

(2024) 02 BOM CK 0078

In the Bombay High Court

Case No : Criminal Writ Petition No. 1764 Of 2023

Mayur @ Vikki Deepak Alone

APPELLANT

Vs

District Magistrate, Jalgaon And Others

RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

Maharashtra Prevention Of Dangerous Activities Of Slumlords Bootleggers Drug-Offenders Dangerous Persons And Video Pirates Act, 1981 — Section 2(b1), 3(1)
Code Of Criminal Procedure, 1973 — Section 107
Indian Penal Code, 1860 — Section 307, 504

Citation : (2024) 02 BOM CK 0078

Hon'ble Judges : Mangesh S. Patil, J;Shailesh P. Brahme, J

Bench : Division Bench

Advocate : Satej Jadhav, Neeraj P. Chudiwal, G.A. Kulkarni

Final Decision : Allowed

Judgement

Shailesh P. Brahme, J

1. Rule. Rule is made returnable forthwith. Heard both the sides finally with their consent.

2. We are called upon to consider the validity of order of detention dated 27.10.2023 passed by the respondent no.1/District Magistrate, Jalgaon under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience).

3. The proceedings of detention have been undertaken against the petitioner on the basis of six offences registered against him, three preventive action under Section 107 of the Code of Criminal Procedure and two in-camera statements of witnesses. The petitioner is found to be indulging into criminal activities habitually. He is declared to be a 'dangerous person'. Resultantly, the impugned order of detention is passed against him.

4. Learned Counsel for the petitioner would submit that the fact that petitioner has been acquitted in Sessions Case No.117/2016 arising out of C.R. No.147/2016 for the offences under Sections 307, 504 of the Indian Penal Code, has been overlooked by the detaining authority. It is vehemently submitted that there is no live link between the offences pitted against him and the impugned action. Even there is delay from last preventive action and the impugned order passed on 27.10.2023.

5. Learned Counsel for the petitioner Mr. Satej Jadhav submits that the subjective satisfaction is defective. There is no cogent material against the petitioner to take drastic draconian action. In-camera statements would not even indicate disturbance to public order. It is further submitted that no recourse has been taken to the available measures like externment proceeding under the Maharashtra Police Act Normal penal laws would be sufficient to control the activities of the petitioner. It is further submitted that last offence registered against the petitioner, has no potential to brand the petitioner as a dangerous person. The detaining authority has failed to apply mind to the orders enlarging the petitioner on bail, which impairs the subjective satisfaction.

6. Learned APP vehemently opposes the submissions. According to him, all offences fall under Chapter XVI and XVII of IPC. There is adequate material on record to indicate the petitioner is a dangerous person as defined under Section 2(b-1) of the MPDA Act. He would submit that since 2016, the petitioner is regularly indulging in the detrimental activities affecting public order.

7. Learned APP submits that the detaining authority has considered relevant material including orders of bail to arrive at subjective satisfaction. He would specifically invite our attention to last offence registered against the petitioner which is of the serious nature. In support of the submission, the reliance is placed on affidavit-in-reply filed on record. It is submitted that no case is made out to cause any interference in the impugned order.

8. We have considered rival submission of both the parties. With the assistance of learned Counsel, we have perused the relevant papers. It reveals that the petitioner is involved in six offences. He has been acquitted by the learned Sessions Judge, Jalgaon in Sessions Case No.117/2016 arising out of C.R. No.147/2016.

9. Following criminal antecedents are considered by the detaining authority to hold him dangerous person.

Sr. No.

Police Station

C.R. Number

Date of Registration

Nature of Offence

1

Jalgaon City

147/2016

14.09.2016

Under Sections 307, 504 of IPC

2

Bhusawal Bazaar Peth

391/2019

14.07.2019

Under Sections 307, 504, 506,

201, 34 of IPC read with Sections 3/25 and 3/27 of Arms Act, 1959

3

Jalgaon City

113/2020

10.07.2020

Under Sections 324, 188, 269, 34 of IPC read with Sections 3/25 of Arms Act, 1959 read with Section 37(1)(3) for breach of Section 135 of Mumbai Police Act, 1951 read with Section 51(b) of Disaster Management Act, 2005.

4

Jalgaon City

83/2021

22.03.2021

Under Sections 4, 5 of Prevention of Gambling Act, 1887 read with Sections 188, 269 of IPC read with Section

51 of Disaster Management Act, 2005.

5

Shani Peth

208/2021

23.09.2021

Under Sections 307, 120-B, 452, 326, 324, 323, 506 of IPC

read with Sections 3/25, 4/25 of Arms Act, 1959 read with Section 37(1)(3) for

breach of Section 135 of Mumbai Police Act, 1951.

6

Ramanand Nagar

18/2017

04.02.2017

As per Section 107 of the Code of Criminal Procedure, 1973

7

Ramanand Nagar

118/2020

23.08.2020

As per Section 107 of the Code of Criminal Procedure, 1973

8

Ramanand Nagar

46/2021

30.07.2021

As per Section 107 of the Code of Criminal Procedure, 1973

9

Ramanand Nagar

143/2023

30.04.2023

Under Section 399 of IPC read with Sections 3/25, 4/25 of Arms Act, 1959

10. It reveals from the record that the first offence registered against the petitioner was on 14.09.2016. After gap of three years, next offence was registered on 14.07.2019. On 30.04.2023, last offence bearing C.R. No.143/2023 was registered after gap of 18 months from C.R. No.208/2021 registered on 23.09.2021. Last preventive action was taken on 30.07.2021. The respondents/ authorities are not delectant in taking steps against the petitioner under the Act . Affidavit-in-reply filed by the respondents also does not disclose any justification for delay. The live link between past conduct and the action would stand snapped. We are guided by the law laid down by the Supreme Court in the matter of Sushanta Kumar Banik Vs. State of Tripura and Ors., AIR (2022) SC 4715. Paragraph Nos. 13 to 16 of the said judgment are as follows :

"13. There is indeed a plethora of authorities explaining the purpose and the

avowed object of preventive detention in express and explicit language. We think that all those decisions of this Court on this aspect need not be recapitulated and recited. But it would suffice to refer to the decision of this Court in *Ashok Kumar v. Delhi Administration and Ors.*, (1982) 2 SCC 403, wherein the following observation is made :

"Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing."

14. In view of the above object of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and keep their eyes skinned but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.

15. The adverse effect of delay in arresting a detenu has been examined by this Court in a series of decisions and this Court has laid down the rule in clear terms that an unreasonable and unexplained delay in securing a detenu and detaining him vitiates the detention order. In the decisions we shall refer hereinafter, there was a delay in arresting the detenu after the date of passing of the order of detention. However, the same principles would apply even in the case of delay in passing the order of detention from the date of the proposal. The common underlying principle in both situations would be the "live & proximate link" between the grounds of detention & the avowed purpose of detention.

16. In *Sk. Nizamuddin v. State of West Bengal*, (1975) 3 SCC 395, this Court while examining the necessity of securing the arrest of the detenu immediately after the order of detention has held thus:

"It would be reasonable to assume that if the District Magistrate was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude in securing the arrest of the petitioner immediately after the making of the order of detention, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. Of course when we say this we must not be understood to mean that whenever there is delay in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine."

Having held as above, Bhagwati, J. (as the learned Chief Justice then was) pointed out that if there is any delay in arresting the detenu pursuant to the order of detention which is prima-facie unreasonable, the State must give reasons explaining the delay.

11. On the point of delay, there are catena of decisions. We have preferred latest one, instead of burdening, our judgment with multiple authorities. This unexplained delay creates serious doubt for the need of draconian action against the petitioner.

12. We have noticed that there is intermittent gap of considerable period between two offences. Similar time span also appears in the preventive actions. No recourse to action of externment has been taken under Maharashtra Police Act. The respondent authorities have not exhausted that remedy to curb the notoriety of the petitioner. In the premise, the recourse to action of detention under the act appears to be unwarranted. We are of the considered view that the subjective satisfaction is not intelligible decision.

13. The grounds of detention only refer to the enlargement of the petitioner on bail in the respective offence pitted against him. The reasons assigned by the criminal courts to grant him bail have not been considered. It is even not made clear whether ever such orders are being placed before the detaining authority. The affidavit-in-reply does not clarify this aspect of the matter. The orders of bail would be relevant material. This Court has consistently held in number of matters that non-consideration of the reasons enlarging the detenu on bail would vitiate detention order. We prefer to refer the following decisions :

(i) Sushanta Kumar Banik (supra)

(ii) Avinash Vs. State of Maharashtra in Criminal Writ Petition No.1745/2022 (Paragraph No.12 and 14)

(iii) Alakshit Rajesh Vs. State of Maharashtra in Criminal Writ Petition No.626/2022 (Paragraph No.13)

(iv) Shri. Pandurang @ Panda Narayan Garud Vs. District Magistrate, Pune in Criminal Writ Petition No.454/2022 (Paragraph No.7 and 8)

14. Considering over all conspectus of the matter, we are of the considered view that the material on record falls short to declare petitioner as a dangerous person. Although, the offences are registered under Chapter XVI and XVII against him, the draconian action of preventive detention appears to be unreasonable and arbitrary. We are inclined to allow the petition by following order :

ORDER

(i) The Criminal Writ Petition is allowed.

(ii) The detention order dated 27.10.2023 passed by the respondent no.1/District

Magistrate, Jalgaon is quashed and set aside.

(iii) The petitioner shall be released from imprisonment forthwith.

(iv) Rule is made absolute in the above terms.