
(2000) 02 BOM CK 0070
In the Bombay High Court
Case No : Criminal W.P. No. 1467 of 1999

Hajrat @ Barkya Shoukatali Khan

APPELLANT

Vs

R.H. Mendonca and others

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
Penal Code, 1860 (IPC) — Section 114, 324

Citation : (2000) 02 BOM CK 0070

Hon'ble Judges : Vishnu Sahai, J;P.V. Kakade, J

Bench : Division Bench

Advocate : B.R. Patil with M.A. Chaudhary, for the Appellant; Rajiv Patil, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Vishnu Sahai, J.—Through this petition preferred under Article 226 of the Constitution of India the petitioner-detenu, has impugned the detention order dated 20th May 1999 passed by the 1st respondent Mr. R. H. Mendonca, Commissioner of Police, Greater Mumbai, detaining him under subsection (1) of section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (No. LV of 1981) (Amendment 1996), (hereinafter also referred to as the M.P.D.A. Act).

The detention order along with the grounds of detention also dated May 29, 1999, was served on the petitioner-detenu on May 29, 1999 itself. True copies of the detention order and the grounds of detention are annexed as Annexures "A" and "C" respectively to this writ petition.

2. The prejudicial activities of the petitioner-detenu on which the impugned order of detention is founded are contained in the grounds of detention (Exhibit "C"). Their perusal shows that it is founded on one C.R., being C.R. No. 554/1998 of Dahisar Police station u/s 324/114 Indian Penal Code, registered on the basis of a complaint lodged against the petitioner-detenu and his associates on

18-11-1998 by one Mohammed Arif Memon and two in-camera statements of witnesses A and B, respectively.

The details of the said C.R. are mentioned in paras 5(a-i) and 5(a-ii) of the grounds of detention. They are as under:

The complainant Mohammed Arif Memon is a resident of Ambawadi, Rahim Baug, Sakinabai Chawl, Room No. 1, S.V. Road, Dahisar (East) Mumbai and is engaged in electroplating business. On 6-11-1998 at about 11.30 p.m. when the police of Kashmira Police Station came to Sakinabai Chawl to arrest the petitioner-detenu and his brothers Mehtab, Nasrat and Meraj in connection with some offence, all of them jumped into the premises of the informant. They asked the informant not to shout. The informant came and informed the police that they were hiding in his room. However, the police failed in its endeavour to arrest them. Since the petitioner-detenu and his associates got annoyed with the informant, they threatened him, resulting in his lodging N.C. Complaint No. 4746/98 on 16-11-1998 at Dahisar Police Station against them.

On 18-11-1998 at about 5.45 p.m. the informant on telephone informed Dahisar Police Station that the petitioner-detenu and his brother Nasrat had come in his locality at Ambawadi, and were available there, whereupon the police came and made enquiries with the informant about the petitioner-detenu's associate Nasrat. The informant informed him that he was roaming. Hence the petitioner-detenu and his associates Nasrat, Mehtab and Meraj, armed with weapons like bamboo, hockey stick and iron bars assaulted the informant Mohammed Arif Memon. Nasrat inflicted blows with iron bar on his head and the petitioner-detenu and Meraj assaulted him with hockey stick and bamboo, respectively. Thereafter they ran away. Seeing the violent acts of the petitioner-detenu and his associates tension mounted in the area and people started running helter-skelter. The informant then went to Dahisar Police Station and lodged C.R. No. 554/1998.

2A. The in-camera statements which are of witnesses A and B, respectively, are contained in paragraphs 5(b), 5(b-i) and 5(b-ii) of the grounds of detention.

Witness A who is a vendor residing at S. V. Road, Dahisar (East), Mumbai stated in his statement dated 11-4-1999 that he knew the petitioner-detenu and his associates as notorious goondas who were extorting money from businessmen and hawkers and collecting money from passerby at the point of weapons and who assault those who gave information about them to the police. At about 11 p.m., one day in the last week of March, 1999, when witness A was engaged in his business, the detenu and his associates armed with sword, chopper and hockey sticks came near his cart and the detenu's associate Mehtab placed a sword on the neck of the witness and in an abusive tone told him that he was informing the police and he would show him. Mehtab asked petitioner-detenu's associate Nasrat to check as to how much money he was having and to take out the said money. On this Nasrat slapped him and forcibly removed Rs. 500/- and the petitioner-detenu caused damage to the articles in the cart. Due to their

violent activities the passers by got scared and ran helter-skelter and nobody came forward to help him. While leaving, the petitioner-detenu and his associates threatened him not to report the matter to anyone or the police, else he would be killed and consequently he did not report the matter to the police.

Witness "B" who is a Hotel Manager in Dahisar (East), in his statement dated 11-4-1999, stated that he knew the petitioner-detenu and his associates Nasrat alias Langdya and Mehtab as notorious goondas who are engaged in collecting money from businessmen and hawkers at the point of weapons and assault those who refuse to pay money and nobody dares to complain against them. One day, in the 2nd week of March 1999, when the witness was attending the counter of his hotel and five to six persons were taking food, the petitioner-detenu and his two associates came there, placed orders for food, ate food and when he issued a bill of Rs. 90/- petitioner-detenu's associate Mehtab accepted the bill, tore it off and then told this witness in an abusive tone that he did not recognise him he was brother of the area and knowing this he had given a bill; so saying he whipped out a knife, kept it on his stomach and slapped him on his face. He then threatened that in case he raised his voice he would thrust the knife in his stomach. Thereafter the petitioner detenu and his associate Nasrat forcibly took away Rs. 450/- from his drawer. While leaving the petitioner-detenu broke the glass of the show case, seeing which the passers by started running away and the customers in the hotel hurriedly left the place. The witness, out of fear did not report the incident to the police.

2B. A perusal of para 6 of the grounds of detention would show that the petitioner-detenu has been detained as a dangerous person under the MPDA Act.

3. We have heard learned counsel for the parties. Although in this Writ Petition a large number of grounds have been pleaded, running from grounds 6(a) to 6(1) Mr. B.R. Patil learned counsel for the petitioner-detenu only canvassed before us two grounds viz. (i) on account of the incorrect Hindi translation furnished to the petitioner-detenu his right to make an effective representation under Article 22(5) of the Constitution of India was impaired and (ii) even if the C.R. and the in-camera statements referred to in the grounds of detention are accepted on their face value they disclose breach of law and order and not public order and consequently the petitioner-detenu cannot be preventively detained under sub-section (1) of section 3 of the M.P.D.A. Act.

4. We have perused the said grounds and the affidavit of the detaining authority rebutting them. In the return the detaining authority has emphatically denied that the C.R. and the in-camera statements of witnesses A and B, mentioned in the grounds of detention only show violation of law and order and not public order and that the petitioner-detenu was deprived of his right of making an effective representation under Article 22(5) of the Constitution of India.

5. We have examined the said grounds and the reply of the detaining authority in respect of them and we are constrained to observe that we do not find any merit

in either of the two grounds.

6. We would like to take up the first ground first. The said ground is that on account of the incorrect Hindi translation supplied to the petitioner-detenu his right of making an effective representation under Article 22(5) of the Constitution of India has been impaired.

Mr. B. R. Patil, learned counsel for the petitioner-detenu invited our attention to two instances of incorrect translation. He pointed out that in the original grounds of detention which are in English in para 6 it has been mentioned that the petitioner detenu had created terror in the localities in question and the people in the said localities were experiencing insecurity and were living in perpetual fear and the even tempo of life was disturbed on account of such activities of the petitioner detenu and since action taken under the normal law of the land was found to be insufficient, it was imperative to detain him under the M.P.D.A. Act, in order to stop him from committing criminal activities, prejudicial to the public order in the areas in question.

Mr. Patil urged that in the Hindi translation furnished to the petitioner-detenu the word "public order" has been translated as "public peace".

Mr. Patil also urged that whereas in para 7 of the original grounds of detention it has been mentioned that the petitioner-detenu, being a free person was likely to revert to similar activities, prejudicial to the maintenance of the public order in future and hence in order to prevent him from committing such activities in future it was imperative to detain him under the M.P.D.A. Act. In the Hindi translation the word public order has been translated as public peace.

In the contention of Mr. Patil the said two errors in the Hindi translation of the word "Public order" have impaired the petitioner-detenu's right of making an effective representation under Article 22(5) of the Constitution of India.

7. We regret that we do not find any merit in Mr. Patil's contention. In our view, the expression "public order" and "public peace" are akin and merely because in the Hindi translation furnished to the detenu in place of public order public peace was mentioned, the detenu's right to make an effective representation under Article 22(5) of the Constitution of India was not impaired.

Our view is fortified by a Division Bench decision of this Court reported in Kamlakar Shankar Patil and etc. Vs. V.B. Akashi, Commissioner of Police of Thane District and another, wherein in para 6 it was observed thus :

6. The expression public order has a very wide connotation. Public order is the basic need in any organised society. It implies the orderly state of society and community in which citizens can peacefully pursue their normal activities of life. In the words of an eminent Judge of the Supreme Court of America "the essential rights are subject to the elementary need for order without which the guarantee of those rights would be a mockery Public order is synonymous with public peace, safety and tranquility", aired of the grounds on which the impugned

detention order is founded.

8. It should be borne in mind that a perfect translation may not always be feasible, though it cannot be disputed that it would be ideal to have it.

The thing which the Court has to see is whether the translation is such that the meaning is conveyed and if the meaning is conveyed then even if the translation is not perfect or exact, the detenu's right to make an effective representation under Article 22(5) of the Constitution of India would not be impaired.

After going through the Hindi translation we are satisfied that the true meaning has been conveyed to the petitioner.

For the said reasons we reject the first ground.

9. We also find no merit in the second ground viz. that the averments taken in the C.R. and the in-camera statement of witnesses A and B disclose breach of law and order simpliciter and not public order.

Way back in the year 1970, in the oft quoted case reported in Arun Ghosh Vs. State of West Bengal, , Hidayatulla C. J. drew the distinction between concepts of law and order and public order. The ratio laid down in para 4 of the said decision is that if as a consequence of an act the even tempo of the life of the individuals is affected the said act amounts to infraction of law and order, but if as a consequence of it the even tempo of life of a segment of community or community as a whole is affected, it would constitute violation of public order.

10. It is pertinent to mention that the detenu has been detained as a dangerous person u/s 2(b) (1) of the M.P.D.A. Act.

We have no doubt in our mind that he committed breach of public order as a dangerous person.

Dangerous person has been defined in section 2(b-I) thus : "2(b-I) "dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets of the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959."

11. An analysis of section 2(b-I) would show that if a person persistently or repeatedly or continuously, either by himself or as a member or leader of a gang commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code (I.P.C.), he would be a dangerous person.

A perusal of the C.R. and the in-camera statements contained in the grounds of detention would show that the petitioner-detenu committed offence punishable u/ s 324 of Indian Penal Code which falls under Chapter XVI of Indian Penal Code and committed offences of robbery which would fall under Chapter XVII of the

Indian Penal Code.

In our view since the petitioner-detenu was persistently and repeatedly committing such offences he would be deemed to be habitually committing offences punishable under Chapter XVI and XVII within the meaning of section 2(b-I).

12. We feel it pertinent to mention that the in-camera statements fall within the ambit of the expression commission of any of the offences used in section 2(b-I) of the M.P.D.A. Act.

We are fortified in our view by the decision of the Supreme Court reported in AIR 1999 SCW 2222, Appellant/Petitioner... Amanulla Khan Kudeatalla Khan Pathan vs. Respondent... State of Gujarat. In the said case the detenu was detained as a dangerous person u/s 2(c) of the Gujrat Prevention of Anti-Social Activities Act (16 of 1985). The definition of dangerous person u/s 2(c) of the said Act is couched in identical words as in section 2(b-I) of the M.P.D.A. Act. In fact it has been bodily lifted from the said Act. A perusal of the said decision would show that the detenu was detained on the basis of one C.R. and two in-camera statements and it was urged before the Supreme Court that he could not be detained on the said material as a dangerous person but the Supreme Court repelled the contention.

13. We now turn to section 2(a), 2(a)(iv) and the explanation to section 2(a)(iv) of the said Act.

Section 2(a) provides that acting in any manner prejudicial to the maintenance of public order means :

(i) xx xx xx

(ii) xx xx xx

(iii) xx xx xx

(iv) in the case of a dangerous person, when he is engaged, or is making preparation for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order."

A perusal of section 2(a)(iv) would show that when, a person is engaged, or is making preparation for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order, he would be acting in a manner prejudicial to the maintenance of public order.

The explanation provides that public order is deemed to have been adversely affected if any of the activities of any of the persons, referred to in clauses (i) to (iv) directly or indirectly cause or are calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or a section thereof.

A perusal of the in-camera statements of witnesses A and B would show in crystal clear terms that as a result of the actions of the petitioner-detenu and his associates a feeling of insecurity was created in the section of the public which was present there. For instance the statement of witness A shows that as a result of the violent activities of the petitioner-detenu and others, passersby got scared and ran away helter and skelter and nobody came forward to help him and the statement of witness "B" shows that seeing the incident the passers by started running away and the customers hurriedly left the place. Similarly in para 5(a) of the grounds of detention wherein details of C.R. No. 598 are given, it mentioned that seeing the violent acts of the petitioner-detenu and others tension mounted in the area and people started running helter-skelter.

14. In our view, the material mentioned in the preceding paragraph would clearly go to show that the petitioner-detenu's activities as a dangerous person were, both directly and indirectly causing and were calculated to cause harm danger or alarm and feeling of insecurity amongst the section of the public mentioned in the C.R. and the in-camera statements; referred to above. For the said reasons we reject the second submission also.

15. No other point was pressed before us by Mr. B. R. Patil, learned counsel for the petitioner-detenu.

16. In the result this petition is dismissed and rule is discharged.