
(2002) 01 BOM CK 0058
In the Bombay High Court
Case No : Criminal W.P. No. 9 of 2002

Pradip Bhikaji Satam

APPELLANT

Vs

S.M. Shangari and Others

RESPONDENT

Date of Decision : 23-01-2002

Acts Referred:

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 2, 3(1)

Citation : (2002) BomCR(Cri) 602 : (2002) CriLJ 1715 : (2002) 2 MhLj 162

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

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; D.S. Mhaispurkar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—Heard learned counsel for the parties.

2. Through this writ petition preferred under Article 226 of the Constitution of India, the petitioner-detenu Pradip Bhikaji Satam has impugned the order dated 10-10-2001 passed by the first respondent Mr. S.M. Shangari, Commissioner of Police, Thane 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), hereinafter referred to as the M.P.D.A. Act.

The detention order along with the grounds of detention which are also dated 10-10-2001 was served on the petitioner-detenu on 11-10-2001 and their true copies have been annexed as Annexures A and B respectively to this petition.

3. A perusal of the grounds of detention (Annexure B) would show that the detaining authority has averred in para 1 that the grounds have been stated by him in para 4 and a perusal of the latter para would show that the impugned order is founded on one C.R. namely C.R. No. 1-185/2001, u/s 392, 394, 397,

34, Indian Penal Code registered on the basis of a complaint dated 9-7-2001 lodged by Sharad Shelly at Wagle Estate police station.

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

4. This is a single point petition.

The solitary ground on which the impugned detention order is challenged is ground No. 6(A). In substance the said ground is that on a solitary C.R. namely C.R. No. 1-185/2001 u/s 392, 394, 397, 34 Indian Penal Code, referred to above, the petitioner-detenu could not have been detained as a dangerous person u/s 2 (bi) of the M.P.D.A. Act.

5. Ground No. 6 (A) has been replied to in para 7 of the return of the detaining authority.

In substance, the reply is as under:--

The prejudicial activities of the petitioner-detenu have been mentioned in paras 2 and 3 of the grounds of detention. The impugned detention order is passed on the grounds which are contained in para 4 of the grounds of detention and was passed on the basis of the three prejudicial activities of the detenu viz. (1) past conduct and antecedent history (2) incident dated 8-7-2001 and (3) incident dated 9-7-2001.

6. Mr. D.S. Mhaispurkar, Additional Public Prosecutor for the respondents urged that even if the past conduct and antecedent history of the petitioner-detenu is not taken into consideration because, the same is detailed in paras 2 and 3, and the grounds are contained in para 4, the impugned detention order would still be sustained because, it is based on two incidents namely those dated 8-7-2001 and 9-7-2001 which have been referred to in para 4 of the grounds of detention.

We have perused the averments contained in ground No. 6 (A) and heard learned counsel for the panics. In our judgment, since there is merit in ground No. 6 (A), this petition deserves to succeed.

7. We have seen earlier that a perusal of para 5 of the grounds of detention shows that the petitioner-detenu has been detained as a "dangerous person" u/s 2 (b-i) of the M.P.D.A. Act. The-said provision reads thus :--

"dangerous person" means a person, who either by himself or as 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."

A perusal of the said provision would show that if a person either singly or as 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 and XVII of the Indian Penal Code Chapter V of the Arms Act, he would be a dangerous person in terms of Section 2(b-i) of the M.P.D.A. Act.

Just as a single swallow does not make a summer, a solitary act does not constitute a habit. In the instant case, para 4 of the grounds of detention makes it manifest that the impugned order is passed on a solitary C.R. namely C.R. No. 1-185/2001 referred to thereunder. In our view, on the basis of the said solitary C.R., it cannot be said that the petitioner-detenu habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapters XVI or XVII of the Indian Penal Code or Chapter V of the Arms Act. And that being so, he could not have been detained as a dangerous person u/s 2(b-i) of the M.P.D.A. Act. And since he has been detained thereunder, as a dangerous person, the impugned detention order would be unsustainable in law.

We make no bones in observing that we find the submission of Mr. Mhaispurkar, learned counsel for the respondent that since the incident dated 8-7-2001 which has been mentioned in para 4 of the grounds of detention, is also a ground, the said incident, coupled with C.R. No. 1-185/2001, referred to above, would satisfy the habitual pre-requisite which is a condition precedent for the detention of a person as a "dangerous person" u/s 2(b-i) of the M.P.D.A. Act and therefore the impugned order suffers from no infirmity, to be devoid of substance. We say this because, in respect of the incident dated 8-7-2001, No. F.I.R. leading to the registration of a C.R. has been lodged nor are there any in-camera statements of witnesses.

8. For the aforesaid reasons, we allow this writ petition; quash and set aside the impugned detention order; direct that the petitioner-detenu Pradip Bhikaji Satam be released forthwith unless wanted in some other case; and make the rule absolute.

9. Writ petition allowed.