
(2002) 02 BOM CK 0016

In the Bombay High Court

Case No : Criminal Writ Petition No. 1631 of 2001

Nitin Narayan Pandare

APPELLANT

Vs

M.N. Singh and Others

RESPONDENT

Date of Decision : 04-02-2002

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 2, 3

Citation : (2002) BomCR(Cri) 812 : (2003) CriLJ 510

Hon'ble Judges : Vishnu Sahai, J;S.K. Shah, J

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; Aruna Kamath, APP, for the Respondent

Final Decision : Dismissed

Judgement

Vishnu Sahai, J.—Through this writ petition preferred under Article 226 of the Constitution of India, the petitioner-detenu has impugned the order dated 28-8-2001 passed by the first respondent Mr. M. N. Singh, Commissioner of Police, Greater Mumbai detaining him under Sub-section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (No. LV of 1981) (Amendment 1996), (hereinafter referred to as the M.P.D.A. Act).

The detention order along with the grounds of detention which are also dated 28-8-2001 was served on the petitioner-detenu on 29-8-2001 and their true copies have been annexed as Annexures A and B respectively to the petition.

2. A perusal of the grounds of detention (Annexure B) shows that the impugned order is founded on one C.R. namely C.R. No. 233/2001 registered on the basis of a complaint dated 25-6-2001 lodged by Badshah Abdul Mannan Shaikh for offences punishable under Sections 324, 452, 342, 34, IPC at Nirmal nagar police station one L.A.C. namely L.A.C. No. 937/2001 u/s 37(1)(a) of the Bombay

Police Act registered at Nirmal nagar police station on 25-6-2001 and in --camera statements of two witnesses namely A and B, which were recorded on 24-7-2001 and 25-7-2001 respectively.

2-A. The details of the C.R. are contained in para 4 (a) and 4(a-i). In short, they are as under :--

The informant -- Badshah Abdul Mannan Shaikh knew the detenu and his associates Santosh Pandare and Ashok Achrekar. On 25-6-2001 at 0.11 hours, while the informant was standing in front of his factory in Aman Chawl committee, of Indira nagar 11, Jawahar nagar, Khar (E) Mumbai, the detenu and his said associates came and started threatening him. The detenu whipped out a sword and inflicted a blow with the same on the informant's head. When the informant in order to save himself ran inside his factory, the detenu and his associates followed him and the detenu therein assaulted him with a sword. On hearing the shouts, neighbours gathered there. On seeing them, the detenu and his associates told them that they should go to their houses otherwise, they would be killed. On hearing the threats of the detenu and his associates, neighbours went away to their residences and closed down their doors and shutters.

2-B. The details of the L.A.C. are contained in para 4 (a-iii). A perusal of the said para shows that a sword was recovered from the possession of the detenu.

2-C. The details of in -- camera statements of witnesses are contained in paras 4(b-4) (b-i) and 4(bii) respectively.

Witness A in his in -- camera statement has stated as under :

He knew the detenu and his associate Ashok Achrekar for the last 4/5 years. On the point of deadly weapons they used to collect hafta money from garment factory owners, hawkers, shop keepers and other businessmen in the areas of Sanjeevani Cooperative Housing Society, Indira nagar, Jawahar nagar, Golibar Marg and areas adjoining thereto.

One day in the second week of June, 2001 at 2 a.m. while he was present in his godown along with 3/4 persons, the detenu along with his associate Ashok Achrekar and an unknown associate entered his godown. The detenu demanded Rs. 2000/- from him and when he turned down his demand, whipped out a button knife and rested it on his chest; abused him; and told him to give the money otherwise, he would be killed. His associates assaulted him by fists and kicks. When his workers came forward to rescue him Ashok Achrekar and the detenu's unknown associate whipped out choppers from their person; pointed them towards his workers; and told them in case they came forward, their neck would be severed. Consequently, all his workers ran away. On hearing his shouts, the residents gathered there but, the detenu and his associates pointed lethal weapons towards them and seeing them, they ran away due to fear and passers by also ran away helter skelter on account of fear.

Witness 3 in his statement recorded on 25-7-2001 stated in short as under; He knew the detenu and his associate Ashok Achrekar for last about 2/3 years, they on the point of deadly weapons like knives, choppers and swords used to collect ransom money from garment and embroidery factory owners, building contractors and hawkers in the areas of Indira nagar No. 1 Indira nagar No. 2, Jawahar nagar, Golibar Marg, and areas adjoining thereto. One day in the second week of June, 2001 at about 3 p.m. when he, his brother and 10/12 workers were present in the factory, the detenu along with his associate Ashok Achrekar and an unknown person entered inside the factory. Ashok Achrekar pointed out a chopper towards his head and demanded a ransom of Rs. 3000/-. When he refused to accede to his demand the detenu's unknown associate and the detenu inflicted fist blows on his person. Ashok Achrekar threatened him saying that in case he did not give the money, he would be killed. When he shouted for help, his brother and the workers came forward to assist him. At that point of time, the detenu pointed out a sword towards them and told them to go away otherwise, they would be killed. Due to fear, the brother of the witness and the workers of the witness ran away. The neighbours who had also gathered there ran away on account of detenu and his associates threatening them on the point of deadly weapons.

2-D. A perusal of para 5 of the grounds of detention shows that the detenu has been detained as a dangerous person u/s 2(b-i) of the M.P.D.A. Act.

3. We have heard learned counsel for the parties.

Although in this writ petition, Mr. U. N. Tripathi, learned counsel for the petitioner detenu has pleaded a large number of grounds numbered as ground Nos. 6(A) to 6(F) but, he has only pressed before us two grounds namely ground Nos. 6(A) and 6(F).

4. We now propose considering the said grounds.

We begin with ground No. 6(A).

In short, the said ground is that the inference of the detaining authority that the detenu is a dangerous person u/s 2(b-i) of the M.P.D.A. Act and will indulge in prejudicial activities in future is absolutely erroneous and baseless and consequently, the detention order is illegal, bad -- in law and ought to be quashed and set aside.

5. Ground No. 6(A) has been replied to in para 7 of the return of the detaining authority. In short, he has averred therein as under :--

There was sufficient material for him to conclude that the detenu was a dangerous person u/s 2(b-i) of the M.P.D.A. Act and would indulge in prejudicial activities in future. The said material was C.R. No. 233 of 2001, L.A.C. No. 937 of 2001 and in camera statement of witnesses A and B. The detaining authority has stated that the said material was relied upon by him for detaining the detenu as a "dangerous person" and for issuing the detention order against him.

6. We have perused the averments contained in ground No. 6(A), those contained in para 7 of the return of the detaining authority wherein the said ground has been replied to, heard learned counsel for the parties and are constrained to observe that we do not find any merit in ground No. 6(A).

"Dangerous person" has been defined in Section 2(b-i) of the M.P.D.A. Act as follows :--

"Dangerous person" means a person, who either by himself or a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.

7. Since a perusal of Section 2(b-i) of the MPDA Act would show that for detaining a person as a dangerous person, only offences punishable under Chapter XVI and XVII of the Indian Penal Code and Chapter V of the Arms Act can be taken into consideration. We make no bones in observing that L.A.C. No. 937 of 2001 which was u/s 37(a) of the Bombay Police Act could not have been a ground for detaining the petitioner-detenu as a dangerous person.

But, we make no bones in observing that the other three grounds namely those relating to C.R. No. 233 of 2001 and those contained in the in-camera statements of witnesses A and B were cogent grounds for detaining the detenu as a dangerous person u/s 2(b-i) of the M.P.D.A. Act. We say this because, on the basis of C.R. No. 233 of 2001, a case u/s 324, 452, 342, 34, IPC was registered against the detenu and the said offence falls under Chapter XVI of the Indian Penal Code and the in camera statements of witnesses A and B disclose the commission of the offence of extortion by the detenu and the said offence falls under Chapter XVII of Indian Penal Code.

In our judgment, since on the basis of the aforesaid three offences, it can be legitimately concluded that the petitioner detenu, as a leader of a gang in terms of Section 2(b-i) of the M.P.D.A. Act was habitually committing offences punishable under Chapter XVI and XVII of Indian Penal Code, the detaining authority was justified in detaining him as a dangerous person u/s 2(b-i) of the said Act.

8. Coming to the other facet of the grievance contained in ground No. 6(A) namely that the conclusion of the detaining authority that the detenu would indulge in prejudicial activities in future is erroneous, we make no bones in observing that we find the said pleading and not the conclusion of the detaining authority to be erroneous.

The conclusion of the detaining authority is based on one C.R. and two in -- camera statements, the details of which have been mentioned in the grounds of detention. We have given our reasons for holding why the L.A.C. cannot be a ground for detaining the petitioner -- detenu as a dangerous person. However,

even after excluding the LAC the C.R. and the in camera statements remain and in our view, on their basis the detaining authority was justified in concluding that in order to prevent the detenu from committing such similar prejudicial activities in future, it was imperative to detain him under the impugned order.

9. Before parting with ground No. 6(A), we wish to focus on the provisions contained in Section 5-A of the M.P.D.A. Act which provide that where a detention order u/s 3 has been made on two or more grounds, it would be deemed to have been separately made on each of the grounds and merely because, one or some of the grounds are vague, nonexistent, not relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever it would still be sustainable in law if the remaining grounds are tenable in law.

We wish to emphasise that in view of the said provision, a detention order which is based on more than one ground would be deemed to be separately passed on each of the grounds; the subjective satisfaction of the detaining authority would also be deemed to have been separately arrived at on each of the grounds and if one of the grounds is untenable, the subjective satisfaction on the other grounds would not become vitiated in law.

10. For the said reasons, ground No. 6(A) fails.

11. We now come to ground No. 6(F). The said ground is that since the detenu has not been furnished vital documents like the charge-sheet of the criminal case registered against him and the proposal to detain him, his fundamental right to make an effective representation guaranteed by Art. 22(5) of the Constitution of India has been impaired.

12. Ground No. 6(F) has been replied to in para 12 of the return of the detaining authority. In short, the reply therein is as under :--

The charge-sheet in C.R. No. 233 of 2001 and L.A.C. No. 933 of 2001 was submitted in the Court of the Metropolitan Magistrate, Bandra, Mumbai on 10-12-2001 i.e. after the issuance of the detention order and was not relied upon by him in issuing the detention order. There is not even a passing reference to both Charge-sheets in the grounds of detention. Since the proposal for detention forwarded to various authorities is a confidential document, it is not incumbent to furnish its copy to the detenu. The detenu's fundamental right to make an effective representation guaranteed by Art. 22(5) of the Constitution of India has not been violated.

13. We have perused the averments contained in ground No. 6(F) of the petition, those contained in para 12 of the return of the detaining authority wherein the said ground has been replied to heard learned counsel for the parties and are constrained to observe that we do not find any merit in ground No. 6(F).

14. Article 22(5) of the Constitution of India reads thus :--

"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the, earliest opportunity of making a representation against the order.

A perusal of the said provision would show that the detaining authority is under an obligation to communicate to the detenu as soon as may be, the grounds of detention. The expression "grounds" as used in Art. 22(5) of the Constitution of India, does not merely mean only the factual inferences contained in the grounds but, also the material on which the said factual inferences are based. (See Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others,).

A perusal of Art. 22(5) makes it manifest that the grounds of detention should be furnished to the detenu because, then and then alone, would he be able to exercise his fundamental right guaranteed by Article 22(5) of the Constitution of India, of making a representation at the earliest opportunity.

15. It is in the above perspective that the pleading contained in ground No. 6(F) has to be examined and we make no bones in observing that when it is so done, it. Is rendered without merit.

It should be remembered that a proposal can neither be described as grounds of detention nor a material on which the grounds of detention are based. In that view of the matter, in our judgment, the failure of the detaining authority to supply to the detenu its copy would not impair upon the detenu's right of making an effective representation, guaranteed to him by Art. 22(5) of the Constitution of India.

At the same time, we hasten to add that we find that the grievance of the petitioner's counsel that since the proposal was not a confidential document, its copy should have been supplied to the detenu, is justified on the facts of this case because in para 1 of the grounds of detention, the detaining authority has only claimed privilege in respect of the names and particulars of the witnesses/victims in connection with the in camera statements of witnesses A and B. He has not claimed privilege in respect of the proposal. That being so, we are not inclined to accept the detaining authority's reply set out in his return that since the proposal was a confidential document, he was justified in not giving its copy to the detenu.

But, in our view, this would not make any difference to the fate of the petition because, as observed by us earlier, the proposal was neither a ground of detention nor the material on which the grounds of detention were founded and the detenu's fundamental right to make a representation guaranteed under Art. 22(5) of the Constitution of India would .riot be violated because its copy has not been furnished to the detenu. As mentioned ear Her, the said right would only be violated if the copy of the grounds of detention and/or the material on which they are founded is not furnished to the detenu.

16. For the said reasons, ground No. 6(F) fails.

17 No other ground was pressed by learned counsel for the petitioner.

18. In the result, we dismiss this petition and discharge the rule.