

(2013) 09 BOM CK 0030

In the Bombay High Court

Case No : Criminal Writ Petition No. 52 of 2013

Niyazuddin @ Sonu Sirajuddin Ansari

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3870 : (2014) 2 BomCR(Cri) 826

Hon'ble Judges : Z.A. Haq, J;B.R. Gavai, J

Bench : Division Bench

Advocate : R.M. Daga, for the Appellant; B.H. Dangre, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.—The petition challenges the order dated 23.11.2012 passed by respondent No. 2 - Commissioner of Police, Nagpur, vide which, the petitioner has been detained for a period of one year by exercising the powers u/s 8 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Person and Video Pirates Act, 1981 (Amendment of 2009). The material, which has been taken into consideration by the authority is three past cases registered against the present petitioner and two recent offences registered against him as under:

Perusal of the impugned order would reveal that in addition to aforesaid cases, the respondent No. 2 has also taken into consideration two in-camera statements purportedly recorded in the 2nd and 3rd week of August, 2012.

2. The order of detention dated 23.11.2012 has been affirmed by the State of Maharashtra by order dated 20.12.2012 by exercising power vested in it under Sub-section (1) of Section 12 of the said Act. The Advisory Board has also granted its approval on 15.12.2012.

3. Mr. Daga, learned counsel appearing on behalf of the petitioner submits that the impugned order is vitiated on several grounds. It is firstly submitted that two

in-camera statements, which are relied upon by the authority, are the fabricated documents. He submitted that the said in-camera statements do not mention the date on which the alleged incident had taken place. He submitted that the Police Inspector has fabricated the said documents in order to rope the petitioner under the provisions of the said Act of 1981.

4. The learned counsel for the petitioner further submitted that the cases which are registered against the petitioner would amount to at the most prejudicial law and order problem and not the public order. The learned counsel submitted that the alleged offences registered are against particular individuals and therefore, not affecting the public order. It is further submitted that there has been inordinate delay in processing the file. He submitted that though the specific ground is taken, there is no reply to the same. In this respect, the learned counsel for the petitioner relied on the judgment of the Apex Court in case of Pradeep Nikanth Paturkar Vs. S. Ramamurthi and others, .

5. The learned counsel for the petitioner further submitted that the last alleged offence, on which reliance is placed, were registered in the month of August, 2012, whereas, the impugned order is passed in the month of November, 2012. The learned counsel further submitted that the order has no nexus or proximity with the alleged activities of the petitioner and therefore, on this ground also, the petition deserves to be allowed.

6. On the contrary, Mrs. Dangre, learned Additional Public Prosecutor appearing on behalf of the respondents, submitted that the respondent No. 2-authority has taken into consideration all the relevant material while passing the impugned order. Learned Addl. P.P. submitted that perusal of in-camera statements would clearly reveal that the activities of the petitioner are prejudicial to the public order. She submitted that even the activities of the petitioner, for which Crime No. 232/2012 is registered would reveal that the said act is prejudicial to the public order. She further submitted that the said act concerns the petitioner going to the liquor shop, vandalizing the shop, looting the amount from the counter and thereafter threatening the public with Sword in hand. She submitted that the contention in that regard is without merit. Insofar as delay is concerned, she submitted that the delay is satisfactorily explained. It is further submitted that each case is to be decided on the facts of the each case and therefore, the petitioner cannot take much advantage of the slight delay in processing the file.

7. We find that it would not be necessary for us to go into the submissions made by either the learned counsel for the petitioner or the learned Additional Public Prosecutor, inasmuch as, in our considered view, the petition deserves to be allowed on three grounds, firstly, subjective satisfaction being vitiated on the ground of consideration of irrelevant and non-existent material; secondly, on unexplained delay in passing the order and thirdly, the translation supplied to the petitioner being not correct and as such adversely affecting the right of the petitioner under Article 22(5) of the Constitution of India.

8. Insofar as first ground is concerned, it will be relevant to refer to paragraph 9 of the impugned order, which reads thus:

9. Thus, it is evident that you are continually engaging yourself in the commission of dangerous criminal activities such as theft, lurking house trespass in order to commit theft in dwelling house, rioting armed with deadly weapons, attempt to murder, assault or criminal force to deter public servant from discharge of his duty voluntarily causing hurt/grievous hurt to deter public servant from his duty, moving armed with deadly weapons, etc. and terrorizing people with dire consequences. The witnesses and victims are afraid of your dangerous activities and also apprehend grave danger to their lives and property from you and hence, the witnesses and victims are not coming forward to depose against you, out of fear. However, with great efforts, two of such witnesses were taken into confidence and their in-camera statements have been recorded after assuring them that they will not be called upon to give evidence against you in any court or any other open forum. Hence, their names are not disclosed to you alongwith these grounds of detention (Article 22(6) of the Constitution of India) and for which I claim privilege.....

(emphasis supplied).

It can thus be clearly seen that while passing the impugned order, the detaining authority has "passed the order on the basis that the petitioner is also involved in the crimes related to attempt to murder, assault or criminal force to deter the public servant from discharging of his duties and voluntarily causing hurt/grievous hurt to deter public servant from his duty. Perusal of the entire material placed on record would reveal that there is not a single offence with relation to the alleged activities. The learned Addl. P.P., on instructions from the officer present in the Court, fairly concedes that not a single offence is registered for the aforesaid activities. It is thus clear that the subjective satisfaction of the detaining authority was vitiated by consideration of the material, which is not at all in existence. Therefore, in our considered view the subjective satisfaction has been vitiated by consideration of non-existent and irrelevant material. On this short ground the detention order would be liable to be set aside.

9. Secondly, the petitioner has specifically averred in paragraph 6(n) and 6(o) of the petition that the alleged last prejudicial activity has taken place on 19.08.2012 and the order of detention came to be passed on 23.11.2012 and as such there is no live link between the last prejudicial activities of the petitioner and the detention order. The same has been replied by the respondent/State in paragraph 24 of its reply, as under:

24..... Hence, on the basis of the above two cases and two secret witnesses recorded on 12.10.2012 and 13.10.2012, the Police Inspector, P. Stn., Nandanwan forwarded proposal to the Respondent No. 2 through proper channel on 15.10.2012 and it was received by Crime Branch on 05.11.2012. After preparing grounds of detention, fair typing, translation of grounds of detention

and other relevant documents in the language known to the detenu i.e. in Hindi, the detention order was passed on 23.11.2012. The detention order was served on the detenu on 23.11.2012.....

10. It is thus clear that after last offence was registered against the petitioner in the month of August, 2012, in-camera statements, on which reliance has been placed by the authority, were recorded on 12th and 13th October, 2012 and proposal was forwarded thereafter by Police Station, Nandanwan to the respondent No. 2 on 15.10.2012. It is stated that it was received by the Crime Branch on 05.11.2012. It is difficult to understand as to why a period of 20 days was required for the file to travel from Nandanwan police station to the office of Police Commissioner, which is situated hardly at the distance of 8-10 kilometers and in the same city. The said delay has not at all been explained, leave apart the same being satisfactorily explained.

11. It is further stated that after 05.11.2012, the time was required for preparing the grounds of detention, fair typing, translation of grounds of detention and other relevant documents in the language known to the detenu. We find that the said period is almost 15 days and the explanation in this regard is vague. Particularly so, when we find that the translation itself is incorrect, it is difficult to understand as to why such a long period was taken only for typing the documents and translating English version incorrectly into Hindi version. As held by the Apex Court in Pradeep Paturkar's case (supra), unexplained delay, whether short or long, especially when the petitioner has taken a specific plea of delay, vitiates the detention order. As such, in our view, the reliance placed on the judgment of the Apex Court in Pradeep Paturkar's case (supra) is well founded.

12. Insofar as translation is concerned, though in the original order, which is passed in English, there is a reference to the aforesaid three prejudicial activities regarding attempt to murder, deterring the public servant by use of force from discharging his duty and voluntarily causing hurt/grievous hurt to deter public servant from his duty, the same are totally missing in the Hindi translation. It appears that the translator was more wise than the authority who has passed the order inasmuch as, he has chosen not to include the activities for which there was no material against the petitioner. Be that as it may, when translation is being done, it has to be a true and correct translation of the original documents. The petition, therefore, also deserve to succeed on the third ground of incorrect translation being supplied to the petitioner and thereby affecting his right to make an effective representation available to him under Article 22(5) of the Constitution of India.

13. As held by the Apex Court in case of Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others, , once detention of the detenu is held to be illegal, his detention for a single day would be contrary to the constitutional mandate.

14. 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.