
(1987) 08 BOM CK 0050
In the Bombay High Court
Case No : Cr.W.P. No. 578 of 1987 (Bom.)

Manohar Bodharam Motwani

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-08-1987

Acts Referred:

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)

Citation : (1988) 90 BOMLR 137 : (1987) MhLj 1009

Hon'ble Judges : S.M. Daud, J;D.N. Mehta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.M. Daud, J.—This petition from Jail takes exception to an order of detention dated February 19, 1987 u/s 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 (LV of 1981 -- hereinafter referred as "the Act").

2. The detenu was booked on three occasions viz. 17 November 1985, 1 December 1985 and 27 August 1986 for the alleged commission of offences punishable under the Narcotics Drugs and Psychotropic Substances Act, 1985 (Drugs Act). In the background of these incidents the Commissioner of Police, Greater Bombay on February 19, 1987 passed an order of detention u/s 3(1) of the Act. The order and the grounds were served upon the detenu along with the relevant papers. From jail the detenu sent the petition assailing the detention order and Miss Joshi, appointed to prosecute the petition on his behalf, has canvassed three grounds which are discussed below.

3. Learned Counsel firstly points out that the grounds did not make out a case for preventive detention in order to maintain the public order. She contended that for the three incidents, the detenu was arrested and regular prosecutions were lodged against him. He had not taken recourse to violence and had not in any way disturbed public tranquility. In order to deal with this submission, it will

be necessary to give some details in relation to the three acts ascribed to the detenu. On November 17, 1985 the detenu was found in possession of four vials of a narcotic known as "Gard Powder" which on analysis was found to be crude heroin. The second incident showed him to be in possession of 14 vials containing Gard Powder and 18 empty vials. In the last incident, he was found with 12 vials of brown sugar concealed in the sleeves of his shirt. Having regard to the quantity, the question is whether a situation affecting public order had been made out? Miss Joshi relied upon the opinion of Shah J. arising upon a difference of views between Tated and Jahagirdar JJ. The Learned third Judge construed Section 2(a) of the Act and opined thus:--

The provisions of Section 3 read with the provisions of Section 2(a) and 2(6) clearly show that it is not enough for a person to be detained u/s 3 of the Act that he should be merely a bootlegger because unless his activities are prejudicial to the maintenance of public order no person can be detained by an order u/s 3. It is only when his activities as a bootlegger affect or are likely to affect adversely the maintenance of public order that an order u/s 3 of the said Act can be passed. It is thus clear that the grounds of detention must disclose not only the bootlegging activity of the person, but the acts attributable to him as affecting maintenance of public order must have a nexus with his bootlegging activity. In other words, apart from showing that he is a bootlegger, the grounds must show that as a bootlegger he indulges in acts which affect the maintenance of public order.

(See Megha Chanchaldas Jeswani Vs. Commissioner of Police and Another,)

The Act under which the detenu has been detained deals with three types of dangerous activities viz. those indulged in by slumlords; those indulged in by bootleggers; and lastly those indulged in by drug offenders. The expression "acting in any manner prejudicial to the maintenance of public order" has been given a different meaning vis-a-vis, the three categories aforementioned. What may apply to the cases of slumlords and bootleggers does not apply to the case of drug offenders. To quote from the section "acting in any manner prejudicial to the maintenance of public order" vis-a-vis a drug offender is thus:-

...when he is engaged, or is making preparations for engaging, in any of his activities as a drug-offender, which affect adversely, or are likely to affect adversely, the maintenance of public order.

Explanation: For the purpose of this Clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter-alia, if any of the activities of any of the persons referred to in this clause, directly or indirectly, is causing...grave or widespread danger to life or public health.

Therefore, so far as a drug offender is concerned, it suffices in the making of an order of detention to show that his activities constituted "a grave or widespread danger to life or public health". Now, in the instant case, the grounds show that

in the short span of about 10 months, the detenu was found with sizeable quantities of crude heroin on as many as three occasions. Statements of two persons were recorded after giving them an assurance that their names and addresses etc. would not be revealed and they would not be required to publicly testify against the detenu. These two witnesses gave the information that the detenu was peddling in drugs for the preceding two years, that the majority of his customers were youngsters and that after their visit to the detenu, they used to come walking out in a dazed condition. Many of the visitors or customers of the detenu had become addicted to brown sugar. It was made clear that neither of the two witnesses was willing to come forward to testify publicly against the detenu and that was because they apprehended danger at his hands. Now, this material which has been disclosed to the detenu attracts not only statutory provisions insofar as it governs "a drug offender", but also a bootlegger. This is because the witnesses when they speak of apprehending danger at the hands of the detenu, gave an inkling of their suspecting violence to their persons. That apart, having regard to the quantity of brown sugar found with the detenu, the period for which he was doing business and the clientele visiting him, clearly established a case of activities on the part of the detenu which constituted, "a grave and widespread danger to life or public health". The decision relied upon by Miss Joshi applies only to the case of bootleggers. As said earlier, the detenu in the present case is a mixture of bootlegger as also a drug offender. Therefore, in terms Shah J's decision, which is restricted to the case of a bootlegger only, will not apply to this case. Conversely, and if the detenu is taken to be a bootlegger, his instilling fear in the minds of the people is enough to show that his activities gave rise to "harm, danger or alarm or a feeling of insecurity among the general public or any section thereof." Therefore, this ground has to be negated.

4. Next, Miss Joshi submitted that there was considerable delay in the last prejudicial activity ascribed to the detenu and the making of the detention order. The delay snapped the live-link that must always subsist between an order of preventive detention and the prejudicial activity which it is designed to curb. Here the detention order was made on February 19, 1987, while the last prejudicial activity preceding the making thereof, was detected on August 27, 1986. But as the grounds show, samples of the drug found with the detenu were sent for analysis to the Forensic Science Laboratory and the result therefrom was received in November 1986. Thereafter, statements of unnamed persons were recorded and this recording took place on January 9/10, 1987. It cannot, in the background of this factual position, be said that there was unreasonable delay between the prejudicial activity and the making of the detention order. It is not every case of delay that snaps the vital link which must always subsist. Delay, to be fatal, must remain unexplained and in the instant case the explanation is self-evident from the record itself.

5. Last, it was submitted that bail furnished to the detenu had been referred to in the grounds, but the documents relating to the factum of grant of bail to the

detenu had not been furnished to the detenu. This, according to Miss Joshi, adversely affected the right of the detenu to make an effective representation against the order of detention. We cannot agree. All that the detaining authority had to take cognizance of was, the fact of the detenu having been granted bail in the three cases initiated against him. It was not necessary that papers relating to the grant of bail should have been taken note of or copies thereof furnished to the detenu. There is no merit in the challenge. The petition fails and it is hereby dismissed. Rule discharged. Intimate the detenu through the jail authorities of the dismissal of his petition.