
(2001) 06 BOM CK 0038
In the Bombay High Court
Case No : Criminal W.P. No. 57 of 2001

Mohd. Mubarak

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-06-2001

Acts Referred:

Arms Act, 1959 — Section 25, 4
Bombay Police Act, 1951 — Section 135
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3, 3(1)
Penal Code, 1860 (IPC) — Section 147, 149, 248, 324

Citation : (2002) 1 MhLj 360

Hon'ble Judges : P.S. Brahme, J;J.N. Patel, J

Bench : Division Bench

Advocate : R.M. Patwardhan, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.S. Brahme, J.—The petitioner Mohammad Mubarak s/o Mohammad Umar has approached this Court by way of this writ petition for a writ of habeas corpus challenging his detention dated 12-7-2000 passed by respondent No. 2. The Commissioner of Police, Nagpur invoking provisions u/s 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers Drug Offenders and Dangerous Persons Act, 1981 (hereinafter referred to as "said Act"). Along with the said order the detenu was served with the grounds of detention which was also dated 12-7-2000. The order of detention and the grounds of detentions have been annexed in the writ petition as Annexure No. 1. The State Government approved the order of detention on 12-7-2000 on 20-7-2000 vide Annexure 2. The order of detention came to be confirmed by the State Government on 18-8-2000 vide Annexure 3.

2. It is revealed from the grounds of detention that the detention of the petitioner is founded on involvement of the petitioner in 5 serious offences

enumerated in paragraph 2 of the grounds, as also his recent criminal activities namely involvement in Crime No. 549/1999 under Sections 147, 248, 149, 324 of Indian Penal Code registered on complaint dated 16-9-1999 lodged by complainant Arif Shaikh s/o Shaikh Rahim with Police Station Sakkardara and his involvement in Crime No. 200/2000 for offence under Sections 307, 143, 147, 148, 149, 506 read with Section 4/25 of the Arms Act read with Section 135 of the Bombay Police Act. On complaint filed on 23-3-2000 by the complainant Shaikh Asif s/o Shaikh Rahim with Police Station Sakkardara and his further involvement in commission of offence as disclosed in in-camera statement namely witness-"A". witness "B" and witness "C" stated in the grounds of detention in paragraph No. 6.1.1, 6.2.1 and 6.3.1. respectively.

3. In the grounds of detention, the detaining authority has observed that since the year 1994, the petitioner has been continuously engaging himself in the commission of violent and desperate acts such as rioting armed with deadly weapons and committed murder, attempt to murder, voluntarily causing hurt and robbery at the point of deadly weapons, illegal possession of deadly weapons and flouting the prohibitory orders in force. Such criminal acts of the petitioner have terrorised the law abiding and peace loving citizens residing in the area of Police Station, Sakkardara, Nagpur. Such activities found to be extremely prejudicial to the maintenance of the public order. Said Criminal record of the petitioner in the past shows that the petitioner has committed five serious offences as given below in paragraph which shows his inclination/tendencies towards committing the offences. These offences are not considered while formulating detention order. In respect of offences registered at Cr. No. 549/1999 the charge sheet has been filed against the petitioner and his associates in the Court of J. M. F.C. Corporation Court No. 1, Nagpur vide C. C. No. 590/1999 dated 18-12-1999 and the case is pending for trial in respect of offence registered at Cr. No. 200/2000 arising out of complaint dated 22-3-2000 the case is under police investigation.

4. The first in-camera statement witness "A" relates to the incident that took place in the month of March, 2000, wherein the petitioner has forcibly took out an amount of Rs. 20/- from the pocket of the witness putting him under threat to kill him on the point of knife. The second in-camera statement of witness "B" again relates to offence which took place in the month of March, 2000, wherein the petitioner alleged to have given threats to the witness by whipping out knife and pointing out it towards him and forcibly took out some amount. The third in-camera statement of witness "C" relates to the incident that took place in the month of March, 2000 wherein the petitioner extracted amount from the witness by putting him under the threat.

5. The detaining authority was subjectively satisfied that the petitioner was dangerous person as defined under the said Act and that his activities were extremely prejudicial to the maintenance of public order.

6. The learned counsel for the petitioner has challenged the detention order on various grounds as mentioned in paragraphs 8 to 16 in the writ petition.

However, Mr. Patwardhan, learned counsel for the petitioner during the course of argument has pressed following grounds :

1. There is no application of mind on the part of the detaining authority inasmuch as detaining authority has in fact considered the material of para No. 2 and the copy of the grounds which is said to have been not considered and the documents in support of the para 2, have not been supplied.

2. There is no live link between the last offence committed and the detention order.

3. The detaining authority has nowhere stated in the order that the statement of witnesses described as A. B. and C are truthful version and are supported by documentary evidence.

4. The two crimes arising out of the incident dated 16-9-1999 and 22-3-2000 and thereafter no offence was registered against the petitioner which follows that, state grounds have been taken into consideration by the respondents in passing the order of detention. No explanation of whatsoever nature has been given anywhere in the order as to why it was felt necessary by the respondents to pass the order of detention on 12-7-2000.

7. As per the settled law, there has to be live link between the illegal activities and action of detention. The basic requirement of taking action u/s 3 of the Act is continuous indulgence of a person in committing acts of terror and causing bodily injuries to innocent persons which could result in causing harm, alarm and danger to the safety of person and property of the residents of the locality and result in such acts which are extremely prejudicial to maintenance of public order.

8. Respondent No. 2 refuting the allegations in the writ petition stated in his reply that the petitioner had been detained on 15-7-2000 in order to curb his criminal activities. The petitioner has a past history of criminal record. The three in-camera statements were verified by the Assistant Commissioner of Police, Ganeshpedi, who is also Special Executive Magistrate. These in-camera statements have been recorded by the Police Inspector who is gazetted officer. The detention order is based upon the two criminal cases i.e. Cr. No. 549/1999 and Cr. No. 200/2000 and three in-camera statements of the witnesses, in-camera statements show continuous criminal activities of the petitioner and there is live link between the illegal activities committed by the detenu and the order of detention order. The detention order was passed within 4 months from the date of occurrence of the offence of crime No. 549/1999 and Cr. No. 200/2000, these rioting acts are extremely prejudicial to the maintenance of public order. The Assistant Commissioner of Police has verified each and every in-camera statement. The very fact of recording of in-camera statement by the officer of the rank of Police Inspector and verification by the Senior Police Officer is sufficient to consider in-camera statements as genuine and truthful.

9. We shall deal with the grounds raised by the learned advocate for the

petitioner one by one. The detention order is challenged on the ground that the detaining authority has considered the material contained in paras 1 to 3 copies of which have not been furnished to the detenu and the same has vitiated the detention order. In this respect the contention of respondent No. 2 is that what is contended in paras 1 to 3 pertains to the previous history and past cases against the detenu and the same has been referred in the grounds of detention to show that the inclination of detenu and tendency towards commission of offences. However, the said offences are not considered while formulating the subjective satisfaction against the detenu that, his activities were prejudicial to the maintenance of the public order.

10. The Apex Court in *Fitrat Raza Khan Vs. State of Uttar Pradesh and Others*, , has pointed out that past conduct or antecedent, history of a person can appropriately be taken into account in making a detention order and it is usually from prior offences showing tendencies or inclinations of man that an inference can be drawn whether he is likely, in the future to act in a manner prejudicial to the maintenance of public order.

11. The Apex Court in *Abdul Sathar Ibrahim Manik Vs. Union of India and others*, , has laid down that when the detaining authority has merely referred to certain incidents in the narration of events and has not relied upon them, the same will not cause any prejudice to the detenu in making effective representation. Whether in a given case the detaining authority has casually or passingly referred or relied upon such incidents would be depend on the facts and the grounds which is required to be examined by the Court.

12. The Apex Court has in *Vashisht Narain Karwaria Vs. State of U.P. and another*, , laid down that submissions which are extraneous touching the character of the detenu though not referred to in the grounds of detention, might have influenced the mind of the detaining authority to some extent, one way or the other in respect of directing the detention of the detenu. It was observed that had, these extraneous materials not been placed before the detaining authority, he might or might not have passed the detention order, as a result of which it could be held that the detention order is suffering from the vice of consideration of extraneous materials vitiating the validity of the order.

13. Learned counsel for the petitioner also placed reliance on a decision reported in 2007 Cri LJ. 452 *Kamlabai Kalicharan Yadao v. State of Maharashtra and Anr.*, in which the Division Bench of this Court to which myself was one of the members held that tenor of the grounds of detention does suggest that past history has considerably influenced the detaining authority in passing the detention order and on the basis of past history the detenu was first dubbed as dangerous person and then only the recent criminal activity has been referred to in the detention order. The copies of the said material were not furnished to the petitioner which influenced the detaining authority in passing the detention order which has also affected the right of detenu to make effective representation, thereby vitiating the detention order.

14. In the case before hand if we have a close look on the grounds disclosed in the detention order it starts with the paragraph "Since year 1994 you have been continuously engaging yourself in commission of violent and desperate acts such as rioting, armed with deadly weapons and committing murder, attempt to murder...." and thereby created reign of terror in the mind of peace-loving and law abiding citizens and your such activities are found to be extremely prejudicial to the maintenance of public order ..." in the second paragraph of the grounds of detention, five cases are enumerated to show mind inclination.

15. Tendency towards committing crimes, but it is stated that the said offences are not considered while formulating the detention order. Paragraph 4 of the detention order also refers to the fact that the petitioner has shown utter disregard towards law of the land and created reign of terror in the minds of law abiding and peace loving citizens of the locality. Further in the grounds of detention, the detenu is dubbed as a dangerous person as defined in the provisions of the said Act. Thus the detenu was dubbed as a dangerous persons on the basis of averments made in paragraph 1 to 3 which certainly has gone into and influenced in the passing of the detention order. It is only thereafter that the detention order enumerates the recent criminal activities on the basis of which the detention order is passed, which includes two offences and four in-camera statements of the witnesses. It is therefore, clear that the tenor of the grounds of detention does suggest that past history has considerably influenced the detaining authority in passing the detention order and on the basis of the past history the detenu was first dubbed as dangerous person and then only the recent criminal activities have been referred to in the detention order, the copies of the said material are not furnished to the petitioner which influenced the detaining authority in passing the detention order, which has also affected the right of detenu to make effective representation. It is clearly a case of non-application of mind by the detaining authority, the copies of the said material being not furnished to the detenu which has influenced the detaining authority in passing the order of detention and the same has therefore, vitiated the detention order. The Three Division Benches of this Court including one of which myself was one of the members have taken a similar view in *Anil v. State of Maharashtra* 2000 (2) Cri.LR. 139 , *Sunil Bhagat v. State of Maharashtra*, Criminal Writ Petition No. 262/1999 and *Vijay Damaji Gaidhane Vs. State of Maharashtra and Another*, , and the detention orders have been quashed on account of the tenor of the grounds of detention in similar situation and we have no reason to take a different view of the matter. Therefore, the order of detention is quashed as the detaining authority has been influenced by the past history of the detenu and the copies of the material relating to the past history of the detenu were not furnished to the petitioner.

16. The next ground Urged by the learned counsel for the petitioner is that there is no live link between the alleged last criminal activity and the detention order. The law on this point is settled that old and stale incident can not be construed as justifiable ground for passing an order of detention and there should be

proximity to such incident and live link between the incident and the detention order. In this respect though straight-jacket formula can be laid down and each case will depend on its facts and circumstances. On facts even short delay which is unexplained may vitiate the order of detention and on the other hand the long delay which is explained may not vitiate the detention order. The Apex Court in *Gulam Hussain @ Gama v. Commissioner of Police Calcutta*, has pointed out that no mechanical test on the counting of months of intervals is sound but, it all depends upon nature of the acts relied on, grave and determined or less serious or corrigable, on the length of the gap short or long on the reason for delay in taking preventive action like information of participation being available only in the course of investigation.

17. The learned counsel for the petitioner also placed reliance on the decision of the Division Bench of this Court reported in *Kamlabai Yadav (Smt.) Vs. State of Maharashtra and Another*, of which myself was one of the members in which it is held that it is difficult to come to the conclusion that there was live link between detention order and the activities on the strength of which the detention order has been formulated. We held that the live link between alleged activities of the detenu and the passing of the detention order has not been established and the detention order was liable to be quashed and set aside. In the case under consideration the detention order is based on the two offences registered against the petitioner which took place on 16-9-1999 and 22-3-2000. In addition the detention order is based upon four in-camera statements where the incidents are reported to have taken place in the month of March 2000. It is stated that in respect of those incidents, though statements were recorded, the offences have not been registered. When those statements were recorded is not reflected in the ground of detention. The order of detention is passed on 12-7-2000. It is undisputed a fact, that no offence has been registered against the petitioner since after March 2000. The two offences registered against the detenu do not indicate the activities of the petitioner to be prejudicial to the maintenance of the public order. Therefore, in these circumstances, it is difficult to come to the conclusion that there was live link between the detention order and the last activities on the strength of which the detention order has been formulated. In fact no explanation has been offered by the detaining authority in the return in this respect. The detaining authority has simply stated that there is no time frame mentioned in this respect, between date of commission of offence and date of the order. Therefore, we hold that there was no live link between the alleged activities of the detenu and the passing of the detention order and as such there has been complete utter non application of mind on the part of the detaining authority in formulating the detention order which stands vitiated on this ground.

18. The next ground urged by the learned counsel for the petitioner is that the detaining authority was not satisfied about the truthfulness of in-camera statement and therefore, detention order made on the basis of in-camera statement is vitiated. The Apex Court in *Smt. Phulwari Jagdambaprasad Pathak*

Vs. Shri R.H. Mendonca and Others, , has summarised the legal position in respect consideration of in-camera statements of the witnesses while formulating the detention order as follows:--

"Then comes the crucial question whether in-camera statements of persons/ witnesses can be utilised for the purpose of arriving at subjective satisfaction of the detaining authority for passing the order of detention. Our attention has not been drawn to any provision of the Act which expressly or impliedly lays down the type of material which can form the basis of a detention order u/s 3 of the Act. Preventive detention measure is harsh, but it become necessary in larger interest of society. It is in the nature of precautionary measure taken for prevention of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the maintenance of public order. In the absence of any provisions specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve the power vested in the detaining authority should be unduly restricted. It is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. Presumably, that is why the Parliament did not make any provision in the Act in that regard and left the matter to the discretion of the detaining authority. However, the fact stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed."

19. The counsel for the petitioner placed reliance on the decision of Smt. Vijaya Raju Gupta Vs. Shri R. H. Mendonca, Commissioner of Police Brihan Mumbai and Others, , wherein it is held that in-camera statements of witnesses can be utilised by the detaining authority for the purpose of arriving on subjective satisfaction for passing order of detention under the said Act, but the detaining authority must be satisfied about the truthfulness of the statements made in the in-camera statements. Where neither in the detention order nor in the grounds of detention, the detaining authority had stated anything that he was satisfied about the truthfulness of the statements made in in-camera statement on the basis of mere verification, without there being something more by way of contemporaneous document or material the statements made in the in-camera statements were believed to be true. It was very difficult to hold that the detaining authority was in fact subjectively satisfied that the assertion made in in-camera statements were true. The detaining authority has to apply his mind about truthfulness of the assertions made in the in-camera statements.

20. There remains no doubt in the light of the law laid down by the Apex Court

that in-camera statements of person can be utilised by the detaining authority for the purpose of arriving at subjective satisfaction for passing the detention order. However, the Apex Court made it clear that the facts stated in the materials relied upon should be true and have a reasonable nexus with the purpose for which the order is passed. Necessary corollary therefore is that the detaining authority must be satisfied about the truthfulness of the statements made in the in-camera statements.

21. In the case before hand the detaining authority has relied upon 4 in-camera statements A, B, C and D. It is already stated that these in-camera statements related to the incidents that took place in the month of March, 2000. The detaining authority has not stated anything that he was satisfied about the truthfulness of the statements. In the affidavit filed by the detaining authority, it is only stated that in-camera statements were verified by the higher grade police officer of the rank of A.C.P. in fact the petitioner has set up specific case that in-camera statements were false and fabricated giving concocted story. There is no material to show that the detaining authority was satisfied that the contents of the in-camera statements were true and genuine. Therefore, on the basis of mere verification, without there being some thing" more by way of contemporaneous document or material moreover, when no such statement made in the grounds of detention that statement made in-camera statements were believed to be true. It is very difficult to hold that the detaining authority was in fact subjectively satisfied with the assertion made in in-camera statements were true. It has to be stated that the detaining authority has not applied his mind about the truthfulness of the assertions made in the in-camera statements and on this count alone the order of detention is vitiated. The learned counsel for the petitioner pointed out that the two offences registered against the petitioner, related to the incidents that took place on 16-9-1999 and 23-3-2000. The incidents alleged to have taken place in relation to in-camera statements A, B, C, D have taken place in the month of March, 2000. The detaining authority has passed the order of detention on 12-7-2000, this shows that there has been inordinate delay of about six months which remained unexplained by the detaining authority. He therefore, urged that this shows utter non application of mind and as such the order of detention is quashed on this count.

22. We refer to the decision of the Apex Court in the case of Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, . In paragraph 6 the Apex Court has held thus "delay ipso facto in passing order of detention after incident not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by detaining authority". We also refer to the decision of the Supreme Court in Pradeep Nikanth Paturkar Vs. S. Ramamurthi and others, . A perusal of the said decision particularly in para 14 would show that when plea of delay in the issuance of detention order is taken, unexplained delay, whether short or long, should be explained and if the same is not explained the detention order would have to be quashed.

23. In the case at hand detention order has been passed after about four months from the last criminal activities of the petitioner as disclosed in in-camera statements. There has been no explanation by the detaining authority about this delay. In fact the detaining authority-respondent No. 2 in his affidavit-has stated that in the Act there is no mention of time, period after which the detention order can be passed. We have already stated that no recent criminal activity of the petitioner was reported to the police station, since after the incident of March, 2000 as disclosed in in-camera statements. In the background of this it does not appeal to the reasons that the detaining authority took 4 months to formulate the detention order. Therefore, as held by the Apex Court when there is delay in issuing the detention order, the same has to be specifically explained by the detaining authority, in the absence of which the issuance of the detention order is snapped the live link between the prejudicial activities of the detenu the rationale of clamping a detention order on him. This itself impairs subjective satisfaction on the part of detaining authority and it has to be said that the order of detention suffers from the vice of non-application of mind, which deserves to be quashed and set aside.

24. To sum up, we hold that the detention order is suffering from vice of consideration of extraneous materials vitiating the validity of the order. There is no live link between the alleged last criminal activity and the order of detention. On account of inordinate delay, the live link between the prejudicial activities of the detenu and the rationale of clamping the detention order on him has been snapped and as a result of which the detention order becomes punitive rather than preventive. The tenor of grounds of detention does suggest that the detention order is founded on the basis of past history and the detenu was first dubbed as dangerous person and then only recent criminal activity has been referred to in the detention order. The copies of the said material were not furnished to the petitioner which influenced the detaining authority in passing the detention order, it has also affected the right of detenu to make effective representation. The detaining authority since was not satisfied about the truthfulness of in-camera statements, subjective satisfaction for passing the order of detention has been impaired resulting into vitiating the order of detention. Therefore, the order of detention deserves to be quashed and set aside. Hence the order.

ORDER

The writ petition is allowed. The order of detention dated 12-7-2000 is quashed and set aside. The petitioner is directed to be released forthwith if not required in any other case. Rule is made absolute.

25. Writ petition allowed.