

(1987) 08 BOM CK 0062

In the Bombay High Court

Case No : Criminal Writ Petition No. 462 of 1987

Gullam Nabi Gullam Shabir Shaikh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-08-1987

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3

Citation : (1988) 1 BomCR 102 : (1988) MhLj 108

Hon'ble Judges : S.M. Daud, J;D.N. Mehta, J

Bench : Division Bench

Advocate : K.A. Suleman, for the Appellant; R.P. Desai, Public Prosecutor, for the Respondent

Judgement

S.M. Daud, J.—Petitioner/detenu invokes Article 226 of the Constitution to assail an order of detention made by the Commissioner of Police, Greater Bombay, on 9th October, 1986 under the National Security Act, 1980 (NSA).

2. The detenu is said to have participated in two crimes which took place on 5 August, 1985 and 26 June, 1986 respectively. The first incident occurred in Ishwar Nagar, L.B.S. Marg, Bhandup (West), Bombay, at 9.00 p.m. The locale was the Liberty Gas Services where the Cashier was writing accounts just preparatory to the closing of the shop. At that time, the detenu is said to have rushed into the shop with his associates Stanley who was armed with a knife and Jokim armed with a revolver. The fourth person from this quartet, Joseph Fernandes tagged along without an arm. As soon as the four had effected an entry, the shutter of the shop was pulled down from inside. The cashier Shridhar Ramayya Shetty was then present along with a servant Babu Sampat Pagare. Stanley flourished a knife in the direction of Shetty and warned him against raising his voice. Jokim pointed his revolver at Pagare. Joseph cleaned the counter and snatched the wrist watches on the wrists of Shetty and Pagare. Chilly powder was thrown at Shetty and Pagare whereafter the miscreants

headed out of the shop. A report of the occurrence was given and a crime registered under sections 397 read with 114 of the IPC. The culprits could not be apprehended because the detenu and his associates remained at large. Next, this gang surfaced on 26 June, 1986 and this time they struck at the shop doing business in the name and style of Kamal Jewellers at Maharashtra Nagar, Bhandup (West), Bombay. The owner, Shantilal Jain was then in the shop with his friend Girilal Gisulal Jain. Came to the shop Girilal's daughter Rekha and following her were the detenu and his associates Stanley, Joseph and Jokim all variously armed. Again, the inmates of the shop were threatened and intimidated and robbed of whatever could be found. Before leaving, the detenu and his associates threw chilly powder at Shantilal and Girilal. A report of this occurrence was given and the next day the detenu and his associates were arrested. At that time they were also shown as arrested in the crime committed on 5 August, 1985. The sponsoring authority, viz. the Bhandup Police Station, submitted the relevant papers which included remand applications/crime reports showing that the crimes aforementioned had been confessed to by the detenu and his associates. Having taken into consideration the proposal of the sponsoring authority, the Commissioner of Police, Greater Bombay, on 9 October, 1986 purporting to act u/s 3(2) of the NSA, passed the order of detention assailed in this petition.

3. Mr. Suleman for the petitioner has raised four submissions to challenge the order of detention. It is first contended that the detenu is an Urdu knowing person and translations of the grounds and the relevant papers in that language were not furnished. This was in violation of Article 22(5) of the Constitution, which required "communication" of the grounds of detention to the detenu, so as to enable him to make an effective representation against the same. The Detaining Authority in his affidavits denies that Urdu translations of the relevant papers were not furnished to the detenu. It is his assertion that translations of the grounds and the relevant documents were given to the detenu in Urdu. Mr. Suleman contends that if this be correct, the Detaining Authority could have easily produced an acknowledgment showing the supply of Urdu translations to the detenu. We cannot accept this argument. An affidavit sworn in by the Detaining Authority advancing this assertion suffices to negative the point advanced by Mr. Suleman.

4. It is next contended that in the grounds of detention, the incident which took place on 5 August, 1985 was one which destroyed the live nexus that must always subsist between the prejudicial activity and an order of detention. There is a semblance of plausibility in this contention. What, however, should not be lost sight of is that the order of detention is one made under the NSA. This enactment contains section 5(a), which to the extent material, reads as follows:-

"Where a person has been detained in pursuance of an order of detention (whether made before or after the commencement of the National Security (Second Amendment) Act, 1984) u/s 3 which 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 and accordingly :---

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are :---

(i) vague.

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person,

or

(v) invalid for any other reason whatsoever,

.....

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

Therefore, assuming that the events of 5 August, 1985 were stale and could not have been taken into consideration for founding an order of detention on 9th October, 1986, that would not void the order as a whole. The said order would have to be considered in relation to the event of 26 June, 1986. If that be a permissible ground for the making of an order of detention, it will suffice to justify the validity thereof. Alternatively, the mere lapse of time between the prejudicial activity and the making of the order of detention would not invalidate the latter. Here the grounds recite the disappearance of the detenu and his associates after the crime committed by them on 5th August, 1985. The next time they surfaced, was, on 26 June, 1986. Therefore, it was the absconcion by the detenu and his associates which delayed the making and service of the order of detention. As reckoned from 27th June, 1986 that is the date on which the detenu and his associates were arrested, there cannot be said to be any unreasonable delay having the effect of snapping the link between the prejudicial activity and the detention order.

5. Thirdly, it was urged by Mr. Suleman that the two incidents which constituted the background for the making of the detention order did not affect "public order". They were mere infraction of "law and order" and did not warrant the making on an order of preventive detention. In Arun Ghosh Vs. State of West Bengal, the Supreme Court had this to say:---

"Public order is the even tempo of the life of the community taking the Country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent or causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a

locality which determines whether the disturbance amount, only to a breach of law and order or that of public order."

Tested in the light of this statement of the distinction between the two concepts, the Supreme Court considered a detention order based upon the grounds somewhat similar to those figuring in present case in Kanu Biswas Vs. State of West Bengal, . In that case the order of detention was based on two events which took place on 26 September, 1971 and 4 November, 1971 respectively. In the first incident, the detenu and his associates had robbed one Baidyanath and his wife who were travelling in a local train and had used knives for committing the said crime. In the next incident, the detenu and his associates armed with bombs, knives and iron rods attacked a Police part on the platform at Baliaghata Railway Station. It was argued that both these incidents were infractions of "law and order" having no bearing on "public order" which warranted the passing of an order of detention. Khanna, J., speaking for the Court negated the argument and in doing so observed thus :---

"It would appear from the above that the petitioner and his associates attacked a husband and wife with open knives in a third class compartment of a running train and robbed them of valuable property, including wrist watch, gold ornaments and cash by putting in fear of death. The grounds of detention further show that the above act of the petitioner and his associates created terror and panic among the travelling passengers and thereby disturbed public order. The second incident which took place at 9.40 p.m. on November 4, 1971 related to the attack by the petitioner and his associates on a Police Party on the platform of Beliaghata Railway Station with a view to kill them. The petitioner and his associates are stated to have been then armed with bombs, daggers, knives and iron rods and they exploded two bombs with terrible sound. It is further stated that the above act of the petitioner and his associates created panic and confusion among the passengers and thus disturbed public order. Each one of the above two incidents of September 26, 1971 and November 4, 1971 in our opinion, affected public order and not merely law and order."

Can anything different be said in relation to the two events in which the detenu before us figured? On both the occasions he chose the hour of closure to break into business establishments. He and his associates on both the occasions, were armed with dangerous weapons. These weapons were menacingly flourished and dire threats were hurled at the inmates of the shops. After pocketing everything of value which they could lay hands upon, the detenu and his associates left-but not forgetting to filing chilly powder on the persons of the victims. The modus operandi was to take advantage of the time, the situation and the environment. If incidents of this nature become known, they cannot but arouse a largely felt sense of insecurity. The apprehension would not be confined to the victims but would grip very large sections of people in the area. Each of the two incidents were of a dimension affecting public order and the effects thereof would not be confined to the immediate victims of the crimes.

6. Lastly Mr. Suleman argued that the Detaining Authority had not been apprised of the statement given by the detenu and his associates in the course of the investigation pertaining to the two crimes. This would affect the subjective satisfaction of the detaining authority. Alternatively, if the said authority was apprised of the statements, copies thereof had not been furnished to the detenu and that omission had impaired his right to make an effective representation against the detention order. Factually speaking Mrs. Desai admits that the statements of the detenu and his associates were recorded in the course of the investigation in the two crimes. Learned Counsel makes it known that the culprits had confessed to having committed the crimes on both the occasions. It is not disputed that the Detaining Authority was not given the confession statements and also that copies thereof were not furnished to the detenu. But Counsel refers us to the crime reports/remand applications dated 10 July, 1987 and 29 June, 1986. These documents are at pages 59 and 129 of the compilation. In both these reports there appears the recital that the detenu and his associates had confessed to having committed the crimes dated 5th August, 1985 and 26th June, 1986. Mrs. Desai submits that once the Detaining Authority was apprised of the making of a confession by the detenu and his associates, the obligation cast upon the sponsoring authority had been discharged. By furnishing copies of the crime reports containing the recital about the confession made by him and his associates the detenu had been apprised of a vital fact enabling him to make an effective representation. Therefore, there could be no complaint about the transgression of detenu's rights under Article 22(5) of the Constitution. Mr. Suleman maintains that the confessions ascribed to the detenu and his associates were of a vital importance and it was necessary for the sponsoring authority to place these before the Detaining Authority. In the absence of the original confessions, the subjective satisfaction of the Detaining Authority was impaired and also adversely affected was the right of representation conferred upon the detenu. We cannot agree. The sponsoring authority had made known to the Commissioner of Police the fact of detenu and his associates having made a confession. This feature was taken into consideration by the Detaining Authority in the making of the order of detention. Copies of the crime reports containing the recital were furnished to the detenu and that would suffice for the latter to make an effective representation against the order of detention. It was not necessary to further furnish to the Detaining Authority or the detenu the verbatim confessional statements of the detenu and his associates.

7. The result of the foregoing discussion is that there is no merit in any of the grounds taken to assail the order of detention. The petition fails and the rule is hereby discharged.