

(1992) 11 BOM CK 0040

In the Bombay High Court

Case No : Criminal Writ Petition No. 1196 of 1992

Prabhakar Menka Shetty

APPELLANT

Vs

V.S. Ramamurthy, Commissioner of Police for Greater
Bombay and others

RESPONDENT

Date of Decision : 18-11-1992

Acts Referred:

Constitution of India, 1950 — Article 22
National Security Act, 1980 — Section 3, 5A, 8
Penal Code, 1860 (IPC) — Section 326, 34, 342, 365, 379

Citation : (1993) 2 BomCR 3 : (1993) 95 BOMLR 40 : (1993) CriLJ 1981

Hon'ble Judges : V.A. Mohta, J;M.S. Rane, J

Bench : Division Bench

Advocate : Adhik Shirodkar and Rajendra Shirodkar, for the Appellant; Smt. R.P. Desai, Assistant Public Prosecutor, J.C. Satpute and A.S. Khan, for the Respondent

Judgement

V.A. Mohta, J.—This is a Habeas Corpus Petition by the brother of Shri Surendra Shetty a detenu detained under the National Security Act (N. S. Act) by an order of detention dated 5-3-1992.

2. Following points are raised by Shri Shirodkar learned counsel for the petitioner.

I. Opening paragraphs 1 to 3 of the grounds of detention indicate that (a) the detenu was externed from the limits of Greater Bombay and Thane Districts for a period of two years under the Bombay Police Act. (b) He was detained under the N.S. Act in the year 1984 and 1986.. These paragraphs are also grounds upon which subjective satisfaction of detaining authority is based. The orders of externment and detention were subsequently quashed they were not brought to the notice of the detaining authority. They have the potentiality of the influencing the subjective satisfaction of the Detaining Authority one way or the other and hence this feature vitiates the order of detention.

II. There has been an inordinate and unexplained delay in passing the detention

order which vitiates the order.

III. The incidents mentioned in the grounds are not prejudicial to the maintenance of the public order.

3. The gist of the incidents upon which, according to the Detaining Authority his subjective satisfaction is based is :

A. On 15-10-1991 at 23.00 hours Shamshankar Jadhav complained to the police that in the morning the detenu and his associates Nadir Shaikh and Arun Ghaiwat had called him from a Pan Shop, the detenu suddenly whipped out a Chopper and put it at his stomach, other associates banged an aerated water bottle on his head, injured him, and dragged him in the hotel room where the detenu and his associates gave blows of blunt side of Choppers. Jadhav was screaming but none from the locality dared to come to his help. His condition became serious, he was confined in the room till 16.00 hours and then taken in a Car into a Nursing Home in Thane. Jadhav sent a chit from that Nursing Home to his resident through a lady. When the detenu and his associates learnt about this, Jadhav was removed from the Nursing Home again in a Car and was dropped near Mulund Naka. The reason for the assault was that Jadhav had advised one Santosh and Badewal to report to the police the threats given to them by the detenu. Jadhav was sent to Mulund General Hospital for treatment. A case under sections 365, 326, 342, 506(ii) r/w 34, I.P.C. was registered against the detenu and his associates in Mulund Police Station. The detenu and the associates were arrested on 19-10-1991. They admitted the assault. The Metropolitan Magistrate, Vikhroli released them on bail.

B. The localities of Gautamnagar, Sidharthnagar, Babu Jagjivanram Zopadpatti, Dumping Road, Mulund were the areas of operation of the detenu, who is a weapon wielder desperado and a gangster. He has created terror in the localities due to which even the victims of his criminal activities did not dare to speak against him. On the assurance that their names and particulars would be secretly guarded, the statements pertaining to following three incidents were recorded in camera.

(i) On 28-09-1991 a resident of Babu Jagjivanram Nagar was passing by the locality in the evening. He was way-laid by the detenu and his associates Nadir and others. Nadir was carrying a sword and the detenu a pocket knife. On the point of these weapons the resident was abused and robbed of Rs. 5000/-. The resident was warned against informing the Police.

(ii) On 28-09-1991 at about 23.00 hours a resident of Gautam Nagar, Dumping Road, Mulund was returning home and was carrying "Diwali Bonus". He was way-laid by the detenu and his associates. A sum of Rs. 3000/- was demanded from him. The resident said that he had no money, on which the detenu whipped out a knife. The associate whipped out a chopper, and thereafter, robbed him of Rs. 2000/- which he was carrying in his pocket.

(iii) On 1-11-1991 at about 21.30 hours, a businessman residing at Tambe Nagar, Mulund was way-laid near Municipal School by the detenu and his associates. He was dragged in the dark. The detenu whipped out a knife from the pant pocket, and robbed him of a sum of Rs. 3,000/-.

4. As per the affidavit of the Detaining Authority Shri S. Ramamurthy, the Commissioner of Police, paragraphs Nos. 1 to 3 of the grounds were only a preamble and not the grounds of detention. The detention order was not based on those events of distant past. The proposal to detain was prepared by the Sponsoring Authority on 26-12-1991 as per the procedure laid down. The said proposal was processed through the usual channel of Senior Inspector of Police, Mulund Police Station, Assistant Commissioner of Police, Mulund Division, Deputy Commissioner of Police, Zone VI, Additional Commissioner of Police, North Region, Bandra, P.C.B., C.I.D., Bombay, Commissioner of Police, Bombay. It was placed before the Joint Commissioner of Police, Bombay on 23-1-1992. He recommended the detention on the very day. Then it was forwarded to the Commissioner who after going through the same in details and making requisite inquiries formulated the grounds of detention on 5-3-1992. The time taken was reasonable for full and proper consideration of the matter and ensuring that no lacuna remains in the order. The detenu was a gangster who had created panic and insecurity in the minds of law abiding citizens of the locality resulting into disturbance of even tempo. The incidents indicated potentiality of the detenu to repeat such incidents even in future. There was no snapping of the live link between the incidents and the order.

5. Against his backdrop, we proceed to consider the points raised. First the point No. I. That there can, in law, be a preamble to the grounds of detention is no more res integra. Last binding word on the subject is in the case of Dhananjay Das Vs. District Magistrate, Darrang and Another, . Supreme Court after considering its earlier decision in the case of Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, , has held so. Whether or not a particular portion is only a preamble or not will depend upon facts and circumstances of each case. No acid test can be applied. Totality of most of factors such as its nomenclature, placement, contents etc., exhaustive list of which cannot be given - will determine the question. After all the grounds of detention means factual inferences plus the factual material leading to those inferences which form the basis for the subjective satisfaction. When the Detaining Authority specifies in the grounds of detention the specific factors of the incidents that weighed with him in taking the decision, the said statement in the grounds will have to be accepted normally unless there are cogent reasons to reject that statement.

6. Applying these tests to the relevant portion with which we are concerned, it seems to us that the said portion is a preamble and not a part of the grounds. The portion reads thus :

"I hereby inform you that you were convicted as under :-
----- Sr. Name of the

Court	Date	U/Sec.	Sentenced	No.
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Court 16-7-73	124 SPA. Rs. 25/-	i/d 7 days S.I.	2. - do - 23-8-73	379 IPC 2
M's R.I. 3.	- do - 7-11-73	- do - 6	M's R.I.	

----- On the basis of above mentioned convictions you were externed out of the limits of Greater Bombay and Thane Districts for a period of 2 years, vide externment order No. 806/C/43, dated 26-6-1978, under S. 37(a)-22-51.

But in spite of above conviction externment you continued your criminal activities unabated and with vigour. You were detained under the National Security Act, 1980 twice, vide Detention Order No. 256/PCB/Zone-V/96, dated 28-8-1984 and 18/PCB/Zone-V/86, dated 29-1-1986.

Now in pursuance of Section 8 of the National Security Act, 1980 (No. 65 of 1980), I hereby communicate to you the grounds on which a detention order has been issued by me on this day against you and under sub-section (2) of Section 3 of the said Act, are as follows."

7. It is to be found in the beginning. It refers to the three stale convictions of the year, 1973, the stale externment order of the year 1978, and to stale detention orders are of the years 1984 and 1986. Normally the detention order cannot be based on the stale incidents. Copies of the documents pertaining to the incidents have been supplied to the detenu but not the copies pertaining to these orders. The words in the last para indicate clearly that what was stated earlier were mere antecedents and past history of the detenu and what was to follow were the particulars of grounds of detention which related to the specific four incidents indicated in details, upon which above subjective satisfaction was based.

8. Strong reliance was placed upon the decision of this Court in the case of Deepak Nathuram Ambekar v. V. K. Saraf, 1990 Cri LR 417 . Ratio of this decision is in no way different. On facts the first five paragraphs of the grounds of detention in that case were held to be grounds and not preamble. These grounds of detention were made available to us for perusal. We find therefrom that the four paged material which the State termed as merely introduction contained detailed reference to five specific incidents. Therefore, in that decision, we notice nothing supporting to the case of the petitioner. In this context useful reference may be made to a Supreme Court decision in the case of Dr. Ramakrishna Rawat Vs. District Magistrate, Jabalpur and Another, , wherein reference to incidents upon which previous order of detention was formulated was held to constitute merely a background and not grounds of detention.

9. There is yet another angle to the point to which our attention was drawn by Smt. Desai, learned Public Prosecutor. It pertains to the severability of grounds u/s 5-A of the N.S. Act. Section 5-A has been inserted by Act No. 60 of 1984 w.e.f. 21-6-1984 since the Courts had taken a view that the detention order passed on several grounds is vitiated even if any one ground is held to be invalid. In view of

S. 5-A, a detention order made on two or more grounds is deemed to have been made separately on each of such grounds and accordingly the order is not rendered invalid merely because a ground or two fails provided it can stand on other grounds or ground.

10. Shri Shirodkar submitted that non-supply of vital information about the quashing of externment order and detention orders to Detaining Authority vitiate the constitutional safeguard provided in Article 22(5) of the Constitution, and hence S. 5-A of the N.S. Act, cannot be attracted. The submission cannot be accepted taking into consideration the language and tenor of S. 5-A in general and the use of phraseology "invalidate for any other reason whatsoever" in the residuary sub-clause (V) of Section 5-A(a). The context indicates in no uncertain terms that the clause is meant to include within the sweep of the provision each and every variety of grounds of invalidity. Acceptance of contrary view would amount to defeating the very object behind S. 5(A). In this context our attention was invited to a decision of this Court in the case of Chandra Shekhar Ojha Vs. A.K. Karnik and others, . From the judgment it appears that attention of the Court was not drawn to the language employed in sub-clause (V). This Court had occasion to deal with the above decision in the case of Abdul Nasir Khan Vs. L. Hmingliana and others, , wherein the above decision is held to be no more good law (para 36 of the report). In the case of Rajesh R. Khushalani v. Mahendra Prasad, Criminal Writ Petn. No. 1412 of 1991 with Criminal Writ Petn. No. 1448 of 1991 decided in April, 1992, this Court has held that, even if one or more of the grounds fail on the ground of non-supply of the documents thereby infringing Article 22(5), the said infringement will not invalidate the order if it can be sustained on the basis of the remaining grounds wherein the constitutional requirements of Article 22(5) are complied with. We respectfully concur with the view taken in the later two decisions. For the twin reasons indicated, we see no substance in point No. 1.

11. Now, point No. 2. Having regard to the totality of the background and not ignoring that in the matters of detention under the N.S. Act, there exists no Screening Committee as it exists in the matter of detention under COFEPOSA Act, we do not notice any inordinate and unexplained delay in the making of the order. The processing of the matter at various stages and levels is inevitable. Proposal was mooted on 26-12-1991 within a period of 1 month and 25 days from the date of last incident and was placed before the Joint Commissioner of Police within a period of 1 month. Then it was put up before the Commissioner - the Detaining Authority. According to him, he went into the depth of the documents and after making requisite inquiries formulated the grounds of detention, after ensuring that no lacuna remains in the order. That apart, mere delay is not conclusive of the matter, unless it has resulted in the snapping of the link between the activities and the purpose of detention. Such an inference cannot be drawn in the instant matter. Both parties had invited our attention to series of decisions on this point, reference to which is unnecessary. Hence we repel this submission.

12. This takes us to the last point. It is submitted that all the incidents disclose only offences of extortion of individuals having no impact on the even tempo of Society and consequently on the public order. The submission has merely to be stated to be rejected. Habitual and undeterred extortion of unknown persons in the locality in this manner by weapon wielder gangster certainly create panic and terror in the minds of the residents of affects the even tempo.

13. To conclude, the petition dismissed, rule discharged.

Petition dismissed.