
(2014) 03 BOM CK 0199

In the Bombay High Court

Case No : Criminal Writ Petition No. 421 of 2013

Mohsin Ahmed

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-03-2014

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(1), 8

Penal Code, 1860 (IPC) — Section 323, 34, 387, 427, 504

Citation : (2014) ALLMR(Cri) 2409

Hon'ble Judges : C.V. Bhadang, J;B.R. Gavai, J

Bench : Division Bench

Advocate : R.M. Patwardhan, Advocate for the Appellant; M.K. Pathan, APP, Advocate for the Respondent

Final Decision : Allowed

Judgement

C.V. Bhadang, J.—By this petition, the petitioner who is a detenu under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (for short "the Act") has taken an exception to the order dated 22.4.2013 passed by respondent No. 2. The brief facts of the case are as under:

A proposal was moved by the sponsoring authority on 29.2.2013 for detention of the petitioner under the provisions of the aforesaid Act, which reached the office of respondent No. 2 on 2.3.2013. Respondent No. 2 passed an order on 22.4.2013 that the petitioner shall be detained under the provisions of the aforesaid Act. By a communication of even date, respondent No. 2 communicated the grounds of the order of detention as required u/s 8 of the Act. A perusal of the same would show that respondent No. 2 has relied upon in all four offences registered and statements of two witnesses (recorded in camera) as under:-

- i) Crime No. 241/2012 u/s 323, 34 of I.P.C read with Section 4/25 of the Arms Act and Section 135 of Bombay Police Act registered with PS, Tahsil, Nagpur (Criminal Case No. 3550/2012).
- ii) Crime No. 264/2012 u/s 387 of I.P.C., registered in PS, Tahsil, Nagpur (Criminal Case No. 628/2013),
- iii) Non cognizable Case No. 38/2013 u/s 504, 323, 427, 34 of I.P.C. registered in Police Station Tahsil, Nagpur,
- iv) Crime No. 3180/2013 u/s 4, 25 of the Arms Act read with Section 135 of Bombay Police Act registered In Police Station Tahsil, Nagpur (Criminal Case No. (126/2013).
- v) Statement of Witness "A".
- vi) Statement of Witness "B".

The said order came to be approved by the State Government. Feeling aggrieved, this petition is filed.

2. It is contended by the learned Counsel for the petitioner that there is an unexplained delay in passing the order which has the effect of snapping the live-link between the alleged prejudicial activities and the purpose of detention, He submitted that there is no plausible explanation forthcoming for the delay in passing the impugned order on 22.4.2013 after the proposal reached the office of respondent No. 2 on 2.3.2013. It is next contended that the incident allegedly involving the petitioner can at the best be said to be of law and order and not public order. Lastly, it is contended that the statements of the witnesses, who had confided and given their statements in camera on 17.1.2013 and 21.1.2013, are not shown to be verified by the Assistant Commissioner of Police, Kotwali Division on the same day. In fact, it is pointed out that the so-called verification of the said statements by the Assistant Commissioner of Police does not bear any date as such. He, therefore, submitted that the reliance placed on these statements would be misplaced and would partake of the nature by taking into consideration extraneous material. It is, therefore, submitted that the impugned order is vitiated and it be quashed and set aside, Reliance is placed on the following decisions in support of the submissions as made.

- (i) Pradeep Nikanth Paturkar Vs. S. Ramamurthi and others,
- (ii) Niyazuddin @ Sonu Sirajuddin Ansari Vs. State of Maharashtra and Another,

3. On the contrary, it is submitted by the learned Additional Public Prosecutor that delay by itself would not be material, particularly when it is properly explained. It is submitted that time was required for getting the documents translated in vernacular and the compilation ran into 296 pages. It is, therefore, submitted that there is no delay as such. It is next contended that indeed the incident, which has been relied upon, would raise a question of public order. It is

also submitted that merely because there is no date mentioned by the Assistant Commissioner of Police on the verification of the two statements recorded in camera would not be fatal. The learned Additional Public Prosecutor has placed reliance on the following decisions in support of the submissions.

(i) Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others,

(ii) Abdul Salam alias Thiyyan Vs. Union of India and others,

(iii) Shri Indrajit Goswami Vs. Shri R.H. Mendonca Commissioner of Police and others,

4. It is now well settled that mere delay in passing of the detention order would not be decisive. The question would depend upon facts and circumstances of each case. The Court has to look to the nature of the delay and the reasons explaining the same.

5. In the case of Pradeep Nilkanth Paturkar (Supra) the Hon'ble Apex Court had considered the observations in an earlier case in T.A. Abdul Rahaman Vs. State of Kerala and others, as under:

The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guide lines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

In the case of Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, the same view was reiterated in the following terms:

Delay ipso facto in passing an order of detention after an incident, is 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 examined by the detaining authority.

In the case of Niyazuddin @ Sonu Sirajuddin Ansari (Supra) before the Division Bench of this Court, to which one of us was a parry (B.R. Gavai, J.), the proposals were forwarded on 15.10.2012 and were received by the Commissioner of Police on 5.11.2012. In the facts of that case, it was held that the delay of 20 days to transfer the file to Crime Branch has not at all been

explained, which vitiated the detention order.

6. The case of Rajendrakumar Natvarlal Shah (Supra) arose out of an order of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. In the said case it was held as under:

When a person is detected in the act of smuggling or foreign exchange racketeering, the Directorate of Enforcement has to make a thorough investigation into all the facts with a view to determine the identity of the persons engaged in these operations which have a deleterious effect on the national economy. Quite often these activities are carried on by persons forming a syndicate or having a wide network and therefore this includes recording of statements of persons involved, examination of their books of accounts and other related documents. Effective administration and realisation of the purposes of the Act is often rendered difficult by reason of the clandestine manner in which the persons engaged in such operations carry on their activities and the consequent difficulties in securing sufficient evidence to comply with the rigid standards, insisted upon by the courts. Sometimes such investigation has to be carried on for months together due to the magnitude of the operations. Apart from taking various other measures i.e. launching of prosecution of the persons involved for contravention of the various provisions of the Acts in question and initiation of the adjudication proceedings, the Directorate has also to consider whether there was necessity in the public interest to direct the detention of such person or persons u/s 3(1) of the Act with a view to preventing them from acting in any manner prejudicial to the conservation and augmentation of foreign exchange or with a view to preventing them from engaging in smuggling of goods etc. The proposal has to be cleared at the highest quarter and is then placed before a Screening Committee. For aught we know, the Screening Committee may meet once or twice a month. If the Screening Committee approves of the proposal, it would place the same before the detaining authority. Being conscious that the requirements of Article 22(5) would not be satisfied unless the "basic facts and materials" which weighed with him in reaching his subjective satisfaction, are communicated to the detenu and the likelihood that the court would examine the grounds specified in the order of detention to see whether they were relevant to the circumstances under which the impugned order was passed, the detaining authority would necessarily insist upon sufficiency of the grounds which would justify the taking of the drastic measure of preventively detaining the person.

It would be thus clear that the delay arose in the peculiar facts and circumstances of the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act and the case would be distinguishable on facts.

Incidentally, the case of Abdu Salam Alias Thiyyan (Supra) also arose out of an order of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act.

7. In the case of Indrajit Goswami (Supra) a minute details of moving papers through hierarchy of administration was given. Consequently, on facts, it was held that the detention order was non vitiated on the ground of delay.

8. Turning to the present case, in our considered opinion, the delay in this case of about one month and 20 days in passing of the order on an omnibus ground of time being required for effecting translation cannot be accepted and the order would be vitiated on the ground of delay. Apart from this ground, it would also appear that the requirement of the statements of the witnesses, recorded in camera, being verified by an officer, ranking of Assistant Commissioner of Police, is not satisfactorily established in the absence of a date on the verification. In that view of the matter, we hold that the impugned order is not sustainable in law. The detention of the petitioner is held to be illegal. The petitioner is directed to be released forthwith, if not required in any other crime.

Criminal writ petition is, thus, allowed and disposed of with no order as to costs.