
(2011) 05 BOM CK 0068

In the Bombay High Court

Case No : Criminal Writ Petition No. 123 of 2011 with Cri. Application No's. 946, 1933 and 1971 of 2011

Rushikesh Tanaji Bhoite

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Constitution of India, 1950 — Article 22(5), 22(6)
Criminal Procedure Code, 1973 (CrPC) — Section 173(2)
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 2, 3, 3(2), 5A, 8

Citation : (2012) BomCR(Cri) 99 : (2011) 113 BOMLR 1963

Hon'ble Judges : K.U. Chandiwal, J;A.V. Potdar, J

Bench : Division Bench

Advocate : Shirish Gupte, holding for U.N. Tripathi, for V.D. Hon, S.B. Talekar, in Cri. application No. 946/2011 and Hemant Surve, in Criminal application No. 1971/2011, for the Appellant; N.B. Khandare, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others, AIR 2012 SC 890 : (2012) CriLJ 1334 : (2012) 1 JT 1 : (2012) 1 RCR(Civil) 863 : (2012) 1 SCALE 53 : (2012) 2 SCC 72 : (2013) AIRSCW 209 : (2012) AIRSCW 677 : (2012) 1 Supreme 30

K.U. Chandiwal, J.—Heard finally.

Rule, made returnable and heard forthwith with the consent of the learned Counsel for respective parties, in view of noting dt.14th Feb.,2011.

2. The detente, a law graduate, is Secretary of an Educational Institution at Jalgaon, pleads that he has social standing at Jalgaon and is associated to redress cause of gullible or unorganized class.

ALLEGATIONS:

3. The allegations against the detent are, he has been continuously engaged in commission of violent and desperate activities, giving rise to at least 20 cases against him. He has a violent character, indulges in terrorizing activities. He has been a habitual criminal, Goonda on the record of various Police Stations of Jalgaon district. The detenu's activities are prejudicial to the maintenance of public order and he is a "dangerous person" within the meaning of Section 2(b1) of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drugoffenders and Dangerous Persons Act, 1981 (in short, "MPDA Act, 1981"). Action taken against the detenu under the existing laws of the land has proved to be ineffective and insufficient, to curb his violent as well as terrorizing activities. In future, his activities may create danger to the society at large. The even tempo of the society is disturbed and the activities are found to be prejudicial to the maintenance of public order and, hence, it has become imperative and necessary to detain him under the provisions of MPDA Act, 1981, to remove fear from the mind of residents of Jalgaon district.

4. The detenu, it is alleged, has formed unlawful assembly, had beaten Government officials like District Deputy Registrar, caused obstruction in official duties, indulged in unruly behavior at a Bar after consuming alcohol, assaulted owner of the hotel. He illegally entered a cinema hall, hurled abuses and created terror under influence of liquor, tossed glass bottles, thereby, created commotion at public place. He created disputes over immoveable property, indulged in assault on the complainants, committed misappropriation and cheating at the educational institution. The benefits to which the teachers, employees were entitled, were squeezed, withheld, thereby employee's wife has even been instigated, nagged to commit suicide. The detenu has visited University with his hoodlums, cronies formed unlawful assembly, and caused destruction to the property of University, created terror and commotion. The detenu had even formed Police Hakka Parishad, instigated Government servants, thereby indulging in acts against the country. He issued press notes against administrative officers of the Government with blatant accusations. He addressed women folks obscenely in the office thereby created macabre terror in appointing servants. Casual transfers of the teachers, female staff, from one college to another college, were made, and even recalled within short period, intermittently, in the midst of academic year, without following Government norms, with a sheer intention to humiliate the staff and ensure that they are under his thumb, tow and meet hideous demand.

SUBMISSIONS AND GROUNDS:

5. Learned Senior Counsel Mr. Gupte has restricted the submissions to legal grounds, did not expand to cases pending/faced by the detenu. The grounds for challenge are:

(a) Reliance placed to the cases of 1980, 1984, 1990, 1993, 1999, 2001, 2002,

2007, 2009 and 2010 is erroneous. Stale grounds are considered. The live link has been snapped and credible chain, if any, having been broken, the order of detention is mala fide, null and void.

(b) The last incident considered by the detaining authority for the purpose of detention was dt.14.8.2010, in which the detenu was arrested at Dharangaon Police Station. The grounds of detention are not proximate to the alleged prejudicial activities on the basis of which impugned order of detention is issued.

(c) The order of detention is per se punitive in character, rather than preventive in nature.

(d) In all six in camera statements were recorded by the sponsoring authority which statements are false and fabricated, only to put detenu under MPDA Act, 1981 and it was to fill in the gap between last incident and the detention. No copies of in camera statements were supplied to the detenu on 10th Jan.,2011. The copies were given to his wife on 24th Jan.,2011.

(e) Section 8 of the MPDA Act, 1981, ordains the detaining authority to have communicated the detenu the grounds of detention which includes documents/ material relied upon by the detaining authority within a period of five days. The delay in serving the grounds of detention, after a period of five days has infringed right of the detenu under the MPDA Act, 1981, as also under Article 22(5) of the Constitution of India.

(f) It does not seem that in camera statements were placed before the detaining authority at the time of issuance of impugned order that would amount to non application of mind on the part of the detaining authority and so also casual and cavalier exercise of powers.

(g) The Petitioner son of the detenu, has made representation on 17th Jan.,2011 to the State Government. The Advisory Board heard the matter on 31st Jan.,2011. The delay in communication of the order is prejudicial.

6. Learned Senior Counsel has asserted that in the detention matters, a very limited role and scope is to be seen; three areas u/s 3 (2) of the MPDA Act call for consideration. Public Order is to be achieved and it is to be primarily indicated that the detenu is a "dangerous person", the public at large should have a feeling of insecurity. The satisfaction of detaining authority, the District Magistrate, is essential. Within two days i.e. 8th Jan.,2011 and 9th Jan.,2011, the detaining authority could not verify statements of six witnesses and voluminous record of 500 pages. It more lean, that directions of some higher officers were followed. The order of detention was prepared, including grounds, and Respondent No. 2 has signed, without application of mind on the dotted lines. The detaining authority did not settle the detention order.

7. Reliance was placed to following judgments.

1) 2006 ALL MR (CRI) 1781 SC. (Rajesh Vashdev Adnani V. State of Maharashtra

and Anr.)

2) 2008 ALL MR CRI 774 (Smt. Kirti Sujit Satam v. State of Maharashtra and Ors.)

3) Ibrahim Ahmad Batti alias Mohd. Akhtar Hussain alias Kandar Ahmed Wagher alias Iqbal alias Gulam Vs. State of Gujarat and Others,

4) Ganga Ramchand Bharvani Vs. Under-Secretary to The Government of Maharashtra and Others,

5) Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others,

6) Charanjitsingh " Sonu Nanaksingh Digwa Vs. State of Maharashtra and Another,

7) 2001 ALL MR (Cri). 48.(Smt. Vijaya Raju Gupta v. Shri R.H. Mendonca and Ors.)

8) Rajindra v. Commissioner of Police, Nagpur Division

9) M. Ahamedkutty Vs. Union of India (UOI) and Another, .

The sum and substance of the above judgments is in tune with the grounds referred above.

8. Learned Public Prosecutor disputes that any prejudice is caused to the detenu or there was any delay or that the six in camera statements were not supplied instantaneously. He reiterated, the grounds of detention are not exclusively based on the in camera statements, therefore, even if statements are, allegedly, not supplied, will not vitiate the detention order or impair the rights vested in the detenu. Right of appeal is not available. Learned Government Pleader has dealt with Sections 3 and 8 of the MPDA Act, 1981, to address that Section 8(2) protects the State, not to disclose a fact to the detenu which it considers against the public interest. He adds, the statements referred of the six witnesses in the grounds were verbatim, even if it has a reference as "summary", as the statements excluded only that much of the portion which could expose identity of the maker and, hence, the terminology "summary" is inconsequential. Formal documents may not be considered by the detaining authority and the detenu has to primarily satisfy that his right has been adversely affected. There is no case to demonstrate non application of mind in the light of the note sheet which shows fidelity to the events. Effect of Article 22(6) of Constitution of India was reiterated.

9. Mr. Surve, representing intervener, has highlighted that the detenu is not a State Guest, to enjoy five star facilities at Bombay Hospital which has a daily rental of around Rs. 15,000/ (Rs. fifteen thousand). The very purpose of detention has been frustrated. Deterrent law needs to be put to the maintenance of public order as the detenu has been proved to be a dangerous person who habitually commits offenses under Chapter XVI and XVII of Code of Criminal

Procedure. Detenu has attacked Class II Officers, Police Officers. He galloped in the transfer process of the staff.

Reliance was placed to the judgments reported in (1) 2011 (1) Bom.C.R. (Cri.) 790 (Rahul " Chaptya Chandrabhan Meshram V. State of Maharashtra through Secretary and Ors.), and (2) (2008) 17 SCC 165 (Bhupendra v. State of Maharashtra and Anr.).

10. In Criminal Application No. 1122/2011 moved by the Petitioner, it was urged that the detenu is seriously ill owing to more than three blocks in his arteries to the extent of 90 per cent or more and the detenu requires coronary artery bypass surgery. The family members, to take utmost care for the detenu, desire to avoid any risk for the life, hence he needs to be referred to Asian Heart Institute, Mumbai, or Bombay Hospital at Mumbai. This application was allowed on 15th March, 2011, and the detenu is in Bombay Hospital. Prior to that, no sooner the detention order was served and he was taken to Nagpur, the detenu was hospitalized at Nagpur in Special Hospital. Mr. Surve points that if he had a blockage at Nagpur on 15th March, 2011, estimated at 90 per cent, how it could be that the experts at J.J. Hospital, Mumbai, on 18th March, 2011, found the same to be 50 to 60 per cent and at the Bombay Hospital it is a case of stress and not of any blockages in the arteries. Mr. Surve says, based on muscle and financial power the detenu has made mockery of the detention order, rubbing salt to the injuries of the public at large in the region. This gives a bad message that everything is possible if one possesses skill to exercise muscle and financial power.

OBSERVATIONS AND REASONS:

11. Each case projects its dimensions to the observation, restricting to facts. The delay, if any, in attending the matter, if explained reasonably, has to be scanned. Law does not enjoin upon the detenu or the Petitioner to know identity of the witnesses whose statements were recorded in camera. The minimum expectation is, that the detaining authority has to satisfy genuineness or otherwise of the allegations or the accusations made against the detenu and record its subjective satisfaction.

12. The detenu is required to know and peruse the most important document, which can be called as sheet anchor of the allegations, to verify the same in context of the grounds. It is in fact unnecessary to furnish copies of the documents to which a casual or passing reference is made by the detaining authority during the course of narration of facts which was not relied upon by the detaining authority to impress his mind in making the order of detention. The peculiar aspect of supply of documents are those which has negatively influenced the detaining authority in arriving at subjective satisfaction, needs to be furnished to the detenu along with the grounds of detention in the script or language which the detenu follows and breach thereof, naturally, attract Article 22(5) of the Constitution of India. In the instant case, the detenu is an Advocate

and he was served with Marathi version of the documents which were the grounds of detention, and subsequently, he was served with English script thereof.

13. The detaining authority has made it clear, that the copies of the six witnesses are incorporated in the orders and grounds and are verbatim reproduction of the statements except the names and some minor details, which would disclose the identity of the makers. On verification of the same, we find, to confirm that there is no variance, to the prejudice and detriment of the detenu's rights. The detenu, at the time of service of the English version of the statements with the letter has refused to receive, for which a panchnama was drawn and, thereafter, the English version with the documents was received by his wife on 24th Jan., 2011, under a Panchnama.

14. The papers reflect that the detenu was a practicing lawyer on Criminal side, at Jalgaon, before he gave up active practice and he faced several cases, not to mend his habit and conduct. The time that has been consumed in passing the order was due to appraisal of facts, verification of genuineness of the statements. Time was not killed prejudicial to the detenu. The process had continuity and it was thereafter that many victims of the detenu have come forward to report other serious cognizable cases against the detenu, however, they could not be part of the detention order nor the detaining authority has considered them to be valid in law but he has explained that this state of affairs cannot be ignored while considering the petition. The grounds of detention are certainly proximate to the alleged prejudicial activities.

15. Reference of subsequent Crime No. 173/2010, arising out of earlier event in Crime No. 172/2010 are tried to be confused. The details in Crime No. 173/2010 moved by the detenu, on account of the incident dt.14.8.2010, was found to be false. Hence "B" summary report has been sent by the Police to the concerned Court on 17th Feb.,2011. A notice was indeed sent in terms of Section 173(2)(ii) of Code of Criminal Procedure to the detenu on 11.12.2010. This was almost a month before the order passed by the Respondent the detaining authority.

16. The relaxation of conditions in the bail have no bearing on the issues involved against detenu as based on the conditions prevalent, advocated at the material time, the weekly attendance condition, was modified.

17. The Respondent detaining authority has given catalogue of events supported with Rozanama and documents to illustrate that the proposal from Police Inspector, Dharangaon, was received at the office of the Sub Divisional Police Officer, Chopda, on 14.12.2010. On 15.12.2010 the Sub Divisional Police Officer, upon verifications of the details, has forwarded the proposal to the Superintendent of Police, Jalgaon. The Superintendent of Police, Jalgaon, forwarded the same to the District Magistrate on 17.12.2010. The subsequent 2 days were holidays due to Muharram and Sunday. Consequently, the proposal was put before the Respondent District Magistrate on 20.12.2010., The

Respondent naturally took time to verify legal aspects of the matter and to verify the witnesses, who appeared before him on 8th Jan.,2011 and 9th Jan.,2011. The contention that the District Magistrate did not verify the statements of the witnesses is far fetched, illusory, as the record primarily establishes otherwise.

18. On 10.1.2011, the detenu was arrested at Aurangabad. He was informed the grounds and committal order, copies were given to him. The Petitioner also accepts the same generally. At detenu's instance, he was taken to local Advocate Shri Eknath Sawant with whom he had free talk. Police Officer Shri Shevgan also spoke to the Petitioner on Mobile No. 09665309999, and the location, at 21.22 hours illustrated Petitioner to be at Pune. In the same evening, the detenu's son was also informed of the detention and nature of the order. On 12.1.2011, communication to detenu's wife was received by detenu's brother Shri Shivaji Bhoite under an acknowledgment. These details blast the theory that there was no timely communication of the detention to the relatives.

19. The papers tendered by the learned Government Pleader from the Government of Maharashtra indicate that on 17.1.2011, the representation was sent, received by the Government on 19.1.2011. On 21.1.2011, remarks were called from the detaining authority, which was received on 27th Jan.,2011, they were placed before the Under Secretary and the Additional Chief Secretary, on perusal of entire record, on 3rd Feb.,2011, rejected the same. Exh. K (Page No. 433) does not indicate that the letter dt.4th Feb.,2011, was received by detenu on 10th Feb., 2011. It is not that the State Government should have filed the affidavit to illustrate these details as they are part of the petition itself.

In the matter of Ranbir Singh V. T. George Joseph, District Magistrate, Merrut and Anr, 1990 (Supp.) SCC 54 , the allegations were that the Petitioner therein made a representation to the State Government and that the State Government has failed to consider the same, which facts were not controverted. There is no such case at hands. The Petitioner attributes delay in communication of rejection. This, to reiterate, is an eyewash.

20. The order of detention and the grounds shows that the detenu has used muscle power for commission of violent crimes. His activities created fear psychosis to the teachers, employees and even University staff. A serious riotous situation developed by the detenu at the University giving rise to Crime No. 172/2010. Crime No. 173/2010 to which detenu referred was indeed inquired, however, it was not enclosed as part of the detention order. It will not diffuse and deflate genuineness of the action. The people in the area of Jalgaon were under intense fear and panic due to the activities of the detenu. The indomitable conduct at educational institution has made the life of Teachers and staff miserable. Wages were withheld for commissions. Favor to intimates was usual feature. His morose temper, made retired employees mortal. These activities are such vigorous are uncontrollable by regular laws. For such element detention is only effective contraceptive pill.

21. The Apex Court in the matter of Bhupendra v. State of Maharashtra (2008) 17 SCC 165 have observed,

The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon the society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and, therefore, touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, i.e., in its impact on society, it may be very different.

22. Section 8(2) of the MPDA Act, 1981, permits the authorities to withhold identity of the witnesses.

23. Section 5A of the MPDA Act, 1981, deals with grounds of detention being severable and ordains, that if a person is detained in pursuance of an order in terms of Section 3, made on two or more grounds, it would be deemed to have been made separately on each of such ground.

Section 5A(a) contemplates,

Such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are

(i) Vague.

(ii) Nonexistent,

(iii) Not relevant.

(iv) Not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the State Government or an officer mentioned in subsection (2) of Section 3 making such order would have been satisfied as provided in Section 3 with reference to the remaining ground or grounds and made the order of detention;

Section 5A(b) speaks as under:

The State Government or such officer making the order of detention shall be deemed to have made the order of detention under the said Section 3 after being satisfied as provided in that section with reference to the remaining grounds or grounds.

Section 2(b1) defines "dangerous person" to mean 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 under

Chapter v. of the Arms Act, 1959.

24. If the detenu claims that he was not supplied with copies of six in camera statements, that will not be prejudicial to him as the order of detention is separable on two or more grounds and non supply of such statements would not be fatal. Another facet in the matter is, the detention order does not qualify to be solely based on the six privileged statements to castigate conduct of the detenu as detrimental to public order, requiring him to be under detention. The long drawn behavioral pattern of the detenu, his arrogance, associated with muscle and money power, has made it impossible to control him with ordinary law and it was imperative, to have check on his activities, to have free air to the citizens with free movements, he was required to be put under detention. Detenu's activities have paralyzed the even tempo of society.

25. We are alive, we are not sitting in appeal over the orders of the District Magistrate, to scan genuineness or correctness therein, however, since the matter is elaborately argued, we had, threadbare, perused the documents and reached to conclusion that at no stage, the documents were deliberately withheld from the purview of the detenu or that his relations were not informed. It is not that the State Government with the Advisory Board constituted under the MPDA Act, 1981, did not proceed with swiftness or due diligence. There is apparently no delay in passing the orders dt.3rd Feb.,2011, after receiving details on 28th Jan.,2011. The order was primarily communicated on 4th Feb.,2011 to the detenu.

26. Survey of above details illustrate, the grounds raised by the Petitioner are ill-founded, far fetched and stretched. No prejudice or sub traction to the fundamental rights enshrined by the Constitution of India is caused to the detenu.

27. The picture from the record is otherwise. The detenu is enjoying five star facilities at Bombay Hospital, even if he is under preventive detention.

ORDER

a) Writ Petition is dismissed. The detenu to surrender to the Jail authorities from Bombay Hospital or any other hospital up to 20th May, 2011. Rule discharged.

(b) At the Jail, the Jailer / the Superintendent of Jail, shall keep up-to-date record of health condition of the detenu through the Medical Officers and Experts in the field who may be invited at the Jail. If the detenu complains of his ill health, he may be referred to a duly constituted Medical Advisory Board.

(c) Intervention and other application/s, for transferring the detenu from Bombay Hospital, to Central Prison, are disposed of in above terms.