for a period of two years to keep peace and the same shall be in the name of the respondent No. 3 i.e. the Commissioner of Police, Bombay. We direct that this undertaking shall be placed on record.

6. The rule is made absolute and the petitioner is directed to be set at liberty forthwith unless required connection with any other case.