

(2000) 09 BOM CK 0069

In the Bombay High Court

Case No : Criminal Writ Petition No. 149 of 2000

Kamala Dhawade

APPELLANT

Vs

O.P. Bali, Commissioner of Police and Another

RESPONDENT

Date of Decision : 30-09-2000

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)

Citation : (2001) 5 BomCR 443 : (2001) 1 MhLj 97

Hon'ble Judges : R.K. Batta, J;P.S. Brahme, J

Bench : Division Bench

Advocate : M.R. Daga, for the Appellant; D.B. Yengal, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R.K. Batta, J.—The wife of the detenu has filed this petition seeking to quash and set aside detention order dated 20-12-1999 which was served on the detenu on 8-1-2000. Reference was made to the Advisory Board u/s 10 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short, the said "Act") on 17-1-2000. The Advisory Board gave its opinion on 22-12-1999 and the Government confirmed the order of detention on 21-2-2000.

2. The detention order was issued by the Commissioner of Police, Nagpur in exercise of power conferred under sub-section (1) of section 3 of the said Act read with Government Order, Home Department (Special), No. DDS. 1399/4/SPL-3 (B) dated 19th November, 1999. The same was approved by the State Government on 28-12-1999. The detention order and the grounds of detention were served on the detenu on 8-1-2000 itself. In the grounds of detention, it is stated that since the year 1979, the petitioner has been engaging himself in criminal activities and has created reign of terror in the minds of peace-loving

and law-abiding people. The grounds of detention cite 51 past offences from the year 1978 to 12-1-1999. In the past history of the detenu, it is further stated that he was detained on 14-4-1975 under the provisions of the Maintenance of Internal Security Act, 1971 and was released from the said detention on completion of two years on 14-4-1977. Even after release, the detenu continued to indulge in the commission of violent and desperate acts and thereby continued to create terror in the minds of people. Then four other criminal cases of the years 1974 to 1976 are cited as also the fact that the detenu was externed u/s 57(a)(i) of the Bombay Police Act from Nagpur City for a period of two years by the Deputy Commissioner of Police, C.I.D., Nagpur vide order dated 7-3-1978 which was served on the detenu on 15-3-1978. The petitioner was again detained under the National Security Act by the Commissioner of Police, Nagpur vide order dated 18th October, 1981 and was released after one year on 17-10-1982. The petitioner was once again detained under the provisions of the National Security Act, 1980 by Commissioner of Police vide order dated 20-11-1983, but he was ordered to be released by the Advisory Board on 23-12-1983. The petitioner was again detained under the provisions of the National Security Act, 1980 by the Commissioner of Police, Nagpur vide order dated 1-5-1992 and the writ petition filed by the petitioner challenging the detention of the petitioner was dismissed by this Court and the detenu was released by the Supreme Court on 30-4-1993.

3. The detention order then cites one extortion case against the petitioner registered under Crime No. 418/99 under sections 386, 323, 506 read with sections 34 and 120-B of the Indian Penal Code in which the detenu was first granted interim bail and subsequently the interim bail was confirmed. The prosecution relies on this criminal case as also gist of four in camera statements of witnesses "A" to "D".

4. The detention is challenged on various grounds and we shall deal with the said grounds which have been urged before us, one-by-one.

5. Learned Advocate for the petitioner has first of all urged before us that the detenu was not informed by the Detaining Authority that he could make representation to the Detaining Authority within 12 days of the order and after placing reliance on the Full Bench judgment of this Court in Sunil Ghate Vs. The State of Maharashtra and others, , which has been confirmed by the Apex Court in State of Maharashtra and Others Vs. Santosh Shankar Acharya, , it has been urged before us that on account of non-communication of the same, the right of making effective representation under Article 22(5) of the Constitution of India has been affected. We may point out that in this case the argument advanced by the learned Advocate for petitioner does not arise at all since the detention order dated 20-12-1999 had been served on the petitioner only on 8-1-2000 and prior to that, the Government had already approved the detention order on 28-12-1999. Therefore, we do not find any merit in the first submission of the learned Advocate for the petitioner.

6. The next submission advanced by the learned Advocate for petitioner is that the past history and the instances quoted in the detention order have influenced the Detaining Authority for the purpose of passing the detention order. In this respect, the contention of respondent No. 1 is that the past history and the instances given upto para 10 of the Detention Order have not been taken into consideration by the Detaining Authority, but the said instances have been quoted in the detention order only to show the detenu's inclinations/tendencies and propensities towards committing criminal offences prejudicial to the maintenance of public order. He has drawn our attention to the fact that this is specifically stated in the detention order in paragraphs 13 and 16 that the subjective satisfaction has been arrived at on the basis of paragraph 11 and four in-camera statements alone.

7. The Apex Court in *Fitrat Raza Khan Vs. State of Uttar Pradesh and Others*, has pointed out that past conduct or antecedent history of a person can appropriately be taken into account in making a detention order and it is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order.

8. The Apex Court in *Abdul Sathar Ibrahim Manik Vs. Union of India and others*, had laid down that when the Detaining Authority has merely referred to certain incidents in the narration of events and has not relied upon them, the same will not cause any prejudice to the detenu in making an effective representation. Whether in a given case the Detaining Authority has casually or passingly referred or relied upon such instances would depend on the facts and the grounds which are required to be examined by the Court.

9. The Apex Court has in *Vashisht Narain Karwaria v. Union of India and others* AIR 1999 S.C. 1272 laid down that submissions which are extraneous touching the character of the detenu though not referred to in the grounds of detention, might have influenced the mind of the Detaining Authority to some extent one way or other in reaching the subjective satisfaction to take the decision of directing the detention of the detenu. It was observed that had these extraneous materials not been placed before the Detaining Authority, he might or might not have passed the detention order as a result of which it could be held that the detention order is suffering from the vice of consideration of extraneous materials vitiating the validity of the order.

10. Besides this, it is now well settled by a series of judgments of the Apex Court, viz. *Ajay Dixit Vs. State of U.P. and Others*, , *Raj Kumar Singh v. State of Bihar* 1986 S.C.C. (Cri.) 481 and *Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others*, that old and stale incidents cannot be construed as justifiable ground for passing an order of detention. There should be proximity of such incidents and live link between the incidents and the detention order.

11. In the light of the above proposition of law, the submissions made by the learned Advocate for petitioner and learned A.P.P. are required to be examined.

12. Though in para 2 of the English grounds of detention, it is stated that 51 offences referred therein are only instances of past history which have not been taken into consideration while formulating this order of detention, yet the Marathi translation of the detention order which was given to the detenu did not contain the fact that the said 51 offences referred to in para 2 of the detention order have not been considered while formulating the detention order. This part is totally absent in the Marathi translation which was furnished to the detenu. The contention put forward by learned Addl. Public Prosecutor that it was a mere oversight, cannot be accepted, because the lapse which goes to the root of the matter cannot be lightly taken since it may affect the right of the petitioner for making effective representation under Article 22(5) of the Constitution of India. The lapse is serious enough for which the Detaining Authority should take action against the concerned Police Officer who has translated the English version of the grounds of detention wherein the relevant portion that 51 offences have not been considered while formulating the detention order is missing from the Marathi translation which was served on the detenu. It is now well settled that the detenu must be served with the detention order in the language known by the detenu and in case the translation of relevant documents or part of document in the language known by the detenu is not furnished, it vitiates the detention order.

13. Be that as it may, in respect of the past history which is enumerated in paragraphs 3 to 10, it is nowhere stated in the said paragraphs specifically that the same have not been taken into consideration though, in paragraphs 13 and 16 reference relating to reliance placed for the purpose of subjective satisfaction is restricted only to paragraph 11 and four in-camera statements. The tenor of the detention order does suggest that this past history has, in fact, influenced the Detaining Authority in the decision-making process for the purpose of the detention order. The detention order repeatedly states that detenu has created reign of terror in the minds of people. All these instances, even otherwise, have neither proximity nor live link for the purpose of detention. In addition, we would like to point out that many of the instances of criminal offences which have been referred to in para 2 and para 4 of the detention order must have been disposed of and if anyone of those matters had ended in favour of the detenu, then obviously the same could not be referred even to show course of conduct since acquittal obliterates the offence itself. Though various criminal offences were listed in para 2 and para 4 of the detention order, yet it appears that no material was placed before the Detaining Authority as to what was the final outcome of the said cases. In respect of the convictions which are referred to in para 4, learned A.P.P. could produce only two of them and two others could not be produced even after sufficient time was granted. Non-supply of this information as to the final outcome of the said cases has also vitiated the detention order since, even the past history of the petitioner had not been correctly placed before the Detaining Authority with the up-to-date information of the outcome of

the said cases.

14. The Apex Court in Dharamdas Shamlal Agarwal Vs. Police Commissioner and Another, has laid down that order of detention would stand vitiated if the fact of acquittal of two of the cases mentioned in the table appended to the grounds of detention are not placed before the Detaining Authority.

15. Two Division Bench judgments of this Court in Anil v. State of Maharashtra 2000(Supp.) Bom.C.R. 154 : 2000(II) C.C.R. 139, and Sunil Bhagat v. State of Maharashtra and others, Criminal Writ Petition No. 262/99 have in a similar situation, taken similar view and we have no reason, in the facts and circumstances of this case, to take a different view of the matter. Thus, it appears that satisfaction of the Detaining Authority is influenced by the material of which copies were not furnished to the petitioner which has affected the right of the petitioner to make effective representation. The instances referred to in paras 2 to 10 have thus crept into the formation of subjective satisfaction, thereby vitiating the detention.

16. Even inspite of the above conclusions, we would still examine the instances which have been relied upon for the purpose of formulating opinion for the detention of the detenu. The prosecution relies upon a case of extortion registered under Crime No. 418/99 under sections 386, 323, 506 read with sections 34 and 120-B of the Indian Penal Code. In this case, certain documents which are said to have been got executed by the detenu with force were executed on 15-10-1997 and the First Information Report in respect of the incident was filed on 15-10-1999. In respect of this incident, the detenu was ordered to be released on bail by the learned Addl. Sessions Judge, Nagpur. Initially, interim bail was granted on 6-11-1999 which was confirmed vide order dated 26-11-1999. It is pertinent to note that the learned Addl. Sessions Judge took into account and rightly so, the delay in filing the complaint and also the fact that the dispute appeared to be of civil nature. Thus, in the light of observations of competent judicial authorities Crime No. 418/99 could not be used for the purpose of detention of the detenu. Besides this criminal case, we are left with four in camera statements. The in camera statement of witness "A" pertains to an incident of 1994 which has no proximate or live link with the detention of the detenu. in camera statement of witness "B" does not give the date or even the year of incident and likewise the in camera statement "D" also does not give the year of the incident though the same is said to have happened in the month of August on the "Rakshabandhan Day". Therefore, these in camera statements suffer from the same vice that there is no proximity or live link of these instances with the order of detention. We are, therefore, left with only one instance, viz. in camera statement of the witness "C" which pertains to the threat given by the detenu to a worker who was working for his brother Anil for the purpose of Vidhan Sabha election. This incident can, by no stretch of imagination, be considered as an incident of public order, but it is an incident against an individual which pertains to law and order.

17. In view of the above, none of the instances, viz. Crime No. 418/99 under sections 386, 323, 506 read with section 34 and 120-B of the Indian Penal Code and four in camera statements on which the prosecution has relied, make out a case for detention on the ground of adversely affecting the maintenance of public order. The detention order is, therefore, liable to be quashed and set aside.

18. For the aforesaid reasons, the detention order dated 20-12-1999 cannot be sustained. Accordingly, the same is liable to be quashed and set aside and it is hereby quashed and set aside. The detenu Harishchandra Madhavrao Dhawade is, therefore, ordered to be released forthwith in case he is not required in any other case.