
(2000) 09 BOM CK 0081

In the Bombay High Court

Case No : Criminal Writ Petition No. 158 of 2000

Raju Vithalrao Bhadre

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 29-09-2000

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(1), 3(3)
Penal Code, 1860 (IPC) — Section 34, 386

Citation : (2001) CriLJ 1363 : (2001) 2 MhLj 606

Hon'ble Judges : R.K. Batta, J;P.S. Brahme, J

Bench : Division Bench

Advocate : S.A. Jaiswal, for the Appellant; T.A. Mirza, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Batta, J.—The petitioner was ordered to be detained vide order dated 8-2-2000 issued by Commissioner of Police, Nagpur in exercise of powers conferred by Sub-section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short, the said "Act") read with Government Order, Home Department (special) No. DDS.1399/4/SPL.3(B) dated 19th November 1999. The detention order was served on the petitioner on 8-2-2000. The grounds of detention were served on the petitioner on 10-2-2000. The detention order was approved by the Government on 18-2-2000. The Government made reference u/s 10 of the said Act to the Advisory Board on 23-2-2000. The Advisory Board gave its opinion on 21-3-2000 and the detention order was confirmed by the Government on 29-3-2000.

2. The detention order is challenged by the petitioner on various grounds including that the Detaining Authority has failed to communicate to the petitioner that he could make representation within twelve days and non-communication of

the same is fatal. In view of the judgment of the Full Bench in Sunil Ghatе Vs. The State of Maharashtra and others, which has been confirmed by the Supreme Court in State of Maharashtra and Others Vs. Santosh Shankar Acharya, , that the Detaining Authority was not made aware as to whether the petitioner was in jail or on bail when the detention order was made as a result of which the detention order is vitiated; that the representation , dated 10-3-2000 was not forwarded by the Advisory Board to the Government nor the representation dated 14-3-2000 filed by the petitioner before the respondent No. 1 was forwarded by the Government to the Advisory board due to which the right of representation enjoined vide Article 22(5) of the Constitution of India has been materially affected and that the instances on which the Detaining Authority has relied upon do not pertain to public order, but those instances pertain to violation of law and order.

3. To start with, it was urged that the I Detaining Authority was not aware as to I whether the petitioner was in jail or on bail as a result of which the recording of the satisfaction by the Detaining Authority is not in accordance with law. Factually, the contention of the learned Advocate for the petitioner is not correct since on the grounds of detention dated 8-2-2000 in para 11. It is stated that petitioner may submit representation to the Government through Superintendent of Jail where he is detained. In view of this, it is not necessary to refer to the authorities on which learned Advocate for the petitioner had placed reliance. Accordingly, we do not find any merit in the first submission of the learned Advocate for the petitioner.

4. Secondly, it is urged by the learned Advocate for petitioner that the Detaining Authority failed to communicate to the petitioner that he had a right to make representation to the Detaining Authority within a period of twelve days and as such, the detention order stands vitiated. In para 13 of the ground of detention, the petitioner was informed that he had a right to make representation to the Detaining Authority against the order of detention and in case he wishes to make representation, then he should address it to the Commissioner of Police, Civil Lines, Nagpur. Contention of the learned Advocate for the petitioner is that the grounds of detention do not specifically inform the petitioner that the said representation should be made within twelve days. This aspect is now well settled. The full judgment of this Court in Sunil Ghatе Vs. The State of Maharashtra and others, which has been confirmed by the Apex Court in State of Maharashtra and Others Vs. Santosh Shankar Acharya, , after placing reliance on the judgments of the Supreme Court in Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, and Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Others, has held that, the Detaining Authority is bound to inform the detenu of his right to make representation against the order of detention to the Detaining Authority and in case the Detaining Authority fails to inform the detenu of his right to make representation against the detention order, the detention order would stand vitiated. Thus the petitioner was informed of such right, but the contention of the learned Advocate is that it was not informed to

the petitioner that such representation should be made within twelve days. In order to appreciate this submission, it is necessary to refer to Section 3(3) of the said Act, which reads as under: --

3(3) When any order is made under this section by an officer mentioned in subsection (2) he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

The detention order in question has been issued by the Commissioner of Police u/s 3(1) read with Sub-section (2) of the Act and the life of the said detention order is twelve days unless in the meantime, it is approved by the State Government. Thus, the State Government is empowered to approve the detention order issued by the Commissioner of Police at any time during the said period of twelve days which means that the detention order can be approved at any time during the said period and even within a couple of days. Therefore, it would not be feasible and appropriate to specify that the petitioner may make representation within 12 days since the detention order can be approved by the Government at any time during the said period of 12 days. A similar argument had been advanced before a Division Bench of this Court to which one of us (Brahme, J.) was a party in *Bandu alias Mobin Ahmad s/o Aminuddin v. State of Maharashtra* (Criminal W.P. No. 315 of 1999). The argument advanced by the learned Advocate for the petitioner therein was rejected and we have no reason whatsoever to take a different view of the matter. Accordingly, we do not find any merit in this submission of the learned Advocate for the petitioner.

5. Thirdly, it has been urged by the learned Advocate for the petitioner that the Advisory Board did not forward the representation dated 6-3-2000 which was filed by the detenu before the Advisory Board on 10-3-2000 when he appeared before the Advisory Board to the concerned authority and likewise representation dated 14-3-2000 filed by the petitioner to the Government was not forwarded by the Government to the Advisory and such inaction on the part of both the Authorities vitiates the detention order. The representation dated 6-3-2000 which the petitioner had filed before the Advisory Board was addressed to the State Government and the State Government requested to forward copies of the representation to the authorities having power to consider and/or to revoke the detention order. It appears that this representation dated 6-3-2000 which was filed by detenu before Advisory Board on 20-3-2000, was forwarded by the Advisory Board to the State Government along with its opinion dated 21-3-2000 as can be seen from the affidavit filed by the Desk Officer, Home Department (Special), Government of Maharashtra which is at pages 27 to 29 of the record and the same was considered by the State Government while taking a decision to confirm the detention on 28-3-2000.

6. Insofar as the representation dated 14-3-2000 is concerned, the same was

addressed to the State Government and it was received by the State Government on 16-3-2000 as can be seen from para 2 of the affidavit of the Desk Officer. In the said reply, it is further stated that the representation was scrutinized and submitted by the Deputy Secretary to the Secretary (Preventive Detention) on 18-3-2000 as 17-3-2000 was holiday, it is further submitted in the said affidavit that the Secretary (Preventive Detention) further examined and put up the said representation before the Additional Chief Secretary (Home) for his orders on 21-3-2000 since 19-3-2000 and 20-3-2000 were holidays. The Additional Chief Secretary (Home) carefully considered the said representation and rejected the same on 22-3-2000 and reply regarding the said rejection of the representation was sent to the detenu vide Government letter dated 23-3-2000 through Superintendent, Buldana District Prison. Copy of the said representation was forwarded by the State Government vide Government letter dated 21-3-2000 to the Advisory Board.

7. Thus, both the representations were considered by the State Government. We have already stated above that, the Advisory Board had submitted its opinion dated 21 -3-2000 to the State Government which opinion was received by the State Government on 21-3-2000 itself. Relying upon a number of judgments, the learned Advocate for the petitioner has urged that the non-consideration of representation by the Authorities has affected the petitioner's right Under Article 22(5) of the Constitution of India.

8. We shall at this stage refer to the rulings upon which reliance has been placed by the learned Advocate for the petitioner. Learned Advocate for the petitioner has relied upon Smt. Gracy Vs. State of Kerala and another, Suresh Rajkumar Seth Vs. The Union of India and Another, ; Shahista Sayed Haji Baitullah v. Union of India (1997) II LJ 85 (sic) 1997 AIHC 1688 and Satyapriya Sonkar v. Superintendent, Central Jail, Naini 2000 Cri IJ 1369 (All).

9. In Smt. Gracy v. State of Kerala (supra) the Apex Court while dealing with the detention under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 has laid down that the mode of address is only a matter of form which cannot whittle down the requirement of the constitutional mandate in Article 22(5) of the Constitution of India enacted as one of the safeguards provided to the detenu in case of preventive detention. Thus, one representation of the detenu addressed only to the Central Government and not also to the Advisory Board does not dispense with the requirement of its consideration also by the Advisory Board. Thus, the dual obligation of consideration of the detenu's representation by the Advisory Board and independently by the detaining authority flows from Article 22(5) when only one representation is made addressed to the detaining authority.

10. In Shahista Sayed Haji Baitullah v. Union of India 1997 AIHC 1688 (supra), the Division Bench of this Court while dealing with the detention under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 has laid down that though the representation was only addressed to the

Detaining Authority, five copies of the representation were given . to the jailor with the request that the representation should be considered by appropriate authorities, the Central Government was required to consider the representation against the order of detention independently.

11. In *Satyapriya Sonkar Vs. Superintendent, Central Jail and Others*, , the Division Bench of the Allahabad High Court has laid down that non-forwarding of representation made under the National Security Act to the Advisory Board vitiates detention. In this matter, the case was referred to the Advisory Board prior to the making of representation, but the subsequent representation made by the detenu was not placed before the Advisory Board and it was held that the detention would be illegal.

12. We may at this stage refer to some other judgments on the subject. In *Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Others*, , the Apex Court was dealing with the detention under the Gujarat Prevention of Anti-Social Activities Act, 1985 which is parimateria to the Act under which the detention has been made in the case under consideration. In this case, the Apex Court has laid down as under 3508 Cri LJ 09 : --

If a representation, is made by the detenu to the authorised officer for revoking or modifying the detention order then it would be certainly his constitutional obligation to consider the same and pass appropriate orders thereon and non-consideration would tantamount to violation of constitutional rights to a detenu Under Article 22(5). But if a representation is made to a specified authority and that specified authority in the given case is the State Government and the Advisory Board considers the same and disposes of it, then at that stage the question of the Detaining Authority considering the said representation even though not addressed to it does not arise. If the Gujarat Prevention of Anti-social Activities Act, 1985 is analysed it would appear that the legislature has circumscribed the powers of the Detaining Authority by providing that an order of detention would lapse after 12 days from the passing of the order unless the State Government has within the said period endorsed and ratified the same. Therefore, within the aforesaid period of 12 days. the detaining authority has the power of revocation which it can exercise before the State Government ratifies the same. But once the State Government approves the order of detention then on the same set of circumstances the Detaining Authority cannot revoke an order of detention. Though if subsequent circumstances change, the Detaining Authority may have the power of revocation in view of the provisions of the General Clauses But when no representation is made to the State Government indicating new set of circumstances requiring the Detaining Authority to consider its representation, and on the other hand the representation is addressed to the Advisory Board, there is no requirement of law for that representation being also to be disposed of by the Detaining Authority and such non-disposal would amount to violation of the constitutional rights of the detenu Under Article 22(5) of the Constitution.

13. In *Ahamed Nassar Vs. The State of Tamil Nadu and Others*, the Apex Court while dealing with the case of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 has, on the question of expeditious disposal of representation, laid down : --

The alleged delay of two days, viz. 25-5-1999 and 26-5-1999 was the time taken by the sponsoring authority to send its comment. Though both the authorities were in the same city it cannot be held that this delay was attributable for the delay in disposal of the detenu's representation. In a given case even a few days' delay may be fatal while in another set of circumstances longer delay may still be held to be for valid reasons. Expeditious disposal of any representation only means which could be expeditiously disposed of by the authority concerned but should not be with any unexplained delay or delay through carelessness. This would depend on the facts and circumstances of each case.

14. In *Ravi Chabiram Sharma Vs. R.H. Mendonca, Commissioner of Police and others*, , the Division Bench under this Court was dealing with the case of detention of the said Act and the detention was assailed on the ground that there was a delay of eight days in considering the representation made by detenu and the same vitiated the order of detention. In this case, the representation was dated 31-12-1997 audit was forwarded to the Advisory Board which came to be rejected on 2-2-1998. The State Government had received written representation on 23-1-1998 and after due consideration, rejected the same on 31-1-1998. During the interregnum, there remained between 23-1-1998 and 31-8-1998 a span of 8 days only inclusive of the receipt of the representation and the rejection out of which four days were holidays and there was only four days for consideration of the representation. In the circumstances, it was held that there was no delay in considering the representation and the same had been duly considered as expeditiously as possible by the Authorities of the Government without any delay. It was observed that there was no laxity or lethargies on the part of the State Government to consider the representation.

15-16. In the right of the above law on the subject, it is to be noted that representation dated 6-3-2000 was handed over by the detenu to the Advisory Board on 10-3-2000 when he appeared before the Advisory Board. The Advisory Board had considered the same while giving its opinion dated 21-3-2000 and had forwarded the said representation to the State Government along with its opinion. Insofar as representation dated 14-3-2000 is concerned, the said representation was received by the State Government on 16-3-2000, 17th March, 2000 was holiday and the Deputy Secretary after scrutinizing the said representation, had submitted the same to the Secretary (Preventive Detention) on 18-3-2000, 19th and 20th March, 2000 were again holidays. Secretary (Preventive Detention) further examined the representation and put up the same before the Additional Chief Secretary (Home) for his orders on 21st March, 2000. The Additional Chief Secretary (Home) carefully considered the said representation and rejected it on 22-3-2000. In the meantime on 21-3-2000 the

representation was sent to the Advisory Board, but by that time, the Advisory Board had already sent its opinion. In these facts and circumstances of the case, we find that there was no delay whatsoever on the part of the State Government in not only considering the representation, but also in forwarding the representation to the Advisory Board. We have already stated that both the representations were considered by the State Government. Accordingly, we find that there has been no violation whatsoever of the right of the petitioner Under Article 22(5) of the Constitution of India and there is absolutely no merit in the submission of the learned Advocate for the appellant.

17. The next submission which has been made by the learned Advocate for the petitioner is that the Detaining Authority has, in fact, considered the material which is said to have been not considered and the documents in support of the said material have not been furnished to the petitioner. In the petition no such ground has been taken and the State did not have any opportunity to file any return on this issue. In this respect, learned Advocate for the petitioner has urged, after placing reliance on *Sudarshan Tukaram Mhatre Vs. R.D. Tyagi*, Commissioner of Police, Thane and others, wherein the Division Bench of this Court has laid down that the law of pleadings in all its rigor is not applicable to habeas corpus petitions. There can be no dispute about this proposition, but, it is pertinent to note that even though the petitioner had sought amendment to the petition by filing application on 17-5-2000, yet still no such ground was taken by the petitioner. The Apex Court in *Abdul Sathar Ibrahim Manik Vs. Union of India* and others, has laid down that when the Detaining Authority has merely referred to certain incidents in the narration of events and has not relied upon them, the same will not cause any prejudice to the detenu in making an effective representation. Whether in a given case the detaining authority has casually or passingly referred Or relied upon such instances would depend on the facts and the grounds which is required to be examined by the Court.

In the case under consideration, we find that though in the grounds of detention, there is a reference to certain offences and externment order, but the grounds of detention itself categorically state that the same have not been considered while formulating the detention and as such, documents pertaining to the same have not been supplied. The Detaining Authority has merely referred to them in the narration of events and has not relied upon them. If order of detention is looked into as a whole, we find that the detention order is based upon one instance of extortion and three in-camera statements contained in para 5 and para 6 of the detention order. There is nothing to suggest that the narration of events has affected or vitiated the subjective satisfaction arrived at by the Detaining Authority. Accordingly, we do not find any merit in this submission of the learned Advocate for the petitioner.

18. The next submission advanced by the learned Advocate for the petitioner is that the instances quoted by the Detaining Authority do not make out a case of affecting or likely to affect prejudicially or adversely the maintenance of the

public order. The law on this aspect is now well settled by a series of judgments in Arun Ghosh Vs. State of West Bengal, ; Angoori Devi for Ram Ratan Vs. Union of India (UOI) and Others, , Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, ; Mrs. Harpreet Kaur Harvinder Singh Bedi Vs. State of Maharashtra and another, ; Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, and Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Others, . It would suffice to quote the following observations of the Apex Court in Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Others, : --

Even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or the same amounted to breach of law and order. The fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society.

19. The Detaining Authority has relied upon one instance of extortion and three in-camera statements. Criminal Case Under Sections 386 read with Section 34 of the Indian Penal Code (Crime no. 371/99, Police Station, Kotwali) was registered on a complaint by Pramod Krushnakumar Awasthi on 15-11-1999. This complaint is in respect of harassment and extortion committed by the petitioner over a period of time. The petitioner along with his associates was repeatedly extorting money from said Pramod from August 1998 on the ground that money was required for constructing a temple. When he refused to part with money, he was threatened with knife. Repeatedly, money was extorted from him from time to time. Ultimately in September 99 the petitioner along with his associates once again approached the petitioner and threatened him that he would be finished. On account of this continued harassment, said Pramod Awasthi approached the police and filed complaint. On that day, he had also been threatened on phone.

20. The in-camera statements also disclose the extortion activities of the petitioner. In-camera Statement "A" related to an incident in September 1999 where the petitioner had stopped the said witness and asked for money, but when he stated that he had no money with him, the petitioner whipped out knife and forcibly took Rs. 20/- from his trouser pocket and threatened him that if he reported matter to the police, his life would be made difficult. In the in camera statement of witness "B" in connection with the incident of September 1999, the petitioner along with his associates stopped his jeep and demanded money. When the said witness declined to pay, the petitioner whipped out knife and threatened him as also forcibly removed Rs. 15/- from his shirt pocket. He was also threatened that in case he reported the matter to police, he would not be spared. In-camera statement of witness "C" is in respect of incident in October

1999 wherein the petitioner and his associates told the witness that they had killed one and they would not hesitate to kill him and demanded money on the ground that if he had to do his business, he will have to pay them expenses of Rs. 200/-. When the said witness stated that he did not have money, the petitioner whipped out knife, pointed the same on his chest and forcibly took out a sum of Rs. 20/- from his shirt pocket. He was threatened that if he reported the matter to police, then he would remember (sic).

21. All the above instances show calculated course of extortion adopted by the petitioner by extorting money from various people and threatened them with dire consequences. These cases certainly relate to public order and are not the mere instances of law and order.

22. The contention of the learned Advocate for the petitioner that secret complaints are false and stereo-type and written in one sitting except for change of date and name, is factually incorrect. We, therefore, do not find any merit in the contention of the learned Advocate for the petitioner that instances upon which reliance has been placed by the Detaining Authority are instances of mere law and order and do not attract public order.

23. For the aforesaid reasons, we do not find any merit in the submissions advanced on behalf of the petitioner. Accordingly, writ petition is hereby dismissed. Rule is accordingly discharged.