
(1982) 08 BOM CK 0024

In the Bombay High Court

Case No : Criminal Application No. 188-A of 1982

Madhukar Laxman Kokate

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 12-08-1982

Acts Referred:

National Security Act, 1980 — Section 3

Citation : (1983) MhLj 750

Hon'ble Judges : G.M. Khandekar, J; D.B. Deshpande, J

Bench : Division Bench

Advocate : K.M. Kanade with A.M. Kanade, for the Appellant; S.S. Choudhary, for the Respondent

Judgement

D.B. Deshpande, J.—By an order dated 21st June 1982, the District Magistrate, Osmanabad, detained the petitioner u/s 3 sub-section (2) of the National Security Act, 1980 (65 of 1980), (hereinafter referred to as "the said Act") but he was actually arrested on 30th July 1982 and was directed to be detained in the Central Prison at Aurangabad under the conditions laid down in the National Security (Conditions of Detention) (Maharashtra) Order, 1980. Feeling aggrieved by this order of detention, the petitioner has filed this Criminal Application for the issuance of a writ of Habeas Corpus.

2. It is not disputed that immediately after his arrest, the petitioner was furnished with grounds of his detention and the grounds are also dated 21st June, 1982. It is mentioned in the grounds that the petitioner is alleged to have committed offences during a span of 4 years from August 1978 to January 1982 as detailed in the grounds and it is further alleged that the actions of the petitioner were as such of committing breach of public order and were of taking law in his own hands and that there was every reason for the District Magistrate to detain the petitioner under the said Act and, that is why, this order was passed.

3. As already stated, aggrieved by this order, the petitioner has filed this writ

petition for his release and for quashing the order of detention. An affidavit in reply in the form of return is filed by Nandkumar Govindrao Dongare who is said to be a clerk in the office of the District Magistrate, Osmanabad, and in the affidavit in reply the same grounds which are mentioned in the detention order, are further mentioned. We will come to the details of the same later on.

4. Mrs. K. M. Kanade, appearing on behalf of the petitioner, raised a very vital question contending that in this case an affidavit not having been filed by the District Magistrate himself, it cannot be said that the District Magistrate was subjectively satisfied about the reasons for the detention of the petitioner. She relied upon the decision of the Supreme Court in *Munna Tuin Vs. District Magistrate, Lucknow and Others*, . The petitioner in that case was also detained under the said Act and the affidavit in reply was filed by one Pratap Chandra Sexena, who was a mere clerk in the judicial section. The Supreme Court observed as follows:

The District Magistrate should have filed counter affidavit himself. In fact by an order of this Court dated 8-1-1982, the District Magistrate was directed to file counter affidavit which alone could be treated as a proper return. Despite this direction, no counter-affidavit has been filed by the District Magistrate. Thus, in short there is no proper explanation or return before us to rebut the allegations made by the detenu. On this ground alone, we are of the opinion that the petitioner should be released.

This will, therefore, go to show that the District Magistrate himself must file the affidavit in reply. It is the subjective satisfaction of the District Magistrate, which authorises him to detain a person under the said Act, Shri S. S. Choudhary, learned Public Prosecutor stated before us that it was not possible for the District Magistrate to file an affidavit in each and every case of detention. We are unable to appreciate this submission. If the District Magistrate chooses to exercise his powers of detention under the said Act, he is in duty bound to file affidavit in reply in support of the action taken by him and the affidavit must be sworn by him. Hence relying upon this ruling of the Supreme Court, we will also be justified in releasing the petitioner on this very short ground.

5. It was then urged by Mrs. Kanade that there is fine line of distinction between law and order situation and public order situation. Now, in the instant case, the petitioner is detained in order to prevent him from acting in any manner prejudicial to the maintenance of public order. Omitting unnecessary words from section 3 sub-section (2), the material part of the section for our purposes is as follows:

(2)... the State Government may, if satisfied with respect to any person with a view to preventing him... from acting in any manner prejudicial to the maintenance of public order... make an order directing that such person be detained.

The order of the District Magistrate clearly goes to show that the petitioner is

detained for being prevented from acting in any manner prejudicial to the maintenance of public order. In this respect also, reliance is placed on behalf of the petitioner on two recent decisions of the Supreme Court. One is Wasi Uddin Ahmed v. The District Magistrate, Aligarh A I R 1987 S C 2166 Head Note E, and the other ruling is Ashok Kumar Vs. Delhi Administration and Others, , Head Note C. The distinction between law and order and public order is very nicely illustrated by the Supreme Court in both these rulings. In Ashok Kumar's case the Supreme Court has further observed that although there is distinction between these two concepts and although it is a fine distinction, it does not mean that there can be no overlapping. Hence it is sometimes possible that both these situations may be overlapping. Mr. S. S. Choudhary also relied upon Ashok Kumar's case and he read over to us certain portions from this ruling, but he did not read the contents of paragraph 16 of this ruling in Ashok Kumars case. It appears from paragraph 16 that the Supreme Court referred to 4 cases against Ashok Kumar and his associates and it appears from all these 4 cases that it had become mode of life of Ashok Kumar and his associates to maintain themselves by robbing persons in the locality of South Delhi such as Greater Kailas, Kalkaj, Lajpat Nagar, etc. It is, therefore, apparent from these 4 instances in paragraph 16 that it had become mode of life of Ashok Kumar and his associates to maintain themselves by robbing members of the public residing in the locality and, therefore, the Supreme Court held that he was a danger to the society, and as such, the question of public order was directly involved in the cases cited against him in paragraph 16. The Supreme Court has further observed as follows:

It is the length, magnitude and intensity of the terror wave unleashed by a particular act or violence creating disorder that distinguishes it as an act affecting public order from that concerning law and order.

From the allegations made in the instant case before us, we do not find that there is any allegation made against the petitioner that he has become a problem of public order. There is no allegation whatsoever against him that he had unleashed terror wave in the commercial town of Latur so as to terrorise citizens of Latur, We shall now go to the grounds mentioned.

6. First ground mentioned is about offence committed by the petitioner on 12th August 1978 at about 10.00 p.m. It is alleged that the petitioner and some others committed criminal trespass in the house of one Bhagwan Ramchandra Bedre of Latur and assaulted Bhagwan and his family members. A criminal case is pending against the petitioner and his associates for the same. There is nothing so far as this case is concerned to show that the petitioner has terrorised anyone in the town of Latur. Second allegation against him is that on 29th November 1978, he tried to outrage modesty of one woman by name Gitabai at Latur and the petitioner is prosecuted for the same. Third also is similar allegation of outraging modesty of another woman by name Shakuntala on 11th March, 1980 at Latur. The case is pending for the same. Even in respect of these two allegations, there is nothing to hold that it has become mode of life of the

petitioner to outrage modesty of women staying in the town of Latur. First is offence in November 1978, whereas second is offence in March 1980 and the difference during these dates of offence is one year and five months.

7. Then in allegation No. 4, it is alleged that on 22nd April 1980 at about 2.30 p.m. he went to S. T. Stand at Latur and assaulted the Controller alleging that the Controller was oblivious of the inconveniences that are caused to the passengers and he broke one glass. Even in respect of these allegations, it is nowhere alleged that there was commotion either in the passengers assembled at the stand or in the servants in the S. T. Department.

8. The next allegation is that on 15th May 1980 on account of previous enmity, the petitioner obstructed Babu Shivappa Solapure and assaulted him. This previous enmity between Babu Shivappa and the petitioner is already mentioned in the allegation. Sixth allegation is also of the same kind. It is alleged that on 28th July 1980, on account of previous enmity, the petitioner and his three associates assaulted one Syed Laikali. This previous enmity is admitted between the two. Next two allegations are in respect of non-cognizable offences alleged to have been committed by the petitioner and it is already mentioned in the grounds themselves that the respective complainants were directed to approach the Court for getting the relief. Hence, it cannot be said that these are allegations established against the petitioner.

9. The next allegation is that the petitioner entered office of one Anant Limbu Patil and complained to him that worthless seeds were being supplied by him and he assaulted Anant and, therefore, the case is sent up against the petitioner. This is again a complaint of a totally different kind. It is clearly mentioned in the grounds themselves that the petitioner complained that the seeds that were supplied were of useless quality and the last allegation is that the petitioner entered Khandsari Factory and questioned the Manager as to why he complained against the petitioner and, therefore, assaulted him. These are all allegations against the petitioner and they clearly go to show that all these allegations are of usual nature and, at best, it can be said that these are clear cases of problem of law and order and not of public order, and nowhere it is mentioned in the grounds that they posed question of public order. In the affidavit it is stated that these offences are against peace and public tranquillity. We have so far pointed out that nothing is mentioned in the grounds as to how alleged offences committed by the petitioner have affected peace and public tranquillity. It is further mentioned that these activities have immediate impact on local community at Latur. As already stated, the affidavit is made by a clerk in the office of the District Magistrate and it cannot be said that they reflect the subjective satisfaction of the District Magistrate himself. In this respect also, Mr. Choudhary contended that the clerk had perused the entire record from the District Magistrate's office and then he filed this return and obviously filed this affidavit. But that does not amount to compliance with the observations made by Supreme Court in Munne Tuin's case cited earlier.

10. We are, therefore, satisfied that the order of detention in the instant case is not legal and it deserves to be quashed and it is, therefore, accordingly quashed and it is directed that the petitioner be released forthwith. Rule is made absolute accordingly.