

(2000) 01 BOM CK 0055
In the Bombay High Court
Case No : Criminal W.P. No. 638 of 1999

Manoj Gajanan Patil

APPELLANT

Vs

R.H. Mendonca and others

RESPONDENT

Date of Decision : 24-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 34, 387, 427

Citation : (2000) 01 BOM CK 0055

Hon'ble Judges : Vishnu Sahai, J;P.V. Kakade, J

Bench : Division Bench

Advocate : H.A. Solkar, for the Appellant; V.K. Tahilramani, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Vishnu Sahai, J.—Through this petition preferred under Article 226 of the Constitution of India, the petitioner-detenu impugns the Detention Order dated 2nd February 1999 passed by the 1st respondent Mr. R. H. Mendonca, Commissioner of Police, Brihan Mumbai, detaining him under sub-section (1) of section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drugs Offenders and Dangerous Persons Act, 1981 (No. LV of 1981) (Amendment 1996) (also referred to as M.P.D.A. Act).

The Detention Order along with grounds of detention also dated 2nd February 1999 was served on the petitioner-detenu on 2nd February 1999. True copies of the Detention Order and the grounds of detention are annexed as Exhibits "A" and "B" respectively, to this Petition.

2. A perusal of the grounds of detention would show that the petitioner-detenu has been detained as a dangerous person under the M.P.D.A. Act and the impugned Detention Order is based on one C.R. and two in-camera statements.

3. C.R. is referred to in ground 5(a)(iii) of grounds of detention and is C.R. No.

132/98 under sections 387,427 and 34 Indian Penal Code arising from a complaint lodged by Jeevan Sukha Gohil, at Trombay Police Station on 22nd September 1998, the details of which are given in grounds 5(a) to 5(a)(ii). In short, it has been alleged that Jeevan Sukha Gohil has been residing at Samrat Ashok Nagar, Raghuseth Wadi, Near Sandhale Building, Govandi, Mumbai where he used to repair autoriksha and sell autoriksha spare parts. The detenu used to visit his place of residence-cum-business and demand hafta of Rs. 2,000/- per month. On several occasions he had asked him to pay hafta and threatened him with dire consequences if he failed to do so but on account of his terror Jeevan Sukha Gohil did not report the matter to the police and instead closed down his business in 1995. About four months prior to 20th September, 1998, two unknown persons approached him and told him that the detenu and his associates had called him at Govandi. Accordingly, he accompanied them and went to Govandi where the detenu and his associates were present. The detenu's associate Pramod Patil asked him whether he was paying hafta or not, to which he expressed his inability to pay such a huge amount. Thereafter the detenu's associate Shashikant Patil told him that in case he did not want to give the hafta he should pay a donation for Navratri festival. On that, Jeevan Sukha Gohil told the detenu and his associates that he can pay Rs. 100/- to Rs. 150/- and this annoyed the detenu's associate Shashikant Patil, who threatened him to pay Rs. 2,000/and told him that in case he lodged a complaint he would be finished. Jeevan Gohil lodged his complaint on the basis of which C.R. No. 132/98, referred to above, was registered at Trombay Police Station against the detenu and his associates Pramod Patil and Shashikant Patil.

3A. The in-camera statements are of witnesses A and B and are referred to para 5(b), 5(bi) and 5(bii).

Witness A in his statement dated 10-12-1998 stated that he knew the detenu and his associates Pramod Patil, Shashikant Patil, Balu Raut, Jagya Chavan and Balya Atakari as members of a gang moving in the areas of Samrat Ashok Nagar, Borla, Govandi, Deonar and areas adjoining thereto with deadly weapons like sword, chopper, gupti, knives and committing serious offences such as extortion, robbery, eve teasing, etc. and on account of fear of reprisal at the hands of the detenu and his associates, none dared to depose against them. One day in the last week of October 1998, at about 7.00 p.m., when he was returning from Govandi Railway Station, the detenu and his associates surrounded him with lethal weapons. His associate Pramod Patil demanded Rs. 500/- for a party. He told the detenu and his associates that he was not having that much money, on which the detenu placed a chopper on his neck and threatened him saying that "do you want to live in Govandi and don't you know us". When he was trying to convince the detenu, the detenu's associates Shashikant Patil and Jagya Chavan started assaulting him with kicks and fists. When he tried to defend himself, the detenu's associate Pramod Patil forcibly removed Rs. 300/- from his pocket and the detenu and his associates threatened to set his house on fire. He screamed but seeing the detenu and his associates armed with deadly weapons, and on

account of their terror people dispersed from the place and shop-keepers closed their shops immediately. Thereafter he went and disclosed this incident to his family members, who advised him not to lodge a complaint because he and they had to stay in the same area.

Witness B in his statement dated 13-12-1998 stated that, he knew the detenu and his associates Pramod Patil, Shashikant Patil, Balu Raut, Balya Atakari and Jagya Chavan as goondas, who had created a gang which is moving about in the areas of Samrat Ashok Nagar, Borla, Govandi, Deonar and adjoining areas and at the point of dangerous weapons used to commit crimes like extortion, robbery, criminal intimidation and eve teasing and due to their fear none dared to lodge a complaint against them. He further stated that one day in the second week of September 1998, when he was sitting at his shop at 5.30 p.m., the detenu and his associates Shashikant Patil, Pramod Patil, Balya Atakari, Jagya Chavan and two others came there armed with deadly weapons. The detenu was armed with a sword and his associate Pramod Patil was armed with a Gupti. The detenu and Shashikant Patil abused the witness in filthy language and asked him to give last month hafta of Rs. 2000/-, on which the witness told them that since his business was slack he could not pay the said amount. On that, the detenu's associate Pramod Patil placed gupti on his chest and threatened him to give money else the detenu and his associates would break his hands and legs. While he was convincing them with folded hands the detenu and his associate Jagya Chavan pulled him out of his shop and inflicted on him fist and kick blows and his other associates Jagya Chavan and Shashikant Patil threw away glass jars on the road and the detenu forcibly removed Rs. 200/- from his shirt pocket. He shouted for help but the nearby shop-keepers and customers on seeing the detenu and his associates, did not come forward to help the witness and instead ran away helter-skelter. The nearby shop-keepers pulled down their shutters. On account of fear he did not disclose the incident to anyone.

4. We have heard the learned Counsel for the parties. Although in this petition Mr. H.A. Solkar, learned Counsel for the petitioner, has pleaded a large number of grounds but since he has pressed only ground 10(i), we are not adverting to the other grounds. The short and long of ground 10(i) is that even if the prejudicial activities of the detenu stipulated in the grounds of detention are accepted on their face value they disclose breach of law and order and not public order.

5. Ground 10(i) has been replied to in paragraph 10 of the return of the 1st respondent-Mr. R. H. Mendonca, Commissioner of Police, the Detaining Authority and in the said paragraph it has been categorically asserted that a perusal of C.R. and the statements of the witnesses A and B, set out in grounds of detention, clearly show violation of public order and not law and order simpliciter.

6. We have bestowed our anxious consideration to the pleadings contained in ground 10(i) of the petition and paragraph 10 of the return of the Detaining Authority. We are constrained to observe that we do not find any substance in ground 10(i). In our view, the C.R. and the in-camera statements referred to in

grounds of detention demonstrate a patent breach of public order and not law and order simpliciter.

Way back in the year 1970, in the case of Arun Ghosh Vs. State of West Bengal, , Chief Justice Hidayatullah in paragraph 3 drew the distinction between the expressions law and order and public order. In substance His Lordship held that if the impact of a prejudicial act was restricted to individual or individuals the said act would be tantamount to violation of law and order but if its impact affects a segment of a community, or community as a whole or a nation the said act would amount to violate public order.

When the norms contained in Arun Ghosh Vs. State of West Bengal, are borne in mind and the averments contained in the C.R. and in-camera statements of witnesses A and B are examined there can be no manner of doubt that the petitioner-detenu committed breach of public order.

A perusal of the in-camera statements of witnesses A and B categorically and clearly show that the impact of the act of the petitioner-detenu and his associates was not only confined to them but affected a segment of community namely those who were present nearby. Let us recapitulate what witnesses A and B stated.

Witness A stated that on account of the act committed by the detenu and his associates, people dispersed from the place of incident and shopkeepers closed their shops immediately.

Witness B stated that on account of the act committed by the detenu and his associates, the shop-keepers and the customers gathered at his shop, ran away and the nearby shop-keepers pulled down their shutters.

7. We are also implicitly satisfied that the petitioner-detenu breached expression "public order" as defined in section 2(a) (iv) of the M.P.D.A. Act. Section 2(a)(iv) reads thus:

"2. Definitions. - In this Act, unless the context otherwise requires,

(a) "acting in any manner prejudicial to the maintenance of public order" means :

(i)

(ii)

(iii)

(iv) in the case of a dangerous person, when he is engaged, or is making preparation for engaging in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely the maintenance of public order."

Explanation to section 2(a) (iv) reads thus :

"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 or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health."

8.A perusal of section 2(a)(iv) would show that if a person is engaged or is making preparation for engaging in activities which adversely affect or likely to affect the maintenance of public order, such a person would be a dangerous person.

The explanation to it shows that public order would be deemed to be breached if the activities of a dangerous person directly or indirectly cause or are calculated to cause any harm, danger or alarm or a feeling of insecurity among general public or any section thereof.

A perusal of the C.R. and the in-camera statements clearly shows that the activities of the petitioner-detenu and his associates were causing alarm and feeling of insecurity in a section of general public. The said section has been referred to in the in-camera statements and referred by us above.

9. For the said reasons, in our view, the petitioner-detenu violated public order, both in its general sense and as also in the sense used in section 2(a)(iv) read with the Explanation thereto of the M.P.D.A. Act.

We accordingly dismiss this petition and discharge the Rule.