
(1955) 10 BOM CK 0011

In the Bombay High Court

Case No : Criminal Application No. 1034 of 1955

Parwatibai

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 11-10-1955

Acts Referred:

Preventive Detention Act, 1950 — Section 11, 6

Citation : AIR 1956 Bom 127 : (1956) CriLJ 379

Hon'ble Judges : Chagla, C.J.;Tendolkar, J

Bench : Division Bench

Advocate : V.H. Gumaste and V.M. Senjit, for the Appellant; Govt. Pleader, for the Respondent

Judgement

Chagla, C.J.—By this petition the wife of the detenu challenges an order of detention passed by the Commissioner of Police on 29-7-1953. This order was confirmed by Government on 4-8-1953. The detenu could not be traced and therefore an order was issued by the Commissioner u/s 6 of the Preventive Detention Act and it was published on 14-1-1954.

The detenu was arrested on 24-7-1955 and was put up before a Presidency Magistrate for having committed a breach of the order Issued u/s 6. He was released on bail and he was continued on bail till 19-8-1955. On that day a charge-sheet was filed against him and the bail was cancelled. On that very day the petitioner's husband was detained pursuant to the order passed. 011 29-7-1953. It is this detention which has been challenged by this petition.

2. What is urged by Mr. Gumaste with considerable force is that the Parliament has afforded a very important safeguard to the subject by Act 61 of 1952 which introduced Section 11-A in the Preventive Detention Act, and under that section no person who has been detained under the Act can be continued in detention for a longer period than one year. The reason underlying that amendment is that the Parliament wanted to give an opportunity to a person who was suspected of prejudicial activities after a lapse of certain time to turn over a new leaf.

The Parliament also thought that the danger to the State by the activities of a particular person could not extend beyond a period of one year and that a safe risk could be taken by the State in releasing the detenu after a lapse of a year. It is always open to the State Government to issue another order if the person detained and who was released u/s 11-A continued in his prejudicial activities. But the principle of indefinite detention was put an end to by the new section which was introduced under the Preventive Detention (Amendment) Act.

3. The Government Pleader says rightly that what is rendered invalid by Section 11-A is continued detention for more than one year; in this case the detenu was not detained at all, and although his detention commenced from 19-8-1955, the order passed on 29-7-1953 was still a good and valid order under which action could be taken by the State of Bombay.

4. Now, what the petitioner has challenged is not the validity of the order but the validity of the execution of the order. The contention is that although a valid order was made on 29-7-1953 the detention of the petitioner's husband on 19-8-1955 under the peculiar circumstances of the case was not a valid detention.

It is quite clear that if the petitioner's husband had been detained on 29-7-1953 when the order was made or soon thereafter, he would have been long ago released and no question of his detention could have arisen on 19-7-1955. It is necessary to bear in mind that an order under the Preventive Detention Act is not in the nature of a punishment.

The Preventive Detention Act is not a Penal Statute. it is an Act passed to arm the State with very important powers in order to prevent danger to public security and public order. Therefore it is not right for the State of Bombay to think that because an order was passed on 29-7-1953 therefore necessarily the detenus must be detained for a period of one year.

If a person is convicted of an offence, whenever he may be found and arrested he can be compelled to serve out his sentence, but that principle cannot apply to the Preventive Detention Act, & what we have to consider is whether in detaining the petitioner's husband on 19-8-1955 the State of Bombay was acting bona fide. If their action was not bona fide, was not dictated by the considerations relevant to the Preventive Detention Act, then the Act of detaining him on 19-8-1955. cannot be supported.

5. The detenu in the grounds submitted to him was charged with having committed between December 1952 and 27-7-1953 petty acts of theft and extortion. He is supposed to have committed this act with several associates of his and those associates were also detained under orders passed against them. All those associates had been in detention for a year and are all at large. There is no suggestion that after 28-7-1953 the detenu has committed any prejudicial act or has indulged in any prejudicial activities.

All that Mr. Billimoria, the present Commissioner of Police, says is that he applied his mind to the materials which were present before Mr. Chudasama who made the original order, and he was satisfied that it was necessary to detain the appellant's husband. But there is no suggestion that there were any materials before any authority that between the period of 29-7-1953 and 19-8-1955 the detenu had indulged in any prejudicial activities or that his being at large on 19-8-1955 would be prejudicial to public order.

It is difficult to understand why the authorities could not have passed a fresh order in August 1955. If they had materials which could have satisfied them that the detenu should not be allowed to be at large, he could have been arrested and detained under a fresh order.

6. With regard to his not surrendering to the order passed on 29-7-1953, a charge-sheet has already been filed against him, he is being prosecuted and he will be convicted if he is found guilty of the offence. From the materials placed before us we are satisfied that the view taken by the authorities is that inasmuch as the order was passed in July 1953 and inasmuch as that order is still a valid order and inasmuch as the detenu has not submitted to that order and has not undergone a period of detention, therefore it is necessary to enforce the order against him.

This view of the authorities is entirely in-consistent with the purpose and object of the Preventive Detention Act. As we pointed out before, it is erroneous on the part of the authorities to consider that detention is a punishment which it is obligatory upon a detenu to serve and if that is the view on which the execution of this order has been passed, then, in our opinion, there is a legal mala fide and the detention is not bona fide.

7. The result is that the petition must succeed and we direct that the petitioner's husband be set at liberty.

8. Petition allowed.