

(1992) 01 BOM CK 0082

In the Bombay High Court

Case No : Criminal Writ Petition No. 1338 of 1991

Chandrakant alias Bala Ramchandra Kadam

APPELLANT

Vs

S. Rammurthi, Commissioner of Police and others

RESPONDENT

Date of Decision : 10-01-1992

Acts Referred:

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

Citation : (1993) CriLJ 671 : (1992) 1 MhLj 826

Hon'ble Judges : Sujata V. Manohar, J;B.N. Deshmukh, J

Bench : Division Bench

Advocate : Shirish Gupte and Prakash Naik, for the Appellant; Y.V. Patil, APP, for the Respondent

Judgement

Mrs. Sujata Manohar, J.—The petitioner has been detained under an order of detention dated 1-10-1991 u/s 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981. The order of detention has been issued in order to prevent the detenu from acting in any manner prejudicial to the maintenance of law and order. The order is in connection with the activities of the detenu as a bootlegger.

2. In the grounds of detention a number of incident have been set out. The first incident is of 28-9-1990, when the Police Sub-Inspector Khaire and his staff patrolling the areas of Kokari Agar hutments, Ambedkar Nagar hutments, Antop Hill, Bombay noticed a motor taxi speedily advancing from Kokari Agar towards Ambedkar Nagar hutments. The police signaled the taxi to stop but the taxi driver accelerated the speed of the taxi. Ultimately the taxi was intercepted and when searched, was found to contain about 800 liters of contraband liquor stored in tyre tubes in various parts of the taxi. The driver and occupant of the taxi were arrested. The arrested driver and the occupant informed the police that the petitioner was also accompanying them in taxi but had got down from the taxi when it slowed down. On the basis of this statement the petitioner was arrested.

The petitioner is said to have admitted his complicity in the case.

3. The second incident is of 5-2-1991 where also a car, which was subsequently found to contain illicit liquor stored in tyre tubes, was intercepted by a police constable. The driver of that car had driven his motor car in the direction of the Head Constable who jumped on the bonnet of the car and caught hold of the doors of the car in order to save his life. This car was successfully intercepted. But the driver and the two occupants of the car managed to escape. They were subsequently arrested and on their statement to the effect that this car was being used by the petitioner to transport illicit liquor, the petitioner has been implicated.

4. The third incident is of 26-4-1991 in which the police constables noticed three black coloured tyre tubes containing illicit liquor being thrown out from a motor car. The car sped away but a person who was found taking the tyre-tubes was arrested. On the basis of his statement that the petitioner was transporting illicit liquor in question, the petitioner was apprehended. The grounds of detention also refer to the three other statements given by three different witnesses whose names are not disclosed on the ground that disclosure of such names would result in danger to their lives, looking to the activities of the petitioner.

5. It is contended by Mr. Gupte, learned Advocate for the petitioner that looking to the grounds of detention, it may be possible to say that the petitioner is a bootlegger. But there is nothing in these grounds to indicate that his activity of bootlegging is such as would affect prejudicially the maintenance of public order. In this connection it is necessary to look at the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981. u/s 3 of this Act, the State Government may, if it is satisfied with respect to any person, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do make an order directing that such person be detained. Section 2(a) defines the phrase "acting in any manner prejudicial to the maintenance of public order". It means, "in the case of a bootlegger, when he is engaged, or in making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order". Section 2(b) defines "bootlegger" to mean inter alia, a person who transports, sells or distributes any liquor, in contravention of any provisions of the Bombay Prohibition Act, 1949 or of any other law for the time being in force or who knowingly supplies any vehicles or other conveyance in furtherance or support of the doing of any of the abovementioned things by or through any other person, or who abets in any other manner the doing of any such thing.

6. In the case of Abdul Razak Nannekhan Pathan Vs. Police Commissioner, Ahmedabad and Another, , the Court considered similar provision of the Gujarat Prevention of Antisocial Activities Act. In the case of Ramesh Ganpat Shahakar v. R. D. Tyagi, reported in 1986 Cri LJ 1421 , the Court has considered the provisions of this Act. It has been held that it is only when the activities of a

person as a bootlegger affect adversely or are likely to affect prejudicially the maintenance of public order that the subjective satisfaction mentioned in Section 3 can legitimately be arrived at. Merely being a bootlegger without doing anything more can never be a ground of detention unless there is a direct nexus with the question of maintenance of public order. The same position was earlier propounded in the case of Babu Kantappa Shetty Vs. M.S. Kasbekar and others, by a Division Bench of this Court. In that case the High Court held that the activity of the detenu of threatening various persons who the detenu suspected to be a police informants was unconnected with the activity of bootlegging. Hence it could not be said that his activity of bootlegging was likely to pose a threat to the maintenance of public order. (See also in this connection - Rashidmiya @ Chhava Ahmedmiya Shaik Vs. Police Commissioner, Ahmedabad and Another,).

7. In the present case there are statements made by three different witnesses which clearly indicate that the bootlegging activity of the petitioner does pose a threat to public order and is such as is likely to disturb the even tempo of the life of the community. The statement of witness "A" is to the effect that while transporting liquor in a taxi, the petitioner stopped the taxi in front of the shop of this witness and collected some spare parts for his motor vehicle. When the witness demanded money for the spare parts the petitioner threatened the witness and taking out an iron rod from the taxi, he threatened to assault the witness. As a result, there was fear in the locality and people ran away.

8. The statement of the second witness is to the effect that the petitioner demanded from the witness his motor taxi for the purpose of transporting liquor. When the witness refused, he was hit on the back by the petitioner and an associate of the petitioner held a knife against the witness and threatened him.

9. The third witness has stated that while he was waiting on the road opposite his hotel, he noticed a taxi parked on the opposite side of the road from which some black coloured tyre tubes were being thrown out. The petitioner and one of his associates rushed towards him, caught him by his collar and held a knife against him. They threatened him by stating that if he gives information about the illicit liquor to the police, he would not remain alive.

10. The 4th witness has stated that while he was standing in front of his hut, a taxi stopped in front of his hut and the petitioner and another person got down from the taxi. At the point of knife the witness was asked to keep the tyre tubes containing illicit liquor in his hut. The witness was threatened that otherwise his hut will be set on fire. The witness stated that he was thereupon compelled to store the illicit liquor in his hut on account of the fear of the petitioner.

11. These incidents clearly indicate that the bootlegging activity of the petitioner is such as is likely to disturb the public order. In fact it has been stated in the grounds of detention that because of the fear of the petitioner, these witnesses were not willing to come forward to give statements against him. Their names

and identity have been withheld on account of the fear expressed by the witnesses of the petitioner.

12. It was however urged by Mr. Gupte that the statements of the witnesses whose identity has been withheld should not be relied upon because these statements are vague. The names of the witnesses are not furnished. In respect of three of the statements, the exact date of the incident is also not given. Hence these statements should be discarded because it is not possible for the detenu to make any effective representation against such vague statements. Now, it is true that in respect of three out of the four statements, the exact date of the incident was not given. But the approximate period over which the incident occurred is given. For example, the second incident has occurred in the 4th week of May 1991. In the case of witness "C" it is in the 2nd week of July 1991 and in the case of witness "D" it is in the 2nd week of August 1991. The statements given by the witnesses are not vague. They refer to a specific incident which took place on a particular day.

13. Mr. Gupta has relied upon the decision of the Supreme Court in the case of Abdul Razak Nannekhan Pathan Vs. Police Commissioner, Ahmedabad and Another, where the Supreme Court has held that the grounds of detention are vague and the statements of the witnesses being vague and without any particulars, they cannot sustain the order of detention. This case, however, does not have any relevance on this point because in the case before the Supreme Court only very general statements were made such as that the detenu was creating an atmosphere of danger and terror or that he was robbing persons by showing deadly weapons like razor in the area, that he was in a drunken condition demanding money from those passing from there and similar other general statements. Such is not the case here. The statements are quite specific.

14. Similarly the second case relied upon by Shri Gupte is also not of much assistance. This is the case of Ahmedhussain Shaikhussain @ Ahmed Kalio Vs. Commissioner of Police, Ahmedabad and Another, . Here also in the grounds of detention there was a general statement made that, "you and your companions hit innocent citizens in public and created an atmosphere of fear and terror for continuing your criminal anti-social activities" and such other similar general statements. The Supreme Court therefore held that these grounds were vague and did not constitute a proper disclosure of material which would enable the petitioner to make an effective representation.

15. In our view the grounds cannot be considered as vague only because the identity of the witnesses is withheld, when the statements made by them are quite specific. (See also in this connection the judgment of a Division Bench of this Court (to which one of us was a party) namely, Criminal Writ Petition No. 597 of 1991 dated 13th and 14th August, 1991 - Mrs. Sujata Manohar and D. N. Srikrishna, JJ).

16. u/s 5A of the said Act where an order of detention u/s 3 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. In view thereof there is no merit in the challenge to the order of detention. The petition is therefore dismissed. There will, however, be no order as to costs.

17. Petition dismissed.