
(1952) 04 BOM CK 0004

In the Bombay High Court

Case No : Criminal Application No. 1278 of 1951

Maganlal Jivabhai Patel

APPELLANT

Vs

Government of Bombay

RESPONDENT

Date of Decision : 01-04-1952

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Preventive Detention Act, 1950 — Section 11(1), 3, 3(1)

Citation : AIR 1953 Bom 59 : (1952) 54 BOMLR 629 : (1953) ILR (Bom) 182

Hon'ble Judges : Vyas, J; Rajadhyaksha, J

Bench : Division Bench

Advocate : K.T. Sule, for the Appellant; H.M. Choksi, Govt. Pleader, for the Respondent

Judgement

Yyas, J.

[1] This is an application under Article 228 of the Constitution of India, in which the order of detention passed by the District Magistrate, Ahmedabad on 29.3-1950, and served on the petitioner on 14-6-1950, and confirmed by the Government of Bombay on 16-5-1951, on the report of the Advisory Board, is sought to be challenged.

[2] The petitioner was arrested on 14-6-1950, in pursuance of an order of detention which was passed against him by the District Magistrate of Ahmedabad on 39-3-1950. The grounds of detention were furnished to the petitioner by the District Magistrate on 19-6-1950. In criminal Application NO. 951 of 1950, which also was made under Article 296 of the Constitution of India, this order of detention was challenged by the petitioner. But that application was rejected by this Court on 10-10-1950. Thereafter the petitioner filed an application for habeas corpus before the Supreme Court of India under Article 32 of the Constitution and that application also was dismissed after hearing on 10-10-1951. It was thereafter, that the present application was filed by the petitioner on 14-12-1951.

[3] Now, the first ground advanced before us by Mr. Sule for the petitioner for challenging the order of detention is that on 20.6.1950, the applicant was transferred from the Navrangpara Police Lock-up, where he was under detention, to Baroda, a place outside the jurisdiction of the District Magistrate, Ahmedabad, without any proper order being passed in the matter of the transfer. It is contended that as there was no valid order for the transfer of the detenu from Ahmedabad to Baroda, the continued detention of the detenu (petitioner) from that date onward was illegal. It is to be remembered that this point was not pressed either before this Court in criminal Application No. 951 of 1950 or before the Supreme Court and therefore obviously the petitioner could not be permitted now to press it before us in this application.

[4] The next point which is pressed before us by Mr. Sule is that after the case of this petitioner was referred to the Advisory Board u/s 9 of the Act and after the report of the said Board was received, Government did not, by an order, confirm the detention of the petitioner. The point which Mr. Sule seeks to make before us is that Government have not got on their records a definite order confirming the detention of the petitioner after receiving the report from the Advisory Board. It is to be remembered that this ground is not stated in the present application of the petitioner. Had it been stated, Government would have had an opportunity to file an affidavit in regard to it. In these circumstances, we do not think we could permit the petitioner to raise it now before us.

[5] The third ground as stated in the application for challenging the order of detention is that the period of detention was not stated in the communication dated 16-5-1951, which the District Magistrate of Ahmedabad sent to the detenu. The text of that communication was as follows:

"I am to inform you that in accordance with Section 9, Preventive Detention Act your case was placed by Government before the Advisory Board, and Government have in pursuance of the Board's opinion maintained the detention order."

The contention of Mr. Sule is that it was a serious defect not to have stated the period of detention in this communication of the District Magistrate. Now, this point, though touched, was really not pressed by Mr. Sule before us in view of the fact that it is covered by the decision of the Supreme Court in *Dattatraya M. Pangarkar v. State of Bombay*, 54 Bom. L. R. 525, in which it has been held that the non-specification of the period, for which the detention was to continue, in the order of confirmation made under Section 11 (1), Preventive Detention Act, after the Advisory Board had considered the cases of the detenus, would not make the detention illegal.

[6] The last ground which is urged before us by Mr. Sule for contending that this Court should not sustain the order of further detention of the petitioner is this: The alleged activities which were the basis of the order of detention which was passed against the petitioner were activities prior to March 1950. Very nearly two

years have already passed since that time, and it is contended that times having changed, this Court must recognise the change and should not confirm the further detention of the applicant. In other words, the argument of Mr. Sule amounts to this that there is no justification for the continuation of the detention of the petitioner on the same grounds on which his detention was ordered on 29-3-1950, and which were furnished to him on 19-6-1950. In support of this submission Mr. Sule has drawn our attention to a judgment of the Madras High Court in criminal Miscellaneous petitions Nos. 1721, 1722 and 1815 of 1951 of that Court. In particular, our attention has been invited to Paras. 13 15 and 17 of that judgment. In para. 13 of the judgment it is observed by the Madras High Court:

"The scope of our jurisdiction as a habeas corpus Bench dealing with detenus continued under Act 4 of 1950 has been sought to be narrowly restricted by the learned Advocate General. According to him, as we understand his argument, we can only interfere and release such a detenu if after considering each ground of detention separately we find it irrelevant for the purposes of preventive detention and are precluded from going into the sufficiency and adequacy of the grounds. This may be so in considering the validity of the grounds under the Maintenance of Public Order Act or even under the Preventive Detention Act of 1950. But we are wholly unable to accept these limitations on our jurisdiction in the light of Article 226 of the Constitution. If we accept the limitations the Advocate-General seeks to impose upon us, we shall be rendered powerless and helpless as a habeas corpus Bench to intervene not only in these cases but in any case at all."

Then in Para. 15 of the judgment the learned Judges proceeded to observe:

"At the same time we are quite unable to accept the position that Parliament when it enacted Act 4 of 1951 intended to emasculate High Courts of all powers in connection with these old detenus. The Act as regards this is eloquently silent, and in fact it could not under the Constitution make any attempt to limit the powers of the High Courts under Article 226 in this connection. Nor can we think it was in any event the intention of the Legislature to confer powers on an Advisory Board which can-, not in appropriate cases be exercised by a habeas corpus Bench after a full hearing of the detenu and his representations."

And in para. 17 they said:

"We have set out these difficulties in the way of any precise determination of the scope of our jurisdiction in these cases and think that they can only be resolved by our bringing into play only such reserve powers as are vested in High Courts under the Constitution as may be necessary to uphold equity and justice on which the Constitution is founded. We have abandoned our quest for any legal theory by which our jurisdiction can be precisely defined or fettered or the conditions under which it can be exercised and decided to invoke commonsense, the quintessence of which is or should be law though unfortunately it cannot

always be embodied in any rigid legal theory. We think that in view of what we have said we clearly have jurisdiction which we propose to exercise in appropriate cases of releasing detenus if on examination of the original grounds of detention in the light of their representations and in the contest of Act 4 of 1951 we find them irrelevant for the purpose of farther detention, in other words, if we consider that they are fit cases for release."

Relying upon this judgment it is sought to be argued before us by Mr. Sule that the grounds which were furnished to the detenu in June 1950 should be considered by us as being irrelevant for his further detention and that accordingly we should order the release of the detenu forthwith.

[7] We must, with very great respect, differ from the view as expressed in the above mentioned judgment of the Madras High Court. In our view, under the scheme of the Preventive Detention Act it is a matter entirely for a detaining authority as it representative of the executive government to decide whether the activities of a particular person are prejudicial to the security of the State, the maintenance of public order, etc. It is that authority alone, and not the Court, who by virtue of the executive office held by it and by virtue of the duties, functions and responsibilities attaching to that office is in the best position to take a decision whether the detention of a particular person is called for on any of the reasons mentioned in Section 3, Sub-section (1), Clause (a) of the Act. It would be impossible for the Court to be in touch with the activities of the members of the public in different spheres of life and, therefore, the Court would not have the means to decide whether any particular person is likely to engage himself in any prejudicial activities. It has not the machinery at its disposal, such as an executive authority has, for the purpose of arriving at a requisite satisfaction whether a person should be detained under the Preventive Detention Act or should be permitted to continue his indulgence in activities unfettered. No doubt, a habeas corpus Bench has competence to decide whether a detaining authority had jurisdiction to pass an order of detention or had "applied its mind properly to the question of detention or whether the detention order was passed mala fide or whether any of the grounds fell out-side the scope of the Act or whether the order was invalid for any other reason. But it is not open to it, in our view, to go into the question whether on merits the detaining authority had justification to pass the order of detention or continue the detention. That under the Act is a sphere exclusively of the detaining authority and upon that sphere the Court cannot encroach. It is the detaining authority alone whose satisfaction as to whether a person should be detained or not is material and relevant under the scheme of the Preventive Detention Act and it is that authority which has got to see whether the activities of a particular person are prejudicial to the maintenance of public order, security of State, etc. In our view, it is clear that the Legislature has given power to executive authority to decide for itself whether a particular person's activities are such as to call for his detention under the Preventive Detention Act. If we turn to the Act as also to the Constitution of India we find that full liberty is given to the executive authority even to withhold

the disclosure of grounds on which the detention of a person is ordered, if in the opinion of that authority such disclosure is detrimental to the interest of the public. The Legislature did not intend that this Court should act as a revising authority in the same sense or manner in which the Advisory Board constituted under the Act was intended to be a revisory authority over the orders of detention passed by the detaining authority. In our view, it is entirely for the executive authority, who is the custodian of public order, to decide whether a person's being at large is detrimental to the interests of the State, the maintenance of public order, etc. Such a question really relates to the governance of the State and is not one for judicial decision. For these reasons we are of the view that we have got no power to interfere with the order of detention passed against the petitioner on such grounds as are pressed before us by Mr. Sule on the authority of the Madras case. If we turn to the affidavit which has been filed by the District Magistrate of Ahmedabad in this case, he says :

"It is denied that the situation and circumstances have materially changed since March 1950. The grounds of detention still subsist and there is no change in the situation whatsoever."

As this Court has repeatedly pointed out, in such cases it is that authority alone who has got to come to a conclusion of his own whether the detention of a person is justified or not in the interest of the maintenance of public order.

[8] The net result, therefore, is that the application fails and is dismissed.

[9] Application dismissed.