

(2001) 08 BOM CK 0035

In the Bombay High Court

Case No : Criminal Writ Petition No. 663 of 2001

Prakash alias Pakya Ramchandra Bobde

APPELLANT

Vs

M.N. Singh, Commissioner of Police, Brihan Mumbai and
Others

RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)
Penal Code, 1860 (IPC) — Section 34, 376(2)(G), 506(II)

Citation : (2002) BomCR(Cri) 16

Hon'ble Judges : Vishnu Sahai, J;Pratibha Upasani, J

Bench : Division Bench

Advocate : Nitin V. Gangal, for the Appellant; D.S. Mhaispurkar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—Through this Criminal Writ Petition, preferred under Article 226 of the Constitution of India, the petitioner-detenu Prakash alias Pakya Ramchandra Bobde, has impugned the order dated 10.1.2001, passed by the first respondent, Shri M.N. Singh. Commissioner of Police, Brihan Mumbai, 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) (Amendment 1996), hereinafter referred to as the "M.P.D.A, Act".

The detention order along with the grounds of detention, which are also dated 10.1.2001, was served on the petitioner-detenu on 18.1.2000 and their true copies are annexed as Annexures "A" and "C" respectively to this petition.

2. A perusal of the grounds of detention (Annexure "C") would show that the impugned detention order is based on one C. R., namely, C.R. No. 100/ 2000, under sections 376(2)(G), 506(11) and 34 of the Indian Penal Code, registered

on the basis of a complaint dated 11.5.2000, filed by one Kumari Lalita Khemchand Raj at R.C.F. Police Station, against the detenu and his associates and in-camera statements of three witnesses, namely, "A", "B" and "C", which were recorded on 3.8.2000, 4.8.2000 and 5.8.2000 respectively.

Since, In our view, a reference to the prejudicial activities of the petitioner-detenu, contained in the said C. R. and the in-camera statements, is not necessary for the disposal of this Writ Petition, we are not adverting to them.

3. We have heard learned counsel for the parties. Although in this Writ Petition Mr. N.V. Gangal, learned counsel for the petitioner-detenu has pleaded a large number of grounds, running from grounds 7(a) to 7(t), but since In our view this petition deserves to succeed on a solitary ground, namely that pleaded as ground 7(h), we are not adverting to the other grounds of challenge pleaded in the petition. Ground 7(h) reads thus :

"(h) That the last incident mentioned in the grounds formulated has occurred as per the allegations on April, 2000. The Petitioner was detained by the order dated 10.1.2001. Thus there was no urgency shown by the Respondent No. 1 in passing the detention order. The live link is snapped which shows that the passing of detention order was not necessary."

4. Mr. N. V. Gangal, learned counsel for the petitioner-detenu strenuously urged that since the last in-camera statement of witness "C" was recorded on 5.8.2000 and the detention order was issued on 10.1.2001, the live-link between the prejudicial activities of the petitioner-detenu and the rationale of clamping a detention order on him, has been snapped, Mr. N. V. Gangal contended that this delay of more than five months in issuance of the impugned order throws a cloud of doubt on the genuineness of the subjective satisfaction of the Detaining Authority to detain u/s 3(1) of the M.P.D.A. Act. He also contended that on account of this delay of more than five months, the detention order has ceased to be preventive, as it is intended to be, but instead has become punitive.

5. Ground 7(h) has been replied to in paragraph 16 of the return of the Detaining Authority; paragraphs 3, 4 and 5 of the return of Mr. Ramesh Bapurao Bhore, Police Sub-Inspector, attached to Prevention of Crime Branch, Crime Investigation Department (P.C.B.-C.I.D.). Mumbai; and paragraphs 8, 9, 10, 11, 12 and 13 of the return of Mr. J. 1. Patil, Police Sub-Inspector, attached to R.C.F. Police Station, Mumbai, the Sponsoring Authority.

6. We now propose to deal with the substance of the reply furnished in the said affidavits.

We begin with the affidavit of Mr. M. N. Singh, Commissioner of Police, Brihan Mumbai the Detaining Authority. As mentioned above, ground 7(h) has been replied to in paragraph 16 of his return. He has stated that the last in-camera statement was recorded on 5.8.2000 and thereafter the Sponsoring Authority, after carefully collecting all the material and preparing the necessary sets of

documents, submitted the proposal of the detenu, along with three other proposals, on 7.8.2000. It was forwarded through proper channel on the said date (7.8.2000) and was submitted to the Deputy Commissioner of Police, Zone-V, who on the said date itself gave his endorsement and submitted the papers to the Additional Commissioner of Police, North-East Region, Mumbai, who gave his endorsement on 10.8.2000 and forwarded the papers to the Senior Inspector of Police, P.C.B.-C.I.D..

The Senior Inspector of Police, P.C.B.-C.I.D. carefully went through the papers and after preparing a detailed note, forwarded them to the Deputy Commissioner of Police (Preventive) vide endorsement dated 28.8.2000.

Why it took him 18 days, has been explained in terms that there were a large number of other proposals lying before the Senior Inspector of Police, P.C.B.-C.I.D. and also a large number of ready detention matters were pending before him for scrutiny. Another explanation furnished is that during the said period there were holidays on 12.8.2000, 13.8.2000, 15.8.2000, 20.8.2000, 21.8.2000, 26.8.2000 and 27.8.2000.

After receiving the papers, the Deputy Commissioner of Police (Preventive) went through them and forwarded the same to the Additional Commissioner of Police (Crime) by endorsement, dated 5.9.2000.

The delay between 28.8.2000 and 5.9.2000. has been explained in terms that in between there were two holidays i.e., on 1.9.2000 and 3.9.2000.

On 8.9.2000 the Additional Commissioner of Police (Crime), after going through the papers, gave his endorsement and forwarded the papers to the Joint Commissioner of Police (Crime).

On 11.9.2000 the Joint Commissioner of Police (Crime) gave his endorsement.

On 14.11.2000 the Detaining Authority went through the proposal and the papers and opined that it was a fit case for detention and on 15.11.2000, after formulating the draft grounds of detention, forwarded the papers to the Sponsoring Authority for the purpose of fair typing, for preparing translation of the documents in a language known to the detenu and for preparing the necessary sets of documents. After completing the aforesaid work, the Sponsoring Authority forwarded the papers to the office of the Senior Inspector of Police, P.C.B.-C.I.D., Mumbai, on 22.12.2000. The Senior Inspector of Police, P.C.B.-C.I.D., after checking all the papers, forwarded them to the Additional Commissioner of Police (Crime) vide his endorsement dated 2.1.2001.

Why it took him 10 days, has been explained in terms that in between there were five holidays i.e., on 23.12.2000, 24.12.2000, 25.12.2000, 28.12.2000 and 31.12.2000.

On 2.1.2001 the Additional Commissioner of Police (Crime), after going through the papers, forwarded them to the Detaining Authority, who on 10.1.2001 once

again carefully went through them and finalised the grounds of detention and issued the detention order on the said date.

At the end of paragraph 16, the Detaining Authority has also mentioned that looking to the propensity and potentiality of the detenu, to commit similar prejudicial activities, on account of a mere time-efflux of five months, the live-link between the prejudicial activities of the detenu and the rationale of clamping a detention order on him, has not been snapped.

7. We now come to the reply contained in paragraphs 3, 4 and 5 of the affidavit of Ramesh Bapurao Bhore, Police Sub-Inspector, attached to Prevention of Crime Branch, Crime Investigation Department (P.C.B.-C.I.D.), Mumbai.

In the said paragraphs he has stated that the proposal of the R.C.F. Police Station for detention of the petitioner and his three associates was forwarded after endorsement of the Joint Commissioner of Police on 11.9.2000 and it was received in his office (office of the P.C.B.-C.I.D.) on the same day. On 14.11.2000 it was put up before the Commissioner of Police.

Why it took two months and three days to place the proposal before the Commissioner of Police, has been explained in terms that during the said period there were 87 proposals with the office of the P.C.B.-C.I.D., out of which in 36 proposals detention orders were actually issued and 51 were sent to the Commissioner of Police for final approval. It has been averred that on account of the work load, this time was consumed. Another explanation furnished is that in between there were 18 holidays namely on 12.9.2000, 17.9.2000, 23.9.2000, 24.9.2000, 1.10.2000, 2.10.2000, 7.10.2000, 8.10.2000, 14.10.2000, 15.10.2000, 22.10.2000, 26.10.2000, 27.10.2000, 28.10.2000, 29.10.2000, 5.11.2000, 11.11.2000 and 12.11.2000.

It has also been averred that after approval of the proposal by the Commissioner of Police, the papers were forwarded to the Sponsoring Authority for preparation of necessary sets and getting translation of the documents done and after the same was done, the papers were received in his office (office of the P.C.B.-C.I.D.) on 22.12.2000 and thereafter the papers were forwarded to the Additional Commissioner of Police, who gave his endorsement on 2.1.2001 and thereafter the papers were put up before the Detaining Authority on 10.1.2001, who on the said date issued the detention order.

The delay between 2.1.2001 and 10.1.2001 has been sought to be explained in terms that 14 fresh proposals were pending for approval in the office of the P.C.B.-C.I.D. and in 15 matters, which were earlier in point of time to the proposal to detain the detenu, detention orders were issued.

In the last paragraph of the affidavit, it has been averred that looking to the propensity and potentiality of the detenu, the live-link has not been snapped.

8. We now come to the averments contained in paragraphs 8, 9, 10, 11, 12 and 13 of the affidavit of J. I. Patil, Police Sub-Inspector, attached to R.C.F. Police.

Station, Mumbai, the Sponsoring Authority. He has stated that the papers were received at the R.C.F. Police Station on 15.11.2000. for the purposes of typing, translation of the documents in a language known to the detenu and three other co-detenu and for preparation of necessary sets of documents. He has also stated that the translation had to be done in Marathi language and the said work of translation of 205 pages was given to a private translator on 17.11.2000. who completed the translation on 18.12.2000. He has further stated that thereafter he went through the papers and checked the translations, etc.. and after completing all the work, forwarded the papers to the office of the Senior Inspector of Police, P.C.B.-C.I.D-. Mumbai, on 22.12.2000, who made his endorsement thereon on 2.1.2001 and thereafter forwarded the papers to the Detaining Authority, who passed the impugned order on 10.1.2001. At the end, he has also mentioned that looking to the propensity and potentiality of the detenu, the live-link has not been snapped.

9. We have perused the averments contained in ground 7(h) of the petition and those contained in paragraph 16 of the return of the Detaining Authority, paragraphs 3, 4 and 5 of the return of P.S.I. Ramesh Bapurao Bhore, and paragraphs 8 to 13 of the return of P.S.I. J. I. Patil, the Sponsoring Authority. We have also heard learned counsel for the parties. We have no reservation in observing that there is substance in ground 7(h) and this petition deserves to succeed.

10. It is well-settled that delay simpliciter in the issuance of a detention order does not vitiate it. It is only vitiated on the vitiating ground of delay if the delay is not satisfactorily explained. The proposition is far too well-settled to require elucidation by any authority but since reference to and reverence of authorities has become the order of the day, we do not wish to deviate and the authority which most readily comes to our mind is the oft-quoted case of *Hemlata v. State of Maharashtra*, " the Supreme Court observed thus :

"..... Delay *simpliciter* in passing an order of detention after an incident is

not fatal to the detention of a person, for, in a certain case delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the Detaining Authority."

We also feel that it would be pertinent to refer to another decision of the *Pradeep Nilkanth Paturkar v. Shri S. Ramnmurthi & Ors.* wherein the Supreme Court, after referring to a number of decisions on the question of delay in the issuance of a detention order, in paragraph 12 observed thus :

"..... A perusal of the various decisions of this Court on this legal aspect shows that each case is to be decided on the facts and circumstances appearing in that particular case."

11. It is in the above, legal perspective that we have to examine the explanation for the delay in the issuance of the detention order, furnished in the three

affidavits, referred to above. We do not want to burden our judgment by reiterating the said explanation.

12. We make no bones in observing that in three pockets, namely (A), (B) and (C) there is no satisfactory explanation for the delay:

(A) Between 10.8.2000 and 28.8.2000;

(B) Between 11.9.2000 and 14.11.2000: and (C) Between 15.11.2000 and 22.12.2000.

13. We begin with pocket (A), namely between 10.8.2000 and 28.8.2000.

In the said pocket the delay has been sought to be explained by the Detaining Authority in paragraph 16 of his return. He has stated therein that on 10.8.2000 the Additional Commissioner of Police, North-East Region, Mumbai, after carefully going through all the papers, gave his endorsement thereon and forwarded the papers to the Senior Inspector of Police, P.C.B.-C.I.D., who gave his endorsement thereon on 28.8.2000.

A two-fold explanation has been furnished as to why it took the Senior Inspector of Police, P.C.B.-C.I.D. 20 days time, (time between 10.8.2000 and 28.8.2000), namely (i) in the said period a large number of proposals were lying before the P.C.B.-C.I.D. and a large number of ready detention matters were pending before him for scrutiny: (ii) there were seven holidays, namely on 12.8.2000, 13.8.2000, 15.8.2000, 20.8.2000, 21.8.2000, 26.8.2000 and 27.8.2000.

We make no bones in observing that we find explanation (i) to be blissfully vague. In our judgment, the expression "large numbers" does not connote anything. What is large is a matter of individual perception. A may consider a certain number to be large, but B, C. and D may not consider that number to be large. In our judgment, if the Detaining Authority wanted this explanation to be accepted as a cogent explanation, it should have specified the actual numbers.

So far as explanation (ii) is concerned, we accept it because the practice is to exclude the holidays.

In our judgment, even if the holidays are excluded, in this pocket there is an unexplained delay of eleven days, because a vague explanation is no explanation in law.

14. We now come to the second pocket, namely (B) i.e., the delay between 11.9.2000 and 14.11.2000. In our judgment, it is in this pocket that there is the fatal delay. The Detaining Authority, to our regret, has not explained in his affidavit, the delay in this pocket and the delay during it has been sought to be explained by P.S.I. Ramesh Bapurao Bhore, attached to P.C.B.-C.I.D., Mumbai. We make no bones in observing that the said delay should have been explained by the Detaining Authority in his affidavit, as is manifest from the portion which we have extracted from Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, .

Explaining the delay P.S.I. Bhore has stated in paragraphs 3 of his return that the proposal for the detention of the petitioner and his three associates was forwarded by the Joint Commissioner of Police on 11.9.2000 and was received in his office on the same day and on 14.11.2000 was forwarded by his office to the Commissioner of Police. He has explained the delay in the said period on a dual count, namely:-(i) there were 87 proposals with his office (P.C.B.-C.I.D.). out of which in 36 proposals detention orders were actually issued and 51 were sent to the Commissioner of Police, for approval; and (ii) there were 18 holidays i.e., on 12.9.2000, 17.9.2000, 23.9.2000, 24.9.2000, 1.10.2000, 2.10.2000, 7.10.2000, 8.10.2000, 14.10.2000, 15.10.2000, 22.10.2000, 26.10.2000, 27.10.2000, 28.10.2000, 29.10.2000, 5.11.2000, 11.11.2000 and 12.11.2000.

We have examined the said explanation and are constrained to observe that we are not inclined to accept explanation (i), as a valid explanation, because P.S.I. Ramesh Bapurao Bhore has not averred in his affidavit whether the said proposals were prior to the proposal to detain the detenu and the co-detenu. Had they been prior, we may have accepted the explanation because it was only fair to have given them priority over the detenu's proposal. Since the explanation is vague and a vague explanation is no explanation in law, we are not accepting it.

It is well-settled that in a preventive detention matter the benefit of any vagueness or ambiguity has got to go to the detenu.

But at the same time, we make no bones in observing that we find explanation (ii), namely of 18 holidays to be tenable.

However, even if the said period of 18 days is excluded, in our judgment, the delay of one-and-half months; the delay between 11.9.2000 and 14.11.2000, has not been satisfactorily explained.

15. We now come to the third pocket, namely (C) i.e., the delay from 15.11.2000 to 22.12.2000. The said delay has been sought to be explained in two returns, namely in those of the Detaining Authority and the Sponsoring Authority. The Detaining Authority, in paragraph 8 of his return, has stated that on 15.11.2000, after formulating the draft grounds of detention, he forwarded the papers to the Sponsoring Authority for the purposes of fair typing, translation of documents in a language known to the detenu and for preparation of necessary sets of documents. He has stated that after the translation the papers were received in the office of the Senior Inspector of Police, P.C.B.-C.I.D. on 22.12.2000. Sponsoring Authority, namely P.S.I. J. I. Patil of RC.F. Police Station, has also sought to explain the delay in the said pocket. He has averred that after receipt of the papers on 15.11.2000, on 17.11.2000, he submitted them to a private translator because translation of 205 pages of the relevant documents had to be done in Marathi language and on 18.12.2000 the said translations were furnished and thereafter he sent the papers to the P.C.B.-C.I.D..

Learned counsel for the petitioner-detenu contended that this delay of slightly

over on month was inordinate. He urged that considering the promptitude with which a preventive detention proposal had to be dealt with, the Sponsoring Authority should have handed over the work of translation of documents in Marathi language to more than one translator. We find merit in the said submission because judicial notice can be taken of the fact that in Mumbai there is no dearth of persons who can translate documents in Marathi language. In our view, there is delay in the said pocket, which has not been satisfactorily explained.

16. For the said reasons, in our view, there has been a delay in all the three pockets, referred to above, and the said delay, in our judgment, has not been satisfactorily explained. It is well-settled that delay in the issuance of a detention order, which has not been satisfactorily explained, would vitiate the detention order on the vice of delay in its issuance. In our judgment, the detention order in the instant case is vitiated by the said vice.

We feel that it would be pertinent to refer to the ratio laid down by the Supreme Court in paragraph 14 of Paturkar's case (supra), in terms, that when the appellant has taken a specific plea of delay and the delay, whether short or long, is unexplained, the detention order would be vitiated by the vice of delay.

Our view is fortified by the said decision.

17. We would be failing in our fairness if, before proceeding to the operative part of our Judgment, we do not refer to the averment pertaining to propensity and potentiality of the detenu, which has been made in all the three affidavits. Mr. Mhaispurkar, learned counsel for the respondents, contended that the propensity and potentiality of the petitioner to commit prejudicial activities, similar to those contained in the grounds of detention, was so firmly entrenched that the live-link between them and the rationale of clamping a detention order on him could not have been snapped. We are constrained to observe that we do not find merit in this submission. Whether the propensity and potentiality of the detenu to commit prejudicial activities, similar to those for which he is preventively detained, survives on account of efflux of time or is extinguished by passage of time, is a question of fact and not one of law. In the instant case, we have seen that the last in-camera statement was recorded on 5.8.2000 and the impugned detention order was passed more than five months thereafter i.e., on 10.1.2001. In our Judgment. in view of this time-lag, it is doubtful whether the propensity and potentiality of the detenu to commit similar prejudicial activities survived.

Apart from it, we may also mention that in Paturkar's case (supra) the detenu was detained on account of five cases under the Bombay Prohibition Act and in-camera statements of five witnesses, namely "A" to "E" but there was a delay of 5 months and 8 days between the last case and the date of issuance of the detention order, the Supreme Court quashed the detention order and as is manifest from its judgment, did not consider the question of propensity and potentiality of the detenu.

18. We make no bones in observing that when this Court examines the question of delay in the issuance of a detention order, the question which it primarily examines is whether the delay has been satisfactorily explained and the issue of propensity and potentiality is only secondary. As we have seen in the instant case, the delay has not been satisfactorily explained. Hence the averment in the three returns that the propensity and potentiality of the detenu to commit similar activities was so firmly entrenched that it could not have been severed on account of a time-efflux of five-and-quarter month, would not save the detention order from being struck down on the vice of delay in its Issuance.

19. In the result, we allow this petition; quash and set aside the impugned detention order; direct that the detenu Prakash @ Pakya Ramchandra Bobade be released forthwith unless wanted in some other case; and make the rule absolute.