

(1991) 09 BOM CK 0007

In the Bombay High Court

Case No : Criminal Writ Petition No. 795 of 1991

Briyesh Ramesh Kamble

APPELLANT

Vs

S. Ramamurthi Commr. of Police and Others

RESPONDENT

Date of Decision : 25-09-1991

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3(1), 3(2)

Citation : (1993) 2 BomCR 670

Hon'ble Judges : M.L. Pendse, J; A.D. Mane, J

Bench : Division Bench

Advocate : Shankar G. Sajnani, for the Appellant; N.M. Kachare, Assistant Public Prosecutor, for the Respondent

Judgement

1. In this writ petition, the validity of the Order of Detention dated March 2, 1991, passed by the Commissioner of Police, in exercise of powers conferred upon him u/s 3(2) of the National Security Act 1980, is under challenge.

2. The order of detention has been passed on the grounds pertaining to criminal activities of the detenu. The grounds of detention inter alia recite one Kumar Bhagwan Ratan Londhe, aged 26 years, resident of Dhobi Ghat, Dahisar (E), is working in the electric shop and styled as "Baban Electric Stores" situated at L.T. Road, Dahisar, owned by one Tulsidas Tani. On September 21, 1990, at about 23-30 hrs. Kumar was standing near a "Bhurji Pav" handcart near Depa Hotel, L.T. Road. Dahisar (W). There were number of other customers eating "Bhurji Pav". At that time, the detenu and his associates Sudhir, Narendra and other went there and called Kumar Bhagwan aside and threatened him in enquiring about Tari. When Bhagwan showed his ignorance, the Detenu gave him slap on his face and telling him that he is informant of Tari, also gave him kicks, Bhagwan then left the place with the cries to tell about it to Tulsidas Tari. On his way he met his co-worker Raju Kumbhar to whom he narrated as to what had happened. It has further been stated that Raju Kumbhar saw the detenu and his

associates in front of Deccan Bank and when Raju tried to ask as to why Bhagwan was assaulted, it is said that the detenu and his associates counter questioned him and he too was manhandled by raising a naked sword. A little thereafter when Tari came, the detenu and his associates caught hold of him and caused him injuries with deadly weapons such as sword and chopper. The crime was therefore, registered against the detenu and others for offences punishable under sections 143, 144, 149, 317 I.P.C. The detenu was arrested but has been released on bail on October 4, 1990.

3. There is further mention in the grounds of detention that no person is willing to come forward to make a complaint against the detenu and his associates but on the assurance given by the police that their names would be kept confidential, the police could record statements of three of the witness "in-camera". The first witness is one Tailor from Dahisar (West), who refers to the incident of March 1990. He has stated that the detenu approached him for stitching the clothes free of charge but when he resisted the detenu wiped out a knife from his pocket and put the same on his chest and threatened him. The detenu told him that he is "Priyesh Dada" and he never gives money but he gets cloths stitched free of cost. So saving, according to the witness, the detenu slapped him. Due to that incident the witness has to run away keeping the shop open.

4. The other witness narrates the incident of March 25, 1990. He is the resident of Bharat Nagar Zhopadpatti, Dahisar (W). He has stated that when he was returning home along L.T. Road, the detenu and his three associates stopped him and at that time the detenu wiped out a knife and snatched Rs. 50/- from his shirt pocket. The detenu also gave him warning that he should not report the matter to the police. The detenu is said to have shouted saying that he is "Priyesh Dada" and money is required to be paid to Dada."

5. The third incident is of May 1990. It was in regard to one hawker, who was stopped near Dahisar Railway Station (W). One of the associates of the detenu is said to have caught hold the hawker's collar and other associate assaulted him with kicks and fists. When the hawker started shouting, the detenu is said to have wiped out a knife and put in on the stomach of the hawker and threatened him saying that he was required to pay him an amount and accordingly a sum of Rs. 70/- was forcibly removed from his pocket. They also is said to have given him the threat that he would be finished if he would report the matter to the police.

6. Lastly it has been stated that in the first week of June 1990, the detenu alongwith his three associates engaged the rickshaw of the witness at S.V. Road, near Borivali Railway Station (West). When rickshaw driver, the witness asked about the destination to pay the rickshaw, the detenu threatened him saying that he should not ask but he should take the rickshaw to Dahisar direction. The witness got frightened and drove his rickshaw towards Dahisar but on the way one of the associates of the detenu put a weapon like knife on his back and threatened him, to take his rickshaw towards Dahisar river side. The witness got

scared and stopped the rickshaw near bush and asked for his fare but the detenu caught hold his collar, pulled him and gave him fist blows by telling him that he is "Priyesh Dada" and no amount could be demanded from him. It is further stated that the detenu also forcibly took away Rs. 50/- from him.

7. The detaining authority has considered these various instances and the conduct of the detenu disclosed therefrom to come to his subjective satisfaction that the detenu is likely to act prejudicial to the maintenance of public order in future in the locality and the area referred to above in the Greater Bombay, unless detained under the Act.

8. Shri Sajnani, the learned Counsel appearing for the detenu in the first place urged that the incidents which have been taken into account by the detaining authority are stale instances. Secondly the learned Counsel urged that the instances as referred to in the statements of the witnesses recorded "in-camera" are stray instances and if they are excluded from consideration, it is clear that the order of detention is based on a single solitary instance as set out in first ground. That incident cannot, however, disclosed a case of "Public Order". It is in this way of the matter it has been stated that the order of detention is not sustainable in law. We have given our anxious thought to the aforesaid material on basis of which the detaining authority has reached to its subjective satisfaction for exercise of its powers u/s 3(2) of the Act. We are of the view that most of incidents referred to above are indeed the stale instances and cannot be said to be proximate in time. The incidents commencing from first week of March 1990 to First week of June 1990, cannot form basis for an order of detention.

9. Indeed, therefore, at the most there is a single solitary instance of September 21, 1990 in regard to the assault to individual. The question arises if the single solitary instance as referred to above suggest a case of prejudicial activities of the petitioner to the maintenance of public order. It is not our view that the single solitary instance will not form basis for detention of the person to be detained for maintenance of public order but that depends upon the facts in each cases. In the present case, however, the mere instance of causing injuries to individuals, in our opinion, will not bring a case under the concept of "public order". The act alleged against the detenu can be effectively dealt with in accordance with the ordinary criminal law of the land for which crime has been registered against the detenu. The material that has been relied on against the detenu suggests a mere law and order problem not the problem of public order. There is always a difference between "public order" and "Law and Order". The true distinct in between the area of "public order" and "Law and Order" is not in the nature or quality of the Act but in the degree and extent of its reaction upon society. Therefore, an action u/s 3(1) of the Act can be taken to prevent subversion of public order and not in aid of maintenance of law and order under ordinary circumstances. Isolated criminal case with no minister significance attached to it has no connection whatsoever to disturb the "Public Order" having regard to the circumstances of the present case. In consequence the order of

detention is violative under Article 22(5) of the Constitution of India.

10. In the result, petition succeeds. The order of detention is quashed and set aside. The detenu is directed to be released forthwith. Rule is made absolute accordingly.