

(2014) 07 BOM CK 0239

In the Bombay High Court

Case No : Criminal Writ Petition No. 56 of 2014

Fazal

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 438, 439
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)
Penal Code, 1860 (IPC) — Section 302, 323, 34, 392, 452

Citation : (2014) 07 BOM CK 0239

Hon'ble Judges : S.S. Shinde, J;P.R. Bora, J

Bench : Division Bench

Advocate : R.D. Sanap, Advocate for the Appellant; M.M. Nerlikar, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

S.S. Shinde, J.—By this Petition, under Article 226 of the Constitution of India, the petitioner takes exception to the detention order bearing No. 2013/MPDA/DET-1/CB-09 dated 26.08.2013 issued u/s 3(1) of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981 by the Commissioner of Police, Aurangabad. The petitioner has raised several grounds for seeking quashing of the detention order, however, in our opinion, it is not necessary to advert to all the grounds taken in the Petition except ground No. b, which reads as under :-

b. It ought to be held that, on 26th August, 2013 petitioner was already in judicial custody, as he made an accuse by an authority in C.R. No. I-34/2013. It is, therefore, unwarranted and unjustified to pass an order of detention while a person is in custody. This shows non-application of mind of the detaining authority. The petitioner says that there were no compelling reasons to pass the order of detention in as much as cogent material before the detaining authority

to come to the conclusion that there is imminent possibility of petitioner's release on bail in near future. The order of detention is illegal and bad in law, ought to be quashed and set aside.

2. In response to ground no. b, in affidavit in reply of respondent no. 3, in para 16, stated thus :-

16. With reference to para 11, ground "b" of the representation, deponent submits that the detaining authority was aware about the judicial custody of the petitioner at the time of passing the detention order on 30/08/2011 and the same has been mentioned in para 10 of the grounds of detention which were served to petitioner on 04/09/2011. Deponent further submits that previous criminal records of the petitioner show that he was released on bail and thereafter committed offences repeatedly. Therefore, the say of petitioner that there was no cogent material before the detaining authority to come to the conclusion that there is imminent possibility of detenu's release on bail in three cases in near future is totally incorrect. Hence, the allegations made in this para by the petitioner are totally false and denied.

3. The learned counsel appearing for the petitioner submitted that, the petitioner was already in judicial custody since he is an accused in C.R. No. I-34/2013. It is submitted that, it is unwarranted and unjustified to pass an order of detention while person is in custody, and therefore, it shows non-application of mind of the detaining authority. It is submitted that, there were no compelling reasons to pass the order of detention, in as much as, there is no cogent material before the detaining authority to come to the conclusion that, there is imminent possibility of petitioner's release on bail in near future.

4. Per contra, the learned Additional Public Prosecutor invited our attention to the affidavit in reply, in reply to the ground no. b of the Petition and submits that, the detaining authority was satisfied that, the petitioner is likely to get bail in C.R. No. I-34/2013 under the normal law of land in due course, and therefore, the detention order came to be passed so as to prevent the petitioner from reverting to similar activities prejudicial to the maintenance of public order in future, and therefore, it was necessary to detain the petitioner.

5. We have carefully considered the submissions of the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor for the State and also perused the entire material placed on record and in particular grounds of detention. So far as ground (b) in the Petition is concerned, the Commissioner of Police Aurangabad in para 10 has stated thus :-

10. I have carefully gone through the material placed before me and I am subjectively satisfied that you are acting in a manner prejudicial to the maintenance of public order. I am aware that you are still in judicial custody as bail has not been granted to you in Police Station Begumpura Aurangabad C.R. no. 34/2013 U/s. 302, 34 IPC. However, I have reason to believe that you are likely to get bail in this case under the normal law of the land in due course. In

view of your tendencies and inclination reflected in the offences committed by you as stated above, I am further satisfied that you are likely to revert to similar activities prejudicial to the maintenance of public order in future and that it is necessary to detain you under the "Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons and Video Pirates Act 1981", to prevent you from acting in such prejudicial manner in future." (Emphasis is ours)

6. The original file is made available for our perusal by the respondents. It appears that, the petitioner herein on 15.10.2012 did file the Bail Application No. 1503 of 2012 u/s 439 of the Cr.P.C. for regular bail in C.R. No. I-83 of 2012 registered with Begumpura Police Station for the offence punishable u/s 452, 323, 392 read with 34 of I.P. Code. It further appears that, the said application was allowed and the petitioner was released on bail on certain conditions in aforementioned crime registered with Begumpura Police Station, Aurangabad. It further appears that, the petitioner did file Criminal Application u/s 438 of Cr.P.C. before this Court praying therein for anticipatory bail in connection with C.R. No. I-41 of 2012 registered with Begumpura Police Station for the offences punishable under Sections 452, 323, 504, 506 r/w 34 of I.P. Code. This Court by order dated 13th July, 2012 issued notice to the respondents and in the meantime, in the event of arrest of the accused applicant, the accused applicant Shaikh Fazal Patel S/o Sikandar Patel i.e. petitioner herein was directed to be released on bail furnishing P.R. bond and surety of Rs. 15,000/-. Thereafter the petitioner did file Bail Petition No. 1031/2013 before Sessions Court, Aurangabad under Section 439 of Cr.P.C. for offence punishable u/s 302 read with 34 of I.P. Code in Crime No. I-34/2013 registered with Begumpura Police Station, Aurangabad on 07.04.2013. The said application was filed on 16.08.2013. The Additional Sessions Judge-4, Aurangabad passed the order on the said application on 17.08.2013 and rejected the bail petition. It appears that, the Court passed the reasoned order on merits.

7. Upon careful perusal of the material placed on record and also grounds of detention, it appears that, except observations that the authority has reason to believe that, the petitioner is likely to get bail in C.R. No. I-34/2013 u/s 302 read with 34 of IPC under normal law of land in due course, there is no material on record on which the detaining authority could conclude that, the petitioner may be released on bail. In the facts of the present case, the petitioner was already in judicial custody, as he is accused in C.R. No. I-34/2013. He did apply for bail, however, his bail application was rejected. The C.R. No. I-34/2013 is u/s 302 read with 34 of I.P. Code, and therefore, there was no likelihood of petitioner would be enlarged on bail. The material placed on record does not indicate that, the second application was preferred by the petitioner for bail. Bail Application was rejected on 17.08.2013 and the order of detention is passed by the Commissioner of Police, Aurangabad on 26th August, 2013. In our opinion, there has to be cogent material to show that, the petitioner could be released on bail. This Court at Principal Seat in the case of Nasir Abdul Farid Khan Vs. Shri D.N.

Jadhav, Commissioner of Police, The State of Maharashtra and Secretary, Advisory Board after taking into consideration the various pronouncements of the Supreme Court in the facts of that case held that, need for detention order was not there as there was no likelihood of his (petitioner therein) coming out on bail. It was further observed that, there was no material on record on which the detaining authority could conclude that, the petitioner may be released on bail and there has to be cogent material to show that, he should be released on bail.

In that view of the matter and in view of the authoritative pronouncement of this Court in case of Nasir Abdul Farid Khan (supra), the Petition succeeds on ground no. b. The view which we have taken lends support from exposition of the Supreme Court in the case of Dharmendra Suganchand Chelawat and another Vs. Union of India and others, and in particular para 21 thereof. We do not feel it necessary to go to any other grounds, as the law relating to preventive detention is visited with serious consequences, it is imperative that there should be strict compliance of the same.

8. In the light of above, the Petition succeeds. The order of detention passed by the Commissioner of Police, Aurangabad being No. 2013/MPDA/DET-1/CB-09, dated 26.08.2013 issued u/s 3(1) of M.P.D.A. Act, 1981 is quashed and set aside. The Respondent authority to release the petitioner forthwith, if not required in any other case.

9. It is, however, clarified that, in case the petitioner is released from custody in aforesaid criminal proceedings arising out of C.R. No. I-34/2013 registered u/s 302 of I.P. Code, the question of his preventive detention under the Act on the available material may, be reconsidered by the appropriate authority in accordance with law and this decision shall not be construed as an impediment for that purpose.

10. Rule made absolute to the above extent.

11. Criminal Writ Petition is disposed of in the above terms.