
(2003) 03 BOM CK 0081
In the Bombay High Court
Case No : Criminal W.P. No. 421 of 2002

Paras Sahu

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)

Citation : (2003) 3 MhLj 24

Hon'ble Judges : R.G. Deshpande, J; P.S. Brahme, J

Bench : Division Bench

Advocate : Daga, for the Appellant; Patel, Assistant Public Prosecutor, for the Respondent

Judgement

P.S. Brahme, J.—By this petition under Article 226 of the Constitution of India, the petitioner Paras s/o Ramprasad Sahu has challenged the detention order dated 12th August, 2002 passed by respondent No. 2, the District Magistrate, Wardha detaining the petitioner under Sub-section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offender and Dangerous Persons Act, 1981 (No. LV of 1981) (Amendment 1996) (for short, hereinafter referred to as "the Act").

2. The detention order along with the grounds of detention also dated 12th August, 2002 was served on the petitioner on 13th August, 2002.

3. As could be seen from the grounds of detention, the Detaining Authority took into consideration the fact of petitioner's involvement in activities of bootleggers and engaging himself in contravention of the Bombay Prohibition Act, 1949 and in all, eight cases under the Bombay Prohibition Act have been registered against him at Police Station, Wardha City and the petitioner has been continuously engaging himself in commission of violent and desperate acts such as house trespass, hurt, mischief, robbery, criminal intimidation etc. on the point of dreadful weapons and his involvement in Police Station, Wardha City in crime No.

78 of 2002 for the offences under Sections 452, 323, 427 read with 34 of the Indian Penal Code and at Police Station, Wardha in Crime No. 82 of 2002 for the offences under Sections 394, 427 read with 34 of the Indian Penal Code and also statement of two witnesses recorded in camera. The Detaining Authority was subjectively satisfied that the petitioner was acting in such a manner extremely prejudicial to the maintenance of public order. In view of his tendency and/or inclinations reflecting the incidents referred to above, the Detaining Authority was satisfied that the petitioner was likely to indulge in activities extremely prejudicial to maintenance of public order and that is how, the Detaining Authority passed the detention order and in pursuance of that order, the petitioner came to be detained.

4. The detention order came to be challenged by the petitioner on various grounds as raised in the petition. However, the learned counsel for the petitioner sought to press in service the contention pleaded in ground No. 11 of the petition. In our opinion, since the petition deserves to be allowed on that legal contention, we are not advertng to other prejudicial activities of detenu contained in the grounds of detention.

5. The said ground, in short, is that the petitioner was on bail at the time of passing of the order of detention. However, respondent No. 2, the Detaining Authority, has not taken into consideration the application for bail nor the order passed by the Court releasing the petitioner on bail and the petitioner was not supplied with the application for bail and the orders passed thereon. Mr. Daga, the learned counsel appearing for the petitioner, submitted that when the detenu was on bail at the relevant time and the bail papers were not placed before the Detaining Authority for consideration, subjective satisfaction of Detaining Authority has been materially impaired and that has also effectively affected right of the petitioner to make effective representation and thereby the detention order cannot sustain. He placed reliance on three decisions of this Court namely 1999 ALL MR (Cri) 1571, Smt. Zeenat Anjum Memon v. The State of Maharashtra and Ors., 2000 ALL MR (Cri) 792, Shri Abbad Ali Khan v. Shri R.H. Mendonca and Ors. and 2000 ALL MR (Cri) 511, Meer Mohmadali @ Baba s/o Meer Tojoddin v. S.B. Kulkarni and Ors.

6. The factual position that the petitioner was on bail when the order of detention came to be passed is not disputed. It is also very significant to note that, in both the crimes, the petitioner had applied for bail and his application has been opposed by the prosecution and the Court has granted bail. It is also not disputed that, in the grounds of detention though there is reference to the fact that the petitioner was released on bail in both the offences registered against him, nothing is reflecting in the order or grounds of detention that the Detaining Authority had before it for consideration the application for bail, as also, the order granting bail to the petitioner.

7. Mr. Patel, the learned A.P.P. has vehemently submitted that the fact that the petitioner was released on bail for the offences registered against him was not

very much relevant for Detaining Authority to consider for forming subjective satisfaction as to whether the petitioner should be detained. He also submitted that the Detaining Authority was very much aware, as could be seen from the ground of detention, that the petitioner was released on bail. He, therefore, submitted that, merely because the application and the order passed on the application granting bail were not available to the Detaining Authority for perusal and consideration, that by itself is not sufficient to say that the order of detention is vitiated.

8. What is the bearing of absence of the material regarding granting bail to the detenu in respect of the offences registered against him and which are taken into consideration by the Detaining Authority for clamping order of detention is explained way back in 1991 by the Apex Court in Abdul Sathar Ibrahim Manik Vs. Union of India and others, . The Apex Court has observed as under :

"In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the Detaining Authority has to necessarily rely upon them as that would be vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should be supplied to the detenu."

9. This Court in 2000 ALL MR (Cri) 792, Shri Abbad Ali Khan v. Shri R. H. Mendonca and Ors., while considering the petition challenging the order of detention passed under this Act and dealing with the same question as to the effect of non-furnishing the copy of the bail application and the order passed on it to the detenu, who has been released on bail and also not having the said documents before the Detaining Authority while considering the case of the detenu for imposing detention order, has placed reliance on the decision of the Apex Court (supra) and has observed as under :

"Since the bail application was not placed before the Detaining Authority and its copy not furnished to the detenu, the impugned detention order is vitiated on a dual count:--

(a) the subjective satisfaction of the Detaining Authority . to preventively detain the detenu under the aforesaid provision is vitiated in law; and

(b) since the copy of a vital document has not been furnished to the detenu, his fundamental right to make a representation guaranteed by Article 22(5) of the Constitution of India, is impaired.

10. In the case before hand, as stated earlier, admittedly, the Detaining Authority was not having, even for perusal, the application for bail and the order passed granting bail. It is significant to note that, in spite of the petitioner being released on bail, the Detaining Authority passed the order of detention of the petitioner. It goes without saying that the subjective satisfaction of the Detaining Authority has been totally hampered for not taking into consideration the fact that the petitioner was already released on bail. That apart, the petitioner was

also deprived of making effective representation when the detention order has been passed by the Detaining Authority. Therefore, the order of detention cannot sustain. It is vitiated.

11. In the result, the writ petition is allowed. The impugned detention order is quashed and the petitioner is directed to be released forthwith unless wanted in some other case. Rule is made absolute.