
(1988) 07 BOM CK 0073

In the Bombay High Court

Case No : Criminal Writ Petition No. 565 of 1988

Sanjay Kedari Patil

APPELLANT

Vs

V.K. Saraf and others

RESPONDENT

Date of Decision : 12-07-1988

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (1988) 07 BOM CK 0073

Hon'ble Judges : V.P. Tipnis, J;M.L. Pendse, J

Bench : Division Bench

Judgement

Pendse, J.—The Commissioner of Police, Greater Bombay by order dt. February 25, 1988 issued in exercise of the powers conferred by sub-sec. (2) of S. 3 of the National Security Act, 1980 directed detention of the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The order of detention was served on the petitioner on the same day and the grounds of detention were furnished.

2. The first ground recites that on January 8, 1987 at about 5.30 p.m. Nareshkumar Chandanram and his friend Vesia Mansukh Solanki were walking along Jangal Mangal Road, Bhandup (West), Bombay. The detenu accosted them and started abusing. The detenu threatened Nareshkumar in filthy language and picked-up a quarrel and fisted him on his face. The detenu thereafter took out a rezor and slashed on the left palm of Nareshkumar causing bleeding injury. Vesia got frightened and ran away. Nareshkumar cried for help and the detenu ran away. Ground No. 2 recites that on January 30, 1987 at about 10.30 p.m. Dhondiram Digambar Thote and his friend Kishor More were proceeding to their residence along Jangal Mangal Road. The detenu and his associates gave a blow with sword on Dhondiram's head, hand and waist causing serious injuries. Kishor got scared and started running when the associates of the detenu chased him and gave blows with sword. The incident created a scare in the locality. Ground No. 3 recites that on March 2, 1987 at about 9.30 p.m., Vijay Bhimaji Lokhande

was standing near Maharashtra Vishranti Griha at Tank Road, Bhandup (West) along with his friends. A marriage procession was proceeding towards Jangal Mangal Road. All of a sudden, the detenu armed with a revolver and his associates armed with deadly weapons came on the scene in 3 auto-rikshaws. Noticing the detenu and his associates, the participants in the marriage procession got scared and ran helter-skelter. The associates of the detenu gave blows with swords while the detenu fired bullet from his revolver causing injuries. The detenu was instigating his associates to assault the people and kill them. Taking the clue, the associates of the detenu assaulted large number of people, by the weapons in their hands. Ground No. 4 recites that on July 10, 1987 at about 4.30 p.m. Saiprasad Babanrao Tajne and his friend Chandrakant More were proceeding on bicycle along L.B.S. Marg at Bhandup. The detenu and his associates followed Saiprasad and Chandrakant in a jeep and intercepted them. The detenu and his associates were armed with swords and other deadly weapons and gave blow on Saiprasad's head. The associates of the detenu also assaulted Saiprasad and Chandrakant. The next incident occurred on September 27, 1987 at about 9.30 p.m. at Dawawala House, Bhandup. One Ashok Natwarlal Randheria was standing in front of his residence, when the detenu and his associates rushed at him, Ashok entered his house and the detenu and his associates went away from the place. Ashok's mother reported the matter to police but the detenu and his associates came back, entered the house of Ashok and stabbed him with gupti, causing injuries on his chest. The associates of the detenu stabbed Ashok on his neck with a knife. The last incident occurred on December 4, 1987 at about 4.30 p.m. when Vedamani Nadar and his brother and his family members were sitting in front of Room No. 4, Vijay Shankar Chawl, Bhattipada Road, Bhandup (West), Bombay. The detenu and his associates went to the place, abused and threatened Vedamani and stabbed him with a Rampuri knife on his head and back. The detenu was carrying an iron bar and gave blows on Vedamani's brother's head.

3. In respect of these incidents, the detenu and his associates were prosecuted before the Metropolitan Magistrate but were released on bail. The Government of Maharashtra filed application before the Court of Sessions for cancellation of bail but the application was turned down by the Sessions Court. The grounds further recites that as a result of the activities of the detenu, peace-loving and law abiding citizens of the locality of Sarvodaya Nagar, Ganesh Nagar, Shivaji Nagar, Tank Road, Bhattipada Road, Gaondevi Road, Jangal Mangal Road and its adjoining areas within the jurisdiction of Bhandup Police Station were experiencing a sense of insecurity and were living under the constant shadow of fear. On the strength of this material, the detaining authority came to the conclusion that activities of the detenu are prejudicial to the maintenance of public order. The order of detention is under challenge in this petition.

4. Mr. Chitnis, learned counsel appearing on behalf of the detenu has raised three contentions to challenge the legality of the order. The first submission of the learned counsel is that there is an unexplained delay in considering the

representation made by the detenu both to the Government of India and the State Government. The detenu forwarded his representation against the order of detention to the President of India on March 31, 1988 and the same was received and directed to the Ministry of Home Affairs on April 14, 1988. On the same day, the Ministry sought comments from the State Government by forwarding a wireless message. The information was received from the State Government on April 26, 1988 and thereafter the representation was turned down on May 2, 1988. Mr. Chitnis submits that the State Government delayed forwarding the comments for about 12 days and there is no explanation given for this delay in the return filed on behalf of the State Government. The learned counsel urged that the delay in considering the representation vitiates the order. We are unable to accede to the submission of the learned counsel. In the facts and circumstances of the case, the period of 10 or 12 days required by the State Government to forward the comments as sought by the Central Government cannot be said to be such a delay which vitiates the order. Mr. Chitnis invited our attention to an unreported decision dt. November 23, 1987 in Criminal Writ Petition No. 910 of 1987 of the Division Bench of this Court. The Division Bench referred to the catena of decisions of the Supreme court where the issue of delay in consideration of representation was considered. It is not necessary to refer to all these decisions in the present case. The principle is well settled and the application of the same to the facts and circumstances of each case is to be determined. We are unable to accede to the submission that the order of detention in the present case stands vitiated on the ground of delay.

Mr. Chitnis then submitted that the detenu has also made a representation against the impugned order to the State Government and there was delay in consideration of the same. It is not possible to accept the submission of the learned counsel. In the return filed by A. J. Karnik, Desk Officer, Home Department, it is claimed in para 3 that the representation was received in the office of the Governor on April 8, 1988 and the same was forwarded to the Home Department on the same day. The Home Department sought remarks of the detaining authority on the same day and the remarks were received back on April 19, 1988. In between 6 days were public holidays. The representation was then examined and turned down on April 22, 1988. Mr. Chitnis complained that the comments should not have taken 10 to 11 days for replying. We are unable to see any merit in the submission. The return clearly recites that 6 days were holidays and taking all the facts into consideration, if 5 days are required for replying to the queries by the Home Department, it cannot be said to be such a delay which vitiates the order.

5. The second contention urged by the learned counsel is that the grounds of detention refers to a revision application filed by the State Government before the Court of Sessions, Greater Bombay, for cancellation of bail granted in respect of the incident referred to in ground No. 3. The learned counsel urged that the Sessions Judge heard group of revision application for cancellation of bail and the order was passed in the first revision application while the other revision

applications were disposed of in accordance with the reasons given in the main judgment. The grievance of Mr. Chitnis is that the reasoned order given in the first revision application was not placed before the detaining authority and thereby vital and relevant circumstance was not brought to the attention of the detaining authority and, therefore, the order is vitiated. It is impossible to accept the submission of the learned counsel. It is not in dispute that the revision application filed by the State Government for revoking the order of bail granted by the Magistrate ended in dismissal. It was, therefore, not necessary to place the reasoned order passed in the first application before the detaining authority. The detaining authority was fully conscious of the fact that the revision applications were turned down by the Sessions Court. The contention of Mr. Chitnis that the reasons which prompted the Sessions Judge to reject the revision application should have been brought to the attention of the detaining authority cannot be accepted because those reasons could not have any effect on the subjective satisfaction of the detaining authority. The second submission of the learned counsel must, therefore, be turned down.

6. The final submission of Mr. Chitnis is that the State Government ought to have filed further application before High Court for revoking the bail order because even after the revision application was turned down by the Sessions Court, it is the claim of the State Government that the detenu persisted in his activities which are prejudicial to the maintenance of public order. The submission is that as long as the State Government did not exhaust all the avenues for preventing the detenu from indulging in anti-social activities, the resort to the preventive detention was uncalled for. In our judgment, the submission is a desperate attempt to come out of the order of detention. The detenu and his associates have taken to crimes as a matter of routine and the grounds set out in the order of detention clearly indicate that for the whole year, the detenu has indulged in criminal activities and assaulted people indiscriminately. The detenu and his associates were prosecuted in respect of each of the incidents but as usual were released on bail. The State Government moved the Sessions Court for cancellation of the bail failed. In these circumstances, to contend that a further effort should have been made to cancel the bail and ought not have resorted to the provisions of the Preventive Detention Act cannot be accepted. It cannot be ignored that the detention is not as a punishment for the acts already done but with a view to prevent acts which the detenu is likely to indulge in future to disturb the public order.

In our judgment, the order of detention does not suffer from any infirmity and the petition must fail. Accordingly, rule is discharged.

7. Petition dismissed.