

(2000) 09 BOM CK 0084
In the Bombay High Court
Case No : Criminal Petition No. 222 of 2000

Kamlabai Yadav (Smt.)

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

Constitution of India, 1950 — Article 25(5)
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)

Citation : (2001) ALLMR(Cri) 120 : (2001) 5 BomCR 352 : (2001) CriLJ 452

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

Bench : Division Bench

Advocate : S.A. Jaiswal, for the Appellant; Arvind Mujumdar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R.K. Batta, J.—The petitioner who is mother of detenu, seeks quashing of detention order dated 16-10-99 of the Commissioner of Police, Nagpur, as also the order dated 27-10-99, whereby the said detention was approved by the State Government and order dated 2-12-99 by which the said detention was confirmed by the Advisory Board.

2. The detenu Bharat @ Akku Kalicharan Yadao was ordered to be detained by Commissioner of Police vide order dated 16-10-99 issued u/s 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (hereinafter referred as said Act) read with order of Home Department (Special) No. DDS. 1399/4/SPL. 3(B), dated 10th August, 1999. Grounds of detention dated 16-10-99 were served on the detenu. The State Government approved the order of detention dated 16-10-99 on 27-10-99. Reference to the Advisory Board u/s 10 of the Act was made on 27-10-1999 and the Advisory Board given its opinion on 25-11-1999. After considering the report of the proceedings of Advisory Board the detention

order was confirmed by the Government on 2-12-99.

3. The detention order is challenged by the petitioner on various grounds, but the learned Advocate for the petitioner during the course of arguments has pressed four grounds namely:

1) Subjective satisfaction is not recorded according to law specially when the petitioner is in jail since June, 1999 and not applied for bail. 2) Translated documents in mother tongue have not been furnished to the petitioner. 3) There is non-application of mind on the part of Detaining Authority in as much as the Detaining Authority has in fact considered the material of Para 1 to 3 of copy of grounds which is said to have been not considered and documents in support of the paragraphs 1 to 3 have not been supplied. 4) There is no live-link between the last offence committed and the detention order. We shall deal with the grounds raised by learned Advocate for the petitioner one by one.

4. The first ground raised by learned Advocate for the petitioner is that subjective satisfaction is not recorded in accordance with law specially when the petitioner is in jail since June 1999 and has not applied for bail. In this connection, it has been urged by learned Advocate for the petitioner that the detenu was already in custody from 16-6-1999 in connection with offence u/s 386 and 302 of I.P.C. and had neither applied for bail nor there was any likelihood of his being released on bail and the order of detention suffers from non application of mind on this count. In reply respondent No. 2 in the return had stated that it is true that the petitioner was arrested on 15-6-99 and thereafter he had not applied for bail and was in magisterial custody, but bail and detention are two different matters. It is further stated in the return that whether a person on bail or is not, it does not minimize the gravity of the offence and the bail matters are not considered while formulating detention order and grounds of detention.

5. Learned Advocate for the petitioner has after placing reliance on judgment reported in Veeramani Vs. State of T.N., has urged that when a person detenu is already in custody, then the detention order can be validly passed if the authority passing the order is aware of the fact of his being in custody and that the Detaining Authority has reason to believe on the basis of material that there is possibility of his being released on bail and on being released the detenu would in all probabilities indulge in prejudicial activities. He has also relied upon the Dharmendra Suganchand Chelawat and another Vs. Union of India and others, as also Kamarunnissa and Others Vs. Union of India and another, . Both these judgments have been considered by the Apex Court in Veermani v. State of Tamilnadu (supra). The reading of the said authorities shows that detention order can be passed against a person who is already in custody, if the authority passing the order is aware of the fact that he is in actual custody and if he has reason to believe on the basis of material placed before him if (a) that there is a real possibility of his being released on bail; (b) that on being so released he would in all probability indulge in prejudicial activity and it is felt essential to

detain him to prevent him from doing so.

6. It is no doubt true that in the case under consideration the Detaining Authority was aware that the detenu was already in custody, but there was no material before the Detaining Authority that detenu was likely to be released on bail. In fact the detenu was detained for offence u/s 368 and 302 of I.P.C. and the admitted position is that he has not applied for bail, as can be seen from the reply filed on behalf of respondent No. 2. In the said reply it is also admitted that the detenu had not applied for bail. However, in the return a very curious stand has been taken by the Detaining Authority that the bail and detention are two different matters and person-accused of an offence may and may not go for bail as per his choice and that, to be on bail or not does not minimize the gravity of the offence committed by the detenu. It is pertinent to mention that according to the said return, bail matter are not considered while formulating the detention order and grounds of detention. This clearly shows non application of mind on the part of the Commissioner of Police, since in a matter where the detenu is already in custody for the purpose of issuing detention order, it is necessary to consider the possibility of grant of bail for the purpose of issuing detention order. Therefore, there was no sufficient data available before the detaining authority for the purpose of issuing the detention order when the detenu was already in custody and had not applied for bail, nor there appeared to be any possibility of his getting bail. Therefore, the satisfaction arrived at by the Detaining Authority, in the circumstances, without considering all these aspects, vitiates the order.

7. The next ground on which the detention is challenged is that the translation of some of the documents in mother tongue of the detenu was not furnished. In this respect the contention of the detenu is that the documents at page 5 medico legal certificate, page 31-36 postmortem report, at page 53-58 on Form B and at page 91 the report of the Chemical Analyser and page 101 order of extension of police custody remand are in English and translated copies of the same in mother tongue of the detenu which are material, have not been furnished. Law in this respect is well settled that the copy of the detention order as well as documents in support thereof should be furnished to the detenu in his mother tongue. Admittedly, in the case under consideration copies of the some of the documents which we have already referred above were not furnished to the detenu in his mother tongue. In the return filed by the respondent No. 2 it has been stated that the said documents are medico legal certificate, postmortem report, C.A. Report which are considered as expert documents and if they are translated the very terminology could change. This so called explanation, which is otherwise not acceptable, does not wipe out the duty enjoined under law on the Detaining Authority to furnish translation in the language known by the detenu. Though, the learned Advocate for the petitioner quoted a number of authorities on this issue, yet in view of the settled position of law it is not necessary to refer to the same. The non furnishing of the translations of the said documents in the language known by the detenu affects the fundamental right of the detenu to make effective representation under Article 22(5) of the Constitution and on this

count also the detention order is vitiated.

8. The third ground on which the detention order is challenged is that the Detaining Authority has considered the material contained in para 1 to 3 copies of which have not been furnished to the detenu and the same has vitiated the detention order. In this respect the case of the respondent No. 2 is that what is contained in para 1 to 3 pertains to the previous history and past cases against the detenu and the same has been referred in the grounds of detention to show the inclination of detenu and tendency towards commission of offence. However, the said offences are not considered while formulating detention order against detenu. In this respect the learned Advocate for the petitioner relied upon a number of authorities including Division Bench judgment of this Court in *Anil v. State of Maharashtra and others* 2000(2) C.C.R. 139 and *Sunil Ishwarlal Bhagat v. State of Maharashtra and others* Criminal Writ Petition No. 262/1999 including *Vijay Damaji Gaidhane v. State of Maharashtra* and another in Criminal Writ Petition No. 172/2000. We shall refer to some of the authorities on this aspect.

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. The Apex Court in *Abdul Sathar Ibrahim Manik Vs. Union of India and others*, has 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 instance would depend on the facts and the grounds which is required to be examined by the Court. 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 the other in respect 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. If we have a close look at the grounds disclosed in the detention order, it starts with the paragraph: "Since the year 1997 you have been continuously engaging yourself in commission of violent and desperate acts such as ... and thereby created a reign of terror in the mind of peace loving and law abiding citizens ... your such activities were found to be prejudicial to the maintenance of public order....". In the second paragraph of the grounds of detention five cases are enumerated to show mind inclination/tendency towards committing crimes, but it is stated that the said offences are not considered while formulating detention order. Para 3 of

the detention order also refers to the fact that the petitioner had shown utter disregard for the law of the land and created a reign of terror among the law abiding and peace loving citizens of the locality. In para 4 of the detention order, the detenu is dubbed as a dangerous person as defined under the provisions of the said Act. The detenu was thus dubbed as dangerous person on the basis of para 1 to 3 which certainly has gone into and influenced in the passing of the detention order. It is only thereafter that the detention order enumerates the recent criminal activities on the basis of which the detention order is said to have been passed which includes two offences and two in camera statements of the witnesses. The tenor of the grounds of detention does suggest that past history has considerably influenced the Detaining Authority in passing the detention order and on the basis of the past history the detenu was first dubbed as dangerous person and then only the recent criminal activity has been referred to in the detention order. The copies of the said material were not furnished to the petitioner which influenced the Detaining Authority in passing the detention order which has also affected the right of the detenu to make effective representation, thereby vitiating the detention order. Three Division Benches of this Court including one to which both of us are members have taken a similar view in *Anil v. State of Maharashtra and others* (supra) , *Sunil Bhagat v. State of Maharashtra and others* (supra) and *Vijay Damaji Gaidhane v. State of Maharashtra and others* (supra) and the detention orders have been quashed on account of the tenor of the grounds of detention in similar situation and we have no reason to take a different view of the matter.

9. Last ground urged by the learned Advocate for the petitioner that there is no live link between the alleged last criminal activity and the detention order. In this respect the learned Advocate for the petitioner has relied upon *Mandakathingal Abdulla v. Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi and others* 1989 CLJ 2259 and *Pradeep Nikanth Paturkar Vs. S. Ramamurthi and others*, . On the other hand on this aspect learned A.P.P. has relied upon the *Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others*, . *Hasan Khan Ibne Haider Khan Vs. R. H. Mendnoca and Others*, . Law on this aspect is settled that old and stale incident cannot be construed as justifiable ground for passing an order of detention and there should be proximity of such incident and live link between the incident and the detention order. In this respect no straight jacket formula can be laid down and each case will depend on its facts and circumstances. On facts even short delay which is unexplained may vitiate detention order and on the other hand long delay which is explained may not vitiate the detention order. The Apex Court in *Golam Hussain @ Gama v. Commissioner of Police, Calcutta and others* (supra) has pointed out that no mechanical test on the counting months of interval is sound, but it all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap short or long on the reason for delay in taking preventive action, like information of participation being available only in the course of investigation.

10. In the case under consideration the detention order is based upon the offence under sections 452, 427, 323, read with section 34 of I.P.C. which took place on 25-2-1999 and decoity, with murder under sections 396 and 302 I.P.C. which took place on 7-6-99. In addition the detention order is based upon two in-camera statements where the incidents are reported to have taken place in May-June 1999, but they did not come forward before the police to report and it is only on the assurance given to keep their statements anonymous that they came later on to give their statements. When their statements were recorded, is not reflected in the ground of detention. Therefore, in these circumstances, it is difficult to come to the conclusion that there was live link between the detention order and the activities on the strength of which the detention order has been formulated. In fact no explanation has been offered by the Detaining Authority in the return in this respect and the return simply states that there is no time frame mentioned in this respect between the date of commission of offence and date of order. Therefore, we hold that live link between the alleged activities of the detenu and the passing of the detention order has not been established and the detention order is liable to be quashed and set aside on this ground as well.

11. For the aforesaid reasons the detention order dated 16-10-1999 issued by the Commissioner of Police, Nagpur is hereby quashed. The detenu Bharat @ Akku Kalicharan Yadav shall be set at liberty in case he is not required in any other case. The petition stands disposed of in aforesaid terms and the rule is made absolute.

Petition allowed.