

(2002) 01 BOM CK 0011

In the Bombay High Court

Case No : Criminal Writ Petition No. 1545 of 2001

Kamlesh Rampalat Kashyap

APPELLANT

Vs

M.N. Singh and Others

RESPONDENT

Date of Decision : 15-01-2002

Acts Referred:

Arms Act, 1959 — Section 25, 3
Bombay Police Act, 1951 — Section 37, 37(1)
Constitution of India, 1950 — Article 226
Maharashtra Control of Organised Crime Act, 1999 — Section 21
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 37
Penal Code, 1860 (IPC) — Section 34, 393, 394, 397, 452

Citation : (2002) CriLJ 858

Hon'ble Judges : Vishnu Sahay, J;S.K. Shah, J

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; I.S. Thakur, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Vishnu Sahay, J.—Through this writ petition preferred under Article 226 of the Constitution of India, the petitioner detenu Kamlesh Rampalat Kashyap has impugned the order dated 2-8-2001 passed by the first respondent Mr. M.N. Singh, Commissioner of Police, Greater Bombay, detaining him under Sub-section (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 referred to as the M.P.D.A. Act).

The detention order along with the grounds of detention which are also dated 2-8-2001 was served on the detenu on 4-8-2001 and their true copies are annexed as Annexure-A and B respectively to this writ petition.

2. A perusal of the grounds of detention (Annexure-B) would show that the

impugned order is founded on two C.Rs. namely C.R. No. 15 of 2001 under Sections 393, 452, 511, 34, IPC r/w 37(a)(i) of the Mumbai Police Act registered on the basis of complaint dated 7-1-2001 lodged by Smt. Mary Kutty Thomas at Khar Police Station and C.R. No. 70 of 2001 under Sections 394, 397, 452, 511, 34, IPC r/w Sections 3, 25 of the Arms Act and 37(1)(a) of the Mumbai Police Act registered on the basis of complaint dated 23-2-2001 lodged by Smt. Leena Rustam Dalal at Cuffe Parade Police Station and in-camera statements of two witnesses namely A and B which were recorded on 25-6-2001 and 26-6-2001 respectively.

2-A. In short, the recitals in the said C.Rs. and in-camera statements are as under :--

We begin with C.R. No. 15 of 2001 of Khar Police Station.

A perusal of paras 4(a), 4(a)(i) and 4(a)(ii) of the grounds of detention would show as under :--

The informant Smt. Mary Kutty Thomas is a resident of C.G.S. Quarters, Sector 3, Building No. 206, R. No. 2787, 1st floor, Antop Hill, Sion, Bombay. She is a nurse by profession and is working with Shri Kanhailal Totaram Sindhvani residing at Mount Prospect, 4th floor, Flat No. 80, 20 Union Park, Khar (W) Mumbai. She looks after Smt. Gopi Kanhailal Sindhvani wife of the aforesaid Kanhailal. On 7-1-2001 at about 8.45 a.m. the door bell rang and the maid-servant Smt. Anandibai opened the door. The informant Smt. Thomas saw the detenu, his unknown associate and his associate named Kali Bandjan Govindjan, Kali Govindjan asked the maid-servant of Kanhailal Sindhvani whether she wanted a cook whereupon the latter replied as to who had sent him. At that juncture, the detenu, Kali Govindjan and his associates armed with choppers entered the flat. Kali on the point of chopper dragged Smt. Anandibai in the bed room and threatened the two persons who were present there on the point of chopper and told them to quietly sit down. Thereafter, another associate of the detenu entered inside the room and a third associate of the detenu dragged the informant to the bed room where the maid-servant had been confined. However, the informant freed herself; broke open the glass of the bathroom window; and shouted for help. On hearing her shouts, neighbours collected and thereafter the detenu and others ran away.

The details pertaining to C.R. No. 70 of 2001 which are contained in para 4(b), 4(b)(1) and 4(b)(11) in short are as under :--

The informant Smt. Leena Rustam Dalal resides at Flat No. 9, Green Field Building, 4th floor, Maharshal Karve Road, Churchgate, Mumbai along with her husband Rustam Dalai, her son Rehan, aged 13 years, and her daughter Miss Natasha. Her husband had left for London on 7-1-2001. On 23-2-2001, at 8 a.m. the informant dropped her daughter Natasha to school. Her son Rehan also left for school. At about 8-45 a.m. the informant returned home. At 11-30 a.m. while the informant was operating computer in the guest room, the doorbell rang and

consequently she opened the door. She noticed the detenu and his associates Kali Govindjan and Ramdhan Bharti standing in front of the door. Kali told the informant that he wanted to see her maid-servant Sunita Chilbe. The informant called her and closed the door and went in the guest room. Smt. Sunita Chilbe partly opened the door and made enquiry whereupon the detenu's associate Kali told her that Raju had sent him for work. On that, Sunita told Kali that she did not know any Raju and so saying when she was about to close the door, the detenu and his aforesaid associates entered the flat. The detenu pushed Sunita down. Sunita shouted loudly whereupon the informant rushed to the door. The detenu caught hold of the T-shirt of the informant and pointed a revolver towards her. He shouted that they had come to commit robbery and dragged her in the dining room and threatened her not to raise cries. His associate Kali pulled down Sunita; sat on her; pressed her neck; and assaulted her with a knife in the region of her right palm. The detenu's associate, who was holding a country-made revolver, caught the hand of Sunita. When the informant was about to tell something to Sunita, the door bell again rang. The detenu took the informant at the main door and before opening it threatened her to tell the person who had rung the bell that nothing was wrong inside the flat and he should go. The informant opened the door and saw her driver Shri More along with Shri Rajesh Chandrani and 2/3 persons standing there. The informant came out; narrated the said facts to Shri More; and informed the police. Thereafter, the detenu and his associates ran away.

2-B. We now come to the averments contained in the in-camera statements of witnesses A and B, contained in paras 4(c)(i) and 4(c)(ii) respectively of the grounds of detention.

In short, witness A stated as under :--He knew the detenu and his associate Kali as notorious goondas who extort hafta money from the shopkeepers, traders and businessmen in the areas of Nariman point and Churchgate, on the point of knife and revolver. One day, in the last week of January 2001 at about 1-30 p.m. while he was present at the place of his business, the detenu and his associate kali and his two other associates came. Kali whipped out a revolver; put it on his chest, and told him to hand over whatever he had earned. When he refused to pay, the detenu whipped out a knife and pointed it at his servant. At that time, the two associates of the detenu were keeping a watch. The detenu's associate Kali forcibly removed Rs. 2400/- from the left pocket of his pant. On account of fear, customers and servants of the witness ran away helter skelter.

Witness B in his statement, in short, stated as under :--

He knew the detenu and his associate Kali as notorious goondas who on the point of deadly weapons used to collect hafta money from the shopkeepers, hawkers and businessmen from Nariman point, Churchgate areas. One day in the second week of February 2001 at about 9 p.m. while he was about to close the business, the detenu, his associate Kali and his two unknown associates came. The detenu whipped out a knife; put it on his neck; abused him; and asked him

to take out whatever money he had. The detenu's associate threatened his servant not to move. His associate Kali forcibly removed Rs. 3400 from the cash box of the witness.

3. We have heard learned counsel for the parties. Although in this writ petition Mr. U.N. Tripathi, learned counsel for the petitioner has pleaded a large number of grounds, numbered as ground Nos. 8(A) to 8(E) but, he has pressed before us a solitary ground namely that pleaded as ground No. 8(C).

In short, the said ground reads thus :--

Since the detenu was already in judicial custody in C.R. No. 70 of 2001 having been arrested on 23-2-2001 and had not applied for bail for more than last five months, there was no cogent material for the detaining authority to conclude that the detenu was likely to be released on bail in the near future and consequently, the impugned detention order was unwarranted in law.

4. Ground No. 8(C) has been replied to in para 10 of the return of the detaining authority.

In short, the reply therein is as under :--

There was imminent possibility that the detenu may be released on bail shortly. The averment that the detenu had not applied for bail for the last more than five months is false. He had applied for bail before the Sessions Court, as is manifest from a copy of the order dated 10-7-2001, annexed by the " petitioner along with the petition (Exhibit E), whereby he was refused bail. Hence, the averment that he had not made any application for bail for more than five months is absolutely false. He (the detaining authority) had shown his awareness in para 6 of the grounds of detention that the detenu had not been granted bail in two cases but in view of the tendencies and inclination of the detenu, as reflected in the grounds of detention, he was subjectively satisfied that in case the detenu was released on bail, he was likely to indulge in activities similar to those mentioned in the grounds of detention and hence, it was necessary to detain him.

5. Mr. I.S. Thakur, learned Additional Public Prosecutor for the respondents urged that since the detenu had applied for bail in C.R. No. 70 of 2001 in the Court of Session, which application of his was rejected on 10-7-2001 and there was no impediment in law in his preferring an application for bail in the High Court, there was cogent material for the detaining authority to conclude that the detenu could move an application for bail in the Hon"ble High Court and could be released on bail by it.

6. We have perused the averments contained in ground No. 8(C) of the petition, those contained in para 10 of the return of the detaining authority wherein the said ground has been replied to and heard learned counsel for the parties. We are constrained to observe that we do not find any merit in ground No. 8(C).

7. The Supreme Court in para 19 of the oft- quoted case of Dharmendra

Suganchand Chelawat and another Vs. Union of India and others, , has held that a detention order can be issued against a person in custody provided :--

(i) awareness in the grounds of detention is shown by the detaining authority that the person sought to be preventively detained is in custody; and

(ii) there are compelling reasons to detain him.

The Supreme Court has also held that the expression "compelling reasons" means that there should be cogent material in support of imminent likelihood of the person sought to be preventively detained of being released . from custody in the near future and of his reverting to committing prejudicial activities similar to those mentioned in the grounds of detention in the event of his being released from custody.

8. Mr. U.N. Tripathi, learned counsel for the petitioner does not dispute that the pre-requisite (i) has been satisfied. He also does not dispute that the inference of the detaining authority that in the event of the detenu being released from custody, he was likely to revert to committing acts similar to those contained in the grounds of detention and hence, it was imperative to preventively detain him cannot be faulted with. But, what he does dispute and vehemently too is that there was no cogent material before the detaining authority, suggesting that the detenu was likely to be released from custody in near future.

Mr. Tripathi urged that in para 4(b-ii) of the grounds of detention, the details of the detenu's role in C.R. No. 70 of 2001 of Cuffe Parade Police Station have been mentioned. He contended that the role given to the detenu therein is that he used a deadly weapon namely a revolver in the incident. Hence he urged that the detenu would be liable for the offence u/s 397, IPC which is punishable with a sentence of not less than 7 years. He vehemently urged that normally, even the High Court does not grant bail in a case under Sections 394, 397, IPC, to a person who has been assigned the use of a deadly weapon. Hence he urged, there was no cogent material for the detaining authority to conclude that there was imminent likelihood of the detenu being released on bail in near future.

9. We have reflected over Mr. Tripathi's submission and we are not inclined to accept it.

In the first place, if the detenu could apply for bail in the Court of Session, it is logical to presume, as urged by Mr. Thakur, learned counsel for the respondents that in the absence of any impediment in law, he could have preferred an application for bail in this Court also. Mr. Thakur urged that the inference that the detenu could be released on bail by this Court is not unreasonable. He contended that unlike Section 37 of the NDPS Act and Section 21 of the MCOC Act, there are no special provisions which make the grant of bail in a case under Sections 394, 397, IPC virtually impossible. Mr. Thakur contended that in the said factual matrix, Mr. Tripathi's submission that there was no cogent material for the detaining authority to conclude that the detenu was likely to be released on bail

in the near future cannot be accepted.

10. We find merit in Mr. Thakur's contention. Simply because the detenu had not preferred a bail application in this Court for 23 days does not mean that he would not have preferred a bail application in this Court. It should be borne in mind that the detenu's bail application was rejected from the Court of Session on 10-7-2001 and the impugned detention order was passed on 2-8-2001. It is common knowledge that for moving the High Court for bail, relations or friends of an accused have to arrange for funds. This takes time, therefore, in our view, from the mere circumstance that the detenu had not approached this Court for bail for 23 days, i.e. between 11-7-2001 and 1-8-2001, it cannot be concluded that there was no imminent possibility of his preferring a bail application in this Court.

It also cannot be concluded that there was no reasonable probability of the detenu being granted bail by this Court had he preferred an application for bail.

11. For the facts and reasons mentioned above, and bearing in mind the averments contained in para 10 of the return of the detaining authority, it cannot be said that there was no cogent material for the detaining authority to conclude that the detenu was likely to be released on bail, in near future, in C.R. No. 70 of 2001 of Cuffe Parade Police Station.

Hence ground 8(c) fails.

12. Before parting with the judgment, we wish to make it clear that there can be no answer having universal application to the question whether there is cogent material, indicating the imminent likelihood of a person being released from custody. The answer to the said question would depend on the facts and overall circumstances of a given case.

13. Although, Mr. Tripathi, learned counsel for the petitioner has pleaded four other grounds namely ground Nos. 8(A)(B)(D) and (E) but, since he has not pressed them, we have not dealt them.

14. In the result, we dismiss this petition and discharge the rule.