

(1992) 02 BOM CK 0027

In the Bombay High Court

Case No : Criminal Writ Petition No. 147 of 1991

Dilip Alias Jogya

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 14-02-1992

Acts Referred:

Bombay Police Act, 1951 — Section 135, 142, 37
Constitution of India, 1950 — Article 22, 226
National Security Act, 1980 — Section 3

Citation : (1993) 1 BomCR 141 : (1992) CriLJ 3551

Hon'ble Judges : S.G. Mutalik, J;H.D. Patel, J

Bench : Division Bench

Advocate : R.M. Patwardhan, for the Appellant; L.K. Khamborkar, Additional Public Prosecutor, for the Respondent

Judgement

H.D. Patel, J.—This is a petition under Article 226 of the Constitution of India filed by Dilip alias Jogya Wamanrao Jog challenging the validity of the order dated 14-6-1991 passed under sub-section (2) of Section 3 of the National Security Act, 1980.

2. Though the order of detention is shown as dated 14-6-1991, the actual detention of the detenu was dated 15-6-1991 as per counter-affidavit filed by the respondent No. 1 - the State of Maharashtra. In the preface, the detaining authority has set out the antecedents or background facts preceding the grounds on which the detaining authority is satisfied that the petitioner must be detained to prevent him from acting in a manner prejudicial to the maintenance of public order.

3. The petitioner was earlier detained by order dated 10-9-1990 and duly confirmed by Advisory Board on 16-10-1990. A Writ Petition No. 145/90 came to be filed but during the pendency of that petition, the detention order came to be revoked by order dated 21-1-1991, consequent upon revocation of powers of detention under the National Security Act delegated to Commissioner of Police

vide order dated 10th January, 1990. It is alleged in the order of detention that the petitioner was an under-trial prisoner in Nagpur Central Jail in pending Criminal Cases. Straightway the detention order jumps to the date 8-6-1991 when release of the petitioner on bail was ordered in the pending cases and starts describing the grounds of alleged criminal activities said to have taken place in between 5 p.m. on 8-6-1990 to 7.30 a.m. on 10-6-1990. The developments in between 21-1-1990 till the time the petitioner was an under-trial prisoner are not disclosed in the order of detention. Taking advantage of this fact, it was urged on behalf of the petitioner that the impugned order suffers from non-application of mind because on the date, i.e. 8-6-1991 when the petitioner was ordered to be released on bail as an under-trial prisoner the order of externment was in force and instead of implementing that order, the detention order is passed in order to detain the petitioner under the National Security Act. It was also further urged that the breach of externment order is an offence under S. 142 of the Bombay Police Act and the petitioner could have been held for that offence, the punishment for which can be imprisonment up to two years. There is much force in the submission canvassed. Actually there was no necessity of passing the impugned order.

4. It is not in dispute that the order of externment dated 1-9-1990 was passed by the Competent Authority and was served upon the petitioner while he was in jail custody. The period of externment is two years. Therefore, when the impugned detention order was issued, the order of externment was still in force. Therefore, immediately upon the release of the petitioner on bail on 8-6-1991 he should have been called upon to stay away from the city as per boundaries specified in the order of externment. That would have automatically prevented the petitioner from carrying on with the so-called criminal activities. No attempt was also made to prosecute the petitioner for violating the order of externment. Obviously, the fact that such an order of externment was made against the petitioner and was still in force on the date the detention order was passed appears to have escaped the notice of the respondents altogether. It was necessary for the detaining authority to have considered the order of externment before passing the impugned order. Not doing so vitiates the order of detention on the ground of non-application of mind by the detaining authority, as is canvassed before us.

5. It is settled principle of law that a detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution. Correspondingly, there is a constitutional mandate commanding the concerned authority, to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within reasonable time and to dispose of the same as expeditiously as possible. The constitutional requirement must be satisfied but if this constitutional imperative is observed in its breach, it would amount to negation of constitutional obligation rendering the continued detention of the detenu constitutionally impermissible and illegal. It is alleged

that this constitutional mandate is not followed by the respondents and, therefore, the detention order is liable to be struck down. We agree with the submissions.

6. According to the respondents, the representation is dated 8-7-1991 but the reply of the State Government dated 12-9-1991 sent to the petitioner rejecting the said representation indicates that the date of representation was 15-7-1991. We will presume the date disclosed by the State Government to be correct. The representation is forwarded to the Advisory Board on 24-6-1991 which was received by them on the same day. The report of the Advisory Board was received on 25-7-1991 by the State Government but the order of confirmation was issued by the State Government only on 4-9-1991 which was received by the detenu on 13-9-1991, that is, 59 days from the date the representation is made or 50 days from the date the report of the Advisory Board was received by the State Government. Though petition was amended by the petitioner taking this plea of delay in specific, no attempts were made by the respondents to file further counter-affidavit explaining the inordinate delay. In the absence of any explanation tendered by the respondents, we are bound to hold that the delay was unreasonable rendering the detention invalid.

7. It was next urged that the acts of the detenu referred to in the grounds of detention either each one of them taken singly or even collectively do not relate to public order but they only relate to law and order and necessary action has already been taken. If the grounds urged relate only to law and order problems, then no choice is left for this Court but to set aside the order impugned in this petition. The submission was vehemently opposed on behalf of the respondents contending that the activities of the petitioner do affect public order.

8. Time and again, the Supreme Court has laid down the principles governing public order and also law and order. It is not necessary to refer to the various judgments. Whether the act refers to law and order or public order depends upon the impact of the act on life of community or in other words the reach and effect and potentiality of the act if so put as to disturb or dislocate the even tempo of life of the community. Applying these tests, we are of the opinion that none of the grounds are such that its impact on the society as a whole can be considered to be so extensive, widespread and forceful as to disturb the normal life of the community thereby rudely shaking the balanced tempo of orderly life of the general public.

9. Before dealing with the aforesaid contentions, it may be relevant to observe here that it has come to our notice and we have reasons to believe that the ground No. 2 is concocted and false. We shall hence take up that ground first. We are extracting that ground for proper appreciation. It reads as under :-

"On 9-6-1991 at about 1215 hours while Shri Manohar s/o Harichand Nagdive, aged 30 years, r/o Plot No. 15, Jaybhim Nagar, Ajni, a Railway Servant was having lunch in his house, you armed with sword went to his house and called

Giridhar saying to come out of his house. When he (complainant) came out of his house, you abused him (complainant) in filthy language by saying "Sale, maderchoth tujhe bhi jinda nahi chhodoonga, tune hamari jindagi kharab ki hai. Kalhi mai jail se chhootkar aya, and threatened to kill him (complainant). He (complainant) got so frightened that he ran inside the house and closed the doors in his house immediately to save his life. Thereafter you left the spot brandishing the sword.

The provocation for this act was previous enmity between you and his (complainant's) brother Giridhar."

In this connection, it will be worthwhile to look into the grounds of detention in respect of another detenu by name Raju @ Khatarya @ Katarya s/o Chintaman Dhakade which came to our notice. The said Raju has challenged his detention in Writ Petition No. 144/91 which came to be decided on 4-2-1992. More or less an identical ground involving the same persons is included in the order of detention issued to Raju. That ground is also extracted for proper appraisal :

"On 11-5-1991 at about 0200 hrs., while the complainant Shri Manohar s/o Harichand Nagdive, aged 30 years, r/o Jaybhim Nagar, Near Eknath Deshbratar's house, Nagpur, a Khalasi in Central Railway, Nagpur was present in his (complainant's) house, you along with your three associates viz. 1) Amar s/o Nanaji Dhanvijay, 2) Raju s/o Hariprasad Bagde and 3) Jay alias Jaya s/o Jagul Christian, all r/o new Babulkheda, Nagpur went to his (complainant's) house, called him (complainant) out of his house and abused and threatened him in filthy language saying "Manohar aur Giridhar bahar aao, aaj tum dono ko nahi chhodenge, maderchoth ghar ke bahar niklo".

After that you along with your associates left the spot."

10. Apparently both Girdhar and Manohar Harichand Nagdive are brothers and one of them seems to be obliging the police by giving complaints in the manner required. The complainant in both the cases was Manohar. The incident narrated in both the cases is more or less identical. The abuses are also of similar nature. There cannot be a better case of concoction and attribution of a false charge against either of the detenu. We are really pained to find the manner in which the police authorities indulge in creating incidents just to subserve their purpose of showing that they are doing their utmost to maintain peace as well as law and order problem. Though the detention orders in the two cases are passed within a gap of eight days, the detaining authority has miserably failed to notice these facts which are so apparent and glaring and that it further indicates the manner in which the said authority applied its mind and the satisfaction reached. Either of the detention orders stand vitiated on this ground as well. We say so because it is difficult to rely upon even other incidents or grounds which may also be concocted like the one discussed above. We will still refer to other grounds in order to point out that those grounds relate only to law and order problem and not to public order.

11. One of the grounds mentioned in the detention order relates to incident of 8-6-1991. It is alleged therein that the complainant Suresh s/o Wasudeo Jagnale - the owner of a flour mill was accosted by the petitioner and his associates while he was on his way home on bicycle and by show of Gupti a sum of Rs. 165/- and the key of his flour mill were taken out from his pocket forcibly. When he shouted aloud to catch the culprits, all of them disappeared. The documents accompanying this ground include the copy of the complaint. It will be of interest to note how the petitioner came to be involved. The complainant never had occasion to see or come in contact with the petitioner. Both were strangers to each other. The petitioner's name is alleged to have been uttered by one of the associates while asking him to run away. The actual words used are "Dilip jogiya ja". One will have to assume that petitioner needed Instructions to flee. The artificial manner in which his identity is sought to be disclosed throws doubt on the involvement of the petitioner in the crime. In any event, the incident or the criminal activity cannot be stated to be one referable to public order as none else than the complainant is said to be affected by the alleged acts.

12. The ground No. 3 is more or less of the same type as above. It is alleged that the complainant Vijay Wadhwani, the owner of the grain shop, who was returning home after collecting payments from his customers, was accosted by the petitioner and his associates and they forcibly took out from his pocket a sum of Rs. 4,350/- after waving the knives and injuring him a little on the thighs. Apart from the fact that even this incident relates to law and order problem, the happening itself is rendered doubtful. In this case, the petitioner is brought in by introducing words "Mai jogya hoon, pehchanta nahin kya ?". The style of involvement is the same.

13. The fourth round is merely an involvement of the petitioner u/s 135 of the Bombay Police Act, he having violated the prohibitory order issued u/s 37(1) of that Act, the allegation being that the petitioner created commotion by carrying a knife in the particular area. In the absence of any overt act, the ground can be described as vague and also evasive. It is also not sufficient either by itself or cumulatively with other grounds to attract the concept of public order.

14. Thus, in the view which we have taken, all the grounds mentioned in the detention order are either false and concocted or are referable to law and order and not to the public order. The detention order is, therefore, unsustainable and consequently it has to be quashed and set aside.

15. In the result, the petition is allowed. The impugned detention order is quashed and set aside. The detenu be released forthwith if not required for any other offence. Rule is accordingly made absolute.

16. Petition allowed.