
(2014) 03 BOM CK 0048

In the Bombay High Court

Case No : Criminal Writ Petition No. 420 of 2013

Rahul

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3

Citation : (2014) ALLMR(Cri) 2579

Hon'ble Judges : C.V. Bhadang, J;B.R. Gavai, J

Bench : Division Bench

Advocate : R.M. Patwardhan, Advocate for the Appellant; B.H. Dangre, Public Prosecutor, Advocate for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.—The petition challenges the order passed by respondent No. 2 thereby detaining the petitioner under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Person and Video Pirates Act, 1981 (Amendment of 2009) (hereinafter referred to "the said Act"). The petitioner has been detained under sub-section 2 of Section 3 of the said Act for a period of one year. Heard Shri Patwardhan, learned Counsel for the petitioner and Smt. Dangre, learned Public Prosecutor for the respondents.

2. Shri Patwardhan, learned Counsel for the petitioner submitted that the impugned detention order is liable to be vitiated on the following grounds:

(1) The incidents on which the Detaining Authority has relied upon would fall under the law and order problem not causing any danger so far as the public order is concerned.

(2) In-camera statements recorded have been verified on 07/3/2013 by the

Special Executive Magistrate, whereas the proposal was forwarded to respondent No. 2 by the Police Inspector on 25/02/2013.

It is, therefore, submitted by the learned Counsel for the petitioner that the impugned order has been passed by taking into consideration the irrelevant and non-existence material and as such the subjective satisfaction is vitiated. It is further submitted that though the proposal was forwarded on 25/02/2013, the order detaining the petitioner has been passed on 19/4/2013 and thus there is almost two months' delay in passing the final order from submission of proposal. It is further submitted that the delay in passing the order, which has the effect of snapping the live-link between the alleged prejudicial activities and the purpose of detention, has not been properly explained which is fatal to the case of the respondents. For this purpose, the learned Counsel for the petitioner relied on the judgment of Division Bench of this Court in the case of Niyazuddin @ Sonu Sirajuddin Ansari Vs. State of Maharashtra and Another,

3. Smt. Dangre, learned Public Prosecutor, on the contrary, relied on the judgments of the Apex Court in the following cases:

(1) Abdul Salam alias Thiyyan Vs. Union of India and others,

(2) Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others,

Learned Public Prosecutor also relied on the judgment of Division Bench of this Court in the case of.

(3) Shri Indrajit Goswami Vs. Shri R.H. Mendonca Commissioner of Police and others,

4. Undisputedly, in the present case, perusal of the record would reveal that the statements of the witnesses, on which Detaining Authority relied, are said to have been recorded by the Senior Police Inspector, Police Station, Nandanwan, Nagpur on 16/02/2013. The record shows that the said statements were verified on 07/3/2013 by the Special Executive Magistrate, Sakkardara Division, Nagpur City. It is seen that the verification of the said statements is much subsequent to the proposal which was forwarded to respondent No. 2 on 25/2/2013.

5. Thus, by no stretch of imagination, it can be said that the statements so recorded could have been a part of the proposal, which was forwarded to respondent No. 2 on 25/2/2013. It is further seen that the subjective satisfaction, which is arrived at by respondent No. 2, has been on the basis of said statements. If the said statements could not have been the part of the proposal, the subjective satisfaction of respondent No. 2 is, therefore, vitiated by taking into consideration the extraneous material. The petition, therefore, deserves to be allowed on this short ground.

6. The petition also deserves to be allowed on the other ground of delay. As a matter of fact, it would not be necessary for us to discuss this ground inasmuch as the petition deserves to be allowed on the ground of subjective satisfaction

being vitiated. However, since the learned Public Prosecutor has relied upon certain judgments of the Apex Court, it would necessary for us to consider that question.

7. Insofar as the judgment of the Apex Court in the case of Rajendrakumar (cited supra) is concerned, the learned Public Prosecutor relies on paragraphs 9, 10 and 11 of the said judgment. No doubt, the Apex Court in the said case has held that the rule as to unexplained delay in taking action is not inflexible. The Apex Court has considered that while passing order for detention in the COFEPOSA Act, the delay in complying with the procedural safeguards of Article 22(5) of the Constitution of India is bound to occur. The Apex Court has found that when a person is detained in the act of smuggling and foreign exchange racketeering, the Directorate of Enforcement has to make a thorough investigation into all the facts with a view to determine the identity of the persons engaged in these operations, which have a deleterious effect on the national economy. The Apex Court has found that in such cases the investigation has to be carried on for months together due to the magnitude of the operations. The Apex Court has further found that, if the detaining authority finds necessary, it has also to consider whether there is necessity in the public interest to direct the detention of such person. The proposal for detention has to be cleared at the highest quarter and then required to be placed before a Screening Committee. However, the said judgment would not be applicable to the facts of the present case inasmuch as the detention under the said Act is concerned, no such proposal is required to be either placed before the Screening Committee or so, as the power is given to respondent No. 2 himself, who has to pass the order after arriving at the subjective satisfaction.

8. Insofar as the judgment of the Apex Court in the case of Abdu Salam (cited supra) is concerned, the Apex Court was considering the question regarding the delay in disposal of the representation by the Central Government. The Apex Court, in the facts and circumstances of the case, has held that delay of one month and five days in disposal of the representation, in absence of negligence, callous inaction and avoidable red-tapism, to be not fatal to the detention. The Apex Court has further found that if the delay is not reasonable and not explained properly, there cannot be a ground to interfere with the detention order.

9. Insofar as the judgment of the Division Bench of this Court in the case of Indrajit Goswami (supra) is concerned, this Court found that the last incident occurred on 02/02/1998 and as such the delay to pass the order of detention being hardly of two months, cannot be said to be the one which would be an effect on snapping between the alleged date of incident and the order of detention.

10. We are making it clear that in the present matter, we are not considering the issue of delay with an object to find out the nexus between the alleged acts on the basis of which the order is passed and the date of the order. May be, in the facts of the case, the said delay would not be fatal to the order of detention.

However, from the perusal of the affidavit-in-reply, filed on behalf of the respondents, it is clear that the proposal was forwarded from Nandanwan Police Station on 25/02/2013, which has received in the office of respondent No. 2 on 25/3/2013. It can thus be seen that exactly one month's period has been taken for the proposal for travelling a distance of around five kilometers. The reason for such a delay has not at all been explained. Even after it was received in the office of the Crime Branch on 25/3/2013, the detention order is passed on 19/4/2013, i.e. almost after a period of one month. The only reason for such delay given in the affidavit-in-reply is that the time was taken for translating the documents in the language known to the petitioner and for preparation of other documents.

11. The Division Bench of this Court to which one of us (Gavai, J.) is a party has considered the similar fact in the case of Niyazuddin (supra). In the present case, the petitioner has specifically taken a ground regarding unexplained delay and for that purpose he relied on the judgment of the Hon''ble Supreme Court in the case of Pradeep Nikanth Paturkar Vs. S. Ramamurthi and others,

In paragraph No. 14 of this judgment, the Hon''ble Supreme Court observed thus:

...Under the above circumstances, taking into consideration of the unexplained delay whether short or long especially when the appellant has taken a specific plea of delay, we are constrained to quash the detention order. Accordingly we allow the appeal, set aside the judgment of the High Court and quash the impugned detention order. The detenu is directed to be set at liberty forthwith.

12. In the present case also the petitioner took a ground of unexplained delay. Admittedly, the proposal has been received by respondent No. 2 after a period of one month from Police Station, Nandanvan, which is merely at the distance of five kilometers from the office of Respondent No. 2. Even after the said proposal was received in the office of the Crime Branch, the detention order is passed by respondent No. 2 almost after a period of one month. In that view of the matter, we find that the delay, being unexplained, right from forwarding of the proposal till passing of the detention order, vitiates the detention order.

13. As held by the Apex Court in the case of Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others, once detention of the detenu is held to be illegal, his detention for a single day would be contrary to the constitutional mandate.

14. In that view of the matter, we hold that the impugned order is not sustainable in law. The detention of the petitioner is held to be illegal. The petitioner is directed to be released forthwith, if not required in any other crime. Criminal writ petition is thus allowed and disposed of with no order as to costs.