

(2021) 08 BOM CK 0014

In the Bombay High Court

Case No : Criminal Writ Petition No. 1833 Of 2021

Chotu Mohan Naidu

APPELLANT

Vs

Commissioner Of Police And Others

RESPONDENT

Date of Decision : 24-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 22
Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers
Drugoffenders, Dangerous Persons And Video Pirates Act, 1981 — Section 2(a)(iii),
2(b1), 3
Code Of Criminal Procedure, 1973 — Section 107
Indian Penal Code, 1860 — Section 141, 143, 144, 146, 149, 324
Maharashtra Police Act, 1951 — Section 135

Citation : (2021) 08 BOM CK 0014

Hon'ble Judges : S.S. Shinde, J;N.J. Jamadar, J

Bench : Division Bench

Advocate : Jayshree Tripathi, J.P. Yagnik

Final Decision : Allowed

Judgement

S.S. Shinde, J

1. Rule. Rule made returnable forthwith and heard with the consent of learned counsel for the parties.

2. This petition is filed with following substantive prayer:-

b. The order of Detention bearing No. 2021/ MPDA/ DET- 05/ CB -79 dated 05.03.2021 issued under Section 3 of M.P.D.A. Act 1981 by the

Respondent No. 1 be quashed and set aside and on quashing the same the Petitioner be ordered for release forthwith;

3. Learned counsel for the petitioner submits that order of detention is passed by the detaining authority mechanically in a very casual and cavalier

manner, which shows total non application of mind on the part of detaining authority. It is submitted that on same set of allegations and facts three proceedings were initiated against the petitioner. Firstly, chapter proceedings under Section 107 of Cr.P.C. were initiated on 27.05.2020 and petitioner was asked to execute an interim bond. Accordingly, he executed bond for keeping peace and tranquility. Secondly, externment proceedings were initiated against the petitioner and the petitioner was externed on 02.08.2020 for a period of 6 months from Nashik City/district. The said chapter proceedings and externment proceedings were initiated against the petitioner on the basis of old and stale registered criminal case of the year 2014 and another C.R. No. 133 of 2020 under Section 324, 141, 143, 144, 146 and 149 of IPC and Section 135 of Maharashtra Police Act. The externment period of six months was completed on 02.02.2021. Immediately, in the next month i.e. on 05.03.2021 the detaining authority passed the detention order on the basis of same registered case vide C.R. No. 133 of 2020. It is submitted by the learned counsel for the petitioner that there was no other material whatsoever to consider for passing the detention order. The respondent authorities have taken in all three preventive actions one after another for single solitary offence. The said action taken by the respondent authorities including the detaining authority is not legally permissible and sustainable in law. When the petitioner was asked to execute an interim bond of Rs. 10,000/- for keeping good behaviour and thereafter he has not committed any offence, there was no question of either initiating externment proceedings or passing the detention order.

4. The detention order passed against the petitioner is under Section 3 of the MPDA Act, categorizing him as a dangerous person. If the definition of the dangerous person as defined under Section 2(b-1) of MPDA Act is read in proper perspective, the requirement of said section is that a person who by himself or as a member of gang habitually commits an offence under Chapter XVI or XVII of IPC or any of the offences punishable under Arms Act, 1959, in that case only, such person can be categorized as a dangerous person. In the criminal history of the petitioner shown in the proceedings, there is mention of one criminal case registered in the year 2014 and later on one registered in the year 2020. The two in-camera statements of witnesses are recorded after a gap of six months. If the said statements are minutely perused, it cannot be said that the activity of the

petitioner would be covered under the definition of dangerous person.

5. While passing the impugned order the respondent-authority has taken into consideration the old and stale criminal case of 2014 and C.R. No. 133 of

2020. It is submitted that the said C.R. No. 133 of 2020 and the initiation of detention proceedings against the petitioner has no live link and nexus

inasmuch as the said C.R. No. 133 of 2020 was registered approximately eight months prior to the passing of detention order. Learned counsel for the

petitioner also invites our attention to the various grounds taken in the petition and submits that the petition deserves to be allowed.

6. In support of aforesaid contentions, the learned counsel for the petitioner placed reliance on following judgments: Darpan Kumar Sharma Vs. State

of T.N. & Ors 2003 SCC (Cri) 537 Mustakmiya J. Shaikh Vs. M.M. Mehta Comm. Of Police (1995) 3 SCC 237, Rashidmiya @ Chhava Shaikh Vs.

Police Comm Ahmedabad & Ors (1989) 3 SCC 321, Dinesh Vitthal Patil Vs. State of Maharashtra & Ors 2012 ALL M.R. (Cri) 3582, Sultan Yakub

Qureshi Vs. Comm of Police Solapur & Ors Cri. WP No. 610/2021., Jay @ Nunya Bhosale Vs. Comm of Police Pune & Ors 2015 ALL MR (Cri)

4437, Ajay Dixit Vs. State of U.P. & Ors AIR 1985 SC 18, Mrs. Mrunali Lonare Vs. Comm. Of Police & Ors Cri.WP No. 245/2014 and Rushikesh

Tanaji Bhoite Vs. State of Maharashtra & Ors 2012 CRI L.J. 1334 SC.

7. On the other hand, Mr. Yagnik, the learned APP appearing for State invites our attention to the averments in the affidavits filed by Mr. Deepak

Pandey, Commissioner of Police, Nashik City and Mr. Sanjay Khedekar, Deputy Secretary Government of Maharashtra, Home Department (Special),

Mantralaya, Mumbai. It is submitted that the detaining authority has perused the material and considered the in-camera statements of witnesses and

arrived at the subjective satisfaction before passing the impugned order of detention. The detaining authority arrived at the subjective satisfaction that

the activities of the petitioner need to be prevented by taking preventive action, since those activities are affecting public order adversely. It is

submitted that all the legal requirements have been complied with before passing the impugned order of detention. Learned APP invites attention of

this Court to the statements recorded in-camera and submits that alleged activities of the petitioner certainly created threat to the public order.

8. We have given careful consideration to the submission of learned counsel for

the petitioner and learned APP for State. With their able assistance we carefully perused the pleadings and grounds taken in the petition, annexures thereto and replies filed by the Respondent-State. It is not in dispute that relying upon C.R. No. 133 of 2020, three proceedings were initiated against the petitioner one after another. In a chapter proceedings the petitioner filed a interim bond of Rs. 10,000/- for keeping good behaviour and thereafter he did not commit any offence, except the alleged incidents mentioned in the in-camera statement of two witnesses. We find considerable force in the submission of learned counsel for the petitioner that, on the basis of said C.R. No. 133 of 2020 the respondent-authority could not have initiated multiple proceedings i.e. chapter proceedings, externment proceedings and passing of detention order.

9. We have carefully perused the grounds of detention so also replies filed by the respondents and other documents on record, however, we do not find that live link is established between registration of C.R. No. 133 of 2020 and passing of the order of detention. It is stated in the grounds of the detention that the reference made to the case registered in 2014 is only to point out the history of the petitioner, however, it is difficult to rely upon the statement of respondent that consideration of said case by the detaining authority did not influence his mind. If the old and stale cases are not to be considered for passing the detention order, the reference of such cases is unwarranted. The Honâ??ble Supreme Court in the case of Khaja Bilal Ahmed Vs. State of Telangana & Ors. [Criminal Appeal No.1876 of 2019 @ SLP (Crl.) No.5487 of 2019] in paragraph 15 of the said decision observed as under :-

In the present case, the order of detention states that the fourteen cases were referred to demonstrate the â??antecedent criminal history and conduct of the appellantâ?. The order of detention records that a â??rowdy sheetâ? is being maintained at PS Rain Bazar of Hyderabad City and the appellant â??could not mend his criminal way of lifeâ? and continued to indulge in similar offences after being released on bail. In the counter affidavit filed before the High Court, the detaining authority recorded that these cases were â??referred by way of his criminal backgroundâ?| (and) are not relied uponâ?. The detaining authority stated that the cases which were registered against the appellant between 2009 and 2016 â??are not at

all considered for passing the detention order? and were referred by way of his criminal background only?. This averment is plainly contradictory. The order of detention does, as a matter of fact, refer to the criminal cases which were instituted between 2007 and 2016. In order to overcome the objection that these cases are stale and do not provide a live link with the order of detention, it was contended that they were not relied on but were referred to only to indicate the antecedent background of the detenu. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.

[Emphasis supplied]

10. We have carefully perused the in-camera statements of A and B witness and we are of the opinion that the alleged activities of the petitioner stated by said witnesses, at most would pose danger to the law and order and certainly not to the public order. If those two in-camera statements of witnesses are excluded from consideration what remains is C.R.

No. 133 of 2020 registered against the petitioner. However, as already observed on the basis of said C.R. No. 133 of 2020 two proceedings i.e. chapter proceeding and externment proceedings were initiated against the petitioner, and petitioner executed an interim bond of Rs. 10,000/- in said chapter proceedings for keeping good behaviour and he was externed for six months pursuant to initiation of externment proceedings. Therefore, third time initiation of detention proceedings against the petitioner on the basis of same offence i.e. C.R. No. 133 of 2020, would be travesty of justice and would amount to double jeopardy and article 22 of the Constitution of India would come into picture. On the basis of solitary offence i.e. C.R. No. 133 of 2020 the impugned order of detention cannot be legally sustained. As already observed, it is evident from allegations made by witnesses in the in-camera statement that the solitary assault on one individual/individuals can hardly be said to disturb the public peace or bring public order in jeopardy so as to bring the case within the purview of the Act providing preventive detention. The Honâ??ble Supreme Court in the case of Darpan Kumar Sharma (supra), in paragraph 5 observed thus:-

â??5. The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs. 1000.

Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of public order. Under the definitions in the Act, it is stated that in the case of ""goonda"" the acts prejudicial to public order are â??when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public orderâ??. [Section 2(a)(iii)] The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act providing for preventive detention.â??

11. In the light of discussion in foregoing paragraphs, in our considered view, the order of detention cannot be legally sustained and therefore, deserves

to be interfered with. Hence, the following order:-

ORDER

A) The writ petition is allowed.

B) The impugned order of detention dated 05.03.2021 bearing No. 2021/MPDA/DET-05/ CB-79 passed by Respondent No. 1, is quashed and set aside.

C) Consequently, the petitioner is directed to be released forthwith unless required in any other case.

D) Rule is made absolute in the above terms.

E) The writ petition stands disposed of.

F) Parties to act upon an authenticated copy of this order.