

(2002) 08 BOM CK 0026
In the Bombay High Court
Case No : Criminal W.P. No. 705 of 2002

Deepak Suresh Ghodeswar	Vs	APPELLANT
M.N. Singh and Others		RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

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

Citation : (2003) CriLJ 5062

Hon'ble Judges : D.G. Deshpande, J;A.S. Aguiar, J

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; A.R. Kamat, APP, for the Respondent

Final Decision : Allowed

Judgement

A.S. Aguiar, J.—The present Criminal Writ Petition is preferred under Article 226 of the Constitution of India. The petitioner, who is the detinue himself, has impugned the order dated 9-3-2002 passed by the respondent No. 1 Commissioner of Police, Greater Bombay in exercise of powers conferred on him under Sub-section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (Amendment-1996) (hereinafter referred to as, "M.P.D.A. Act").

2. The detention order and the grounds of detention, both dated 9-3-2002 are annexed as Exhibits "A" and "B" to this petition. They were served upon the detinue on 11-3-2002. The detention order is founded on one Crime No. 16 of 2002 for offence under Sections 435, 506(1), 504 read with 34, IPC registered at Chembur Police Station on the complaint of one, Uttam Dashrath Ahire and three in-camera statements of witnesses A, B and C recorded on 17-1-2002 and 18-1-2002 respectively.

3. The respondent No. 1 Commissioner of Police being satisfied on the basis of the said crime and three in-camera statements that it is necessary to prevent the

detenue from carrying out such activities in future passed the impugned order of detention dated 9-3-2002.

4. The detention order has been challenged on number of grounds. However, Mr. Tripathi has restricted himself to grounds A, B, D and E.

5. The detention order has been passed on the grounds mentioned in Annexure "B". Paragraph 5(a)(i) refers to the incident which took place on 9-1-2002 at about 3-30 hours pursuant to which C.R. No. 16 of 2002 was registered by the Chembur Police Station on the complaint of one, Uttam Dashrath Ahire.

6. The complaint is as follows :

"On 9-1-2002 at about 3.30 hours, Shri Uttam Dashrath Ahire was returning home on his M/Cycle after finishing his private work. When he reached at fish market, Chembur, Mumbai, he saw you and your associates Shyam, Raja and Sonya Mohan Pandit were sitting near a little warming fire near a hand cart having plastic shelter used for selling fruit the said hand cart belongs to Smt. Gajarabai Manohar Nigam, a fruit and vegetable vendor, Shri Uttam Ahire saw that you were throwing burning coals on the plastic shelter cover of the hand cart in order to set it on fire. You and your said associates also set on fire the temporary shed belongs to Smt. Chaturabai Nivrutti Borade, a vegetable vendor. On seeing the incident, Shri Uttam Ahire halted there. You again threw burning coals on the said hand cart and set it on fire. Shri Uttam Ahire took objection. Upon this, you threatened Shri Uttam Ahire saying that, (Vernacular matter omitted....Ed.) and saying so you abused and threatened him. Then you and your said associates ran away."

7. The witness "A" has in her statement, recorded on 17-1-2002, (see 5(b)(i) referred to the incident which took place in the last week of December, 2001 which is as follows :

"In the last week of December 2001 one day, at about 20.00 to 21-00 hours you and your associate Sonya Pandit and one more unknown associate approached the witness at the place of her business. At that time the witness was counting her sale proceeds. You touched the chick of the witness and told witness that, (Vernacular matter omitted.....Ed.) and your associate Sonya Pandit told witness that, (Vernacular matter omitted....Ed.) and saying so your associate Sonya Pandit snatched away Rs. 150 to 200 from the hands of witness. Your unknown associate kicked on the vegetable basket of witness and overturned it. On seeing the incident the passers-by started running helter skelter due to fear. While leaving, your associate Sonya Pandit threatened the witness at the point of knife saying (Vernacular matter omitted....Ed.). Due to fear of retaliation witness did not lodge complaint with police."

8. The witness "B" has in his statement recorded on 17-1-2002 referred to the incident which took place in the first week of December, 2001 which is as follows :

"In the first week of December 2001 one day, at about 21-00 to 21-30 hours,

when the witness was about to close his shop, you and your associate Sonya Pandit and one more unknown associate approached him in his shop. Your associate Sonya Pandit whipped out a button knife concealed in his back side pant pocket and threatened the witness at the point of the knife saying that, (Vernacular matter omitted....Ed.). In the meantime you forcibly took out Rs. 700/- to 800/- from the drawer of witness and caught hold the collar of witness and pushed him. On seeing the incident the passers-by started running helter skelter. While leaving, your unknown associate threatened the witness saying; (Vernacular matter omitted....Ed.) and saying so you and your said associate left the place. Due to fear of retaliation witness did not lodge complaint with police."

9. The witness "C" has in his statement recorded on 8-1-2002 (see 5(b)(iii)) referred to the incident which took place in the third week of December, 2001 which is as follows :

"In the third week of December 2001 one day, at about 20.00 to 21.00 hours, you and your associate Sonya Pandit and one more unknown associate barged into his shop. You whipped out a chopper tucked at your waist and put it on the neck of the witness and threatened him saying that, (Vernacular matter omitted....Ed.) saying so, you forcibly took out Rs. 400/ to 500/- from the cash box of witness. At that time your associate Sonya Pandit threatened the customers of witness at the point of sword saying that, (Vernacular matter omitted....Ed.) seeing the incident the passers by started running helter skelter. While leaving, your unknown associate threatened the witness saying that (Vernacular matter omitted....Ed.) and saying so you and your said associate left the place. Due to fear of retaliation witness did not lodge complaint with police."

10. The challenge to the order of detention is set out in the grounds of challenge more specifically at ground (B). The petitioner contends that the Detaining Authority has taken into consideration Crime No. 16 of 2002 as set out in para 5(a)(i) registered against the Detenue by Chembur Police Station at the instance of one, Uttam Dashrath Ahire. However, by no stretch of imagination the said incident which took place in the wee hours of 9-1-2002 could be said to be the one which disturbs public order. From the said complaint, it appears that the petitioner had only warned the complainant not to interfere as he had no concern in the matter. It is contended that the complaint itself does not appear to be genuine as the presence of the complainant at 3.30 a.m. in the morning appears to be improbable and unexplained. Moreover, from the facts, it appears that the complainant in no way is connected to the owner of the hand-cart, namely, Gejarabai Manohar Nikam, a fruit and vegetable vendor nor to Smt. Chaturabai Nivrutti Borade, also a vegetable vendor.

11. It is contended by the learned counsel for the petitioner that even the incidents referred to in the said three in-camera statements of witnesses A, B and C appear to be doubtful. It is pointed out that the said statements of witnesses A, B were recorded on 17-1-2002 and that of witness C on 18-1-2002 within two days of the detenue being granted bail in the said C.R. No. 16 of

2002. Further more, the incident referred to by the witness "A" in her statement dated 17-1-2002 allegedly took place in the last week of December, 2001 at about 20 to 21 hours. Similarly, the incident referred to by witness "B" in his statement recorded on 17-1-2002 allegedly took place in the first week of December, 2001 at about 21.00 to 21-30 hours. The incident referred to by witness "C" in his statement recorded on 18-1-2002 also allegedly took place in the third week of December, 2001 at about 20.00 to 21.00 hours. In all the three cases, the incidents took place at a time when the witnesses were about to close their shops at the place of business when hardly any customers could have been present.

12. It is the contention of the learned Advocate for the petitioner that though the alleged incidents refer to use of force and weapons that by itself does not constitute disturbance to public order as neither the society in general nor a section of society could be said to be affected by any of the three incidents. It is further pointed out that the case made out against the petitioner and other co-detunes is that they were involved in protection racket business, yet there is no allegation by any of the witnesses that the detenue had earlier in the day called, upon them to pay any haftas and that the said incidents took place later in the night as the witnesses failed to pay hafta to the detenue and his colleagues. Further more, it is contended that although all the three in-camera statements disclose that the detenue and his colleagues used weapons, the detention order does not disclose how the said incidents affected public order.

13. Another contention taken up by the learned Advocate for the petitioner is that the A.C.P. was required to verify the truthfulness of the facts stated in the in-camera statements, has infact, not been verified by the A.C.P. and that the endorsement of verification has been made by the A.C.P. in routine manner without infact ascertaining the facts referred to in the said incidents.

14. Taking up the last contention first, the learned A.P.P. Ms. Kamath for the respondents has referred to the judgment of this Court reported in Smt. Zebunnisa Abdul Majid Vs. Shri M.N. Singh, Commissioner of Police, Brihan Mumbai and Others, are opposite to the facts of the present case. Paragraph 25 reads as follows :

"25. That the A.C.P. had verified whether the contents of the incomers statements are true or not can be ascertained from the noting found at the end of the incomers statements. From this verification, it is clear that A.C.P. after questioning the witness was satisfied about the fact that the incident narrated by him was truthful. It is on this verification that the detaining authority has placed reliance and we find nothing wrong with it. It is not even the case that the detaining authority should personally question the witnesses and satisfy himself about the truthfulness of the contents of the statements....."

15. In the present case, the contention of the learned Advocate for the petitioner is that the verification is a sham and infact there was no real verification by the

A.C.P. as the endorsement does not show what steps the A.C.P. has taken to verify the truth of the incomers statements.

16. We have perused the incomers statements and the endorsement of the A.C.P. at the bottom thereof. From the said endorsement, it appears that the A.C.P. had called the witnesses personally and verified from them about the truthfulness of the incidents and that itself is the material on which the verification statement was made by the A.C.P. The contention of the learned Advocate for the petitioner that the A.C.P. had to personally verify the facts cannot be accepted as any further verification of facts beyond questioning the witnesses would require investigation which cannot be done without the FIR being lodged.

17. We are satisfied that the A.C.P. has verified the truthfulness of the facts as set out in the said incomers statements and therefore reject the contention of the learned Advocate for the petitioner that the statement could not be used for basing order of detention on the ground that the facts of incidents narrated in the said statements were not verified by the A.C.P.

18. However, the facts set out in the incomers statements by themselves are not sufficient to come to the conclusion that the detenue and his colleagues are indulging in activities which are prejudicial to public order. Their activities could be said to be prejudicial to "law and order" but not necessarily prejudicial to public order. The distinction between law and order" and "public order" has been elaborately discussed by the Supreme Court time and time again while holding that public order cannot be said to be affected unless society in general or a section thereof has been disturbed by the criminal activities of the detenue.

19. The facts as set out in C.R. No. 16 of 2002 clearly cannot be said to affect public order as no weapon was used and the complainant was not threatened with dire consequences but only warned not to interfere as it was none of his business.

20. So far as three incomers statements are concerned, it is seen that although weapons were allegedly used, the incidents are alleged to have taken place at the time when the said witnesses A, B and C were about to close their shops at about 9.00 or 9.30 p.m. a time when it would be unlikely to find several other persons in the shop. Therefore, question of detenue's activities causing public panic does not appear to be probable. It is also pertinent to note that these three incomers statements were recorded within two days after the detenue was released on bail in C.R. No. 16 of 2002. One gets the impression that the police were determined by hook or crook to get the accused detained. The incomers statements on the face of it, are suspect. Even otherwise the incidents referred to in the incomers statements, in the facts as set out by the witnesses, could not have caused panic resulting in disturbance of public order. A reference to the detention order at annexure "A" would show that the said order was issued with a view to prevent the detenue from acting in a manner prejudicial to the maintenance of public order. It is a settled position that "public order" is a

different concept from "law and order". The Hon"ble Supreme Court in the case of Arun Ghosh Vs. State of West Bengal, has held that public order is affected when the even tempo of life of the community, taking the country as a whole or even a specified locality, is disturbed. Disturbance of public order is distinct from acts directed against individuals which do not disturb society to the extent of causing a general disturbance of public tranquillity.

21. In the present case, the detaining authority placing reliance on one crime, namely, Crime No. 16 of 2002 and three incomers statements has come to the conclusion that the activities of the detainee are prejudicial to public order.

22. As pointed out by the learned Advocate Mr. Tripathi, for the petitioner, the said incident by no stretch of imagination could be said to affect public order, since besides the complainant and few persons in the shop, nobody else was disturbed by the incident. No one was alarmed by the incident of 9-3-2002 which is the subject matter of C.R. No. 16 of 2002 and no weapon was used by the detainee in the incident. The complainant was not threatened with any weapon but was only cautioned to mind his own business. No other person present could be said to have become alarmed by the incident. Therefore, it cannot be said on the basis of the said C.R. that the detainee was a dangerous person and has committed activities prejudicial to maintenance of public order.

23. So far as the three incomers statements are concerned, though we do not accept petitioner"s contention that the A.C.P. had not personally verified the truthfulness of the contents of the statements, the incidents referred to in the said statement, on the facts as stated therein, appear to be suspect. Further more, even if the said incidents are held to have taken place, the said incidents could not have resulted in any alarm or panic to any section of the public like customers in view of the late hour at when the incidents are alleged to have taken place. The statements of witnesses A, B and C seeking to make out the detainee as a habitual offender indulging in extortion activities were recorded after a considerable delay. There is no reason why the said witnesses did not approach the police earlier to lodge their complainants but did so within two days of the detainee being granted bail in C.R. No. 16 of 2002. The plea of the respondents that the witnesses did not report the matter earlier on account of fear of appraisal by the detainee and his accomplices is specious as it is clear that the witnesses came forward to give statements only after some pressure or urging from the police.

24. Clearly the incident of 9-8-2002 pursuant to which Crime No. 16 of 2002 was registered cannot sustain the order of detention as the alleged acts of the detainee set out in the said C.R. cannot be said to be prejudicial to public order. In the absence of any criminal antecedents being registered against the detainee showing the detainee having indulged in extortion as a habitual offender, the three incomers statements recorded after a considerable delay and in the facts stated therein, cast doubts as to their genuineness. Therefore these three incomers statements also cannot sustain the order of detention. The submission

of learned A.P.P. that Section 5-A of the MPD Act comes to the rescue of the detaining authority is of no avail. The detention order can be sustained neither on the basis of C.R. No. 16 of 2002 registered by the Chembur Police Station nor on the basis of three incomers statements.

25. We therefore pass the following order :

"Petition is allowed. Order of detention bearing No. 36/PCB/DP/Zone-VI/2002 dated 9-3-2002 (at Annexure "A") issued u/s 3(1) of M.P.D.A. Act, 1981 (Amendment -- 1996) passed by the Commissioner of Police, Mumbai, is quashed and set aside. The detenue be released forthwith, if not required in any other case. Rule is made absolute accordingly. Petition stands disposed of."