
(2003) 10 BOM CK 0043

In the Bombay High Court

Case No : Criminal Writ Petition No. 185 of 2003

Sarjerao Pawar f/o. Detenu Santosh @ Santya Sarjerao Pawar	APPELLANT
Vs	
Shri M.N. Singh, Commissioner of Police and Others	RESPONDENT

Date of Decision : 15-10-2003

Acts Referred:

Arms Act, 1959 — Section 25(1B), 27, 3, 35
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302

Citation : (2003) 10 BOM CK 0043

Hon'ble Judges : Ranjana Desai, J;P.V. Kakade, J

Bench : Division Bench

Advocate : I.S. Thakur, Addl.P.P., Kuldeep S. Patil, for the Appellant;

Judgement

Ranjana Desai, J.—The petitioner is the father of one Santosh @ Santya Sarjerao Pawar, who has been detained by the Commissioner of Police, Brihan Mumbai, under an order of detention dated 11/11/2002 issued under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short, the MPDA Act). The order of detention, grounds of detention and the material in support thereof were served on the detenu on 14/11/2002. From that day till date, the detenu is in custody.

2. The order of detention is based on C.R. No. 97 of 2002 registered u/s 302 of the Indian Penal Code read with Sections 3, 25(1-B), 27, 35 of the Arms Act and two in-camera statements. In the present petition, there is a challenge to the said order of detention.

3. Though several grounds have been taken up in the petition, Mr. Patil, learned counsel for the petitioner, has canvassed only one ground which is taken up by way of amendment in paragraph 5(k) of the petition. It is stated that the inference drawn by the detaining authority in C.R. No. 97 of 2002 that there is a likelihood of the detenu being granted bail under the normal law of land is

erroneous and this shows clear non-application of mind of the detaining authority. It is, inter alia, stated that the incident in question is serious and looking to the charges levelled against the detenu and the role played by him, the detaining authority could not have come to the conclusion that there is imminent possibility of any court granting bail to the detenu in near future. It is also stated that the detenu had applied for bail in the Court of Sessions, Mumbai on 26/11/2002 and the Sessions Court passed an order thereon as "withdrawn as rejected".

4. Mr. Patil submitted that the detenu having withdrawn his bail application and considering the grave nature of the incident in which he was involved and the active role played by him, there was no possibility of any court granting bail to him. There was no cogent material before the detaining authority to arrive at the conclusion that the detenu was likely to be released on bail and, therefore, the order of detention deserves to be set aside.

5. In support of his submission, the learned counsel relied on decisions of this court in *Amit Rakesh Janbandhu v. State of Maharashtra and Anr.*, 2002 All MR (Cri) 1983; *Shri Mohd. Ubed Abdul Rashid Ansari v. Shri M.N. Singh and Ors.* 2002 All MR (Cri) 1893. He contended that unless there is some cogent existing material before the detaining authority to indicate that the detenu is likely to be released on bail, he cannot issue the order of detention as there is no compelling necessity to issue the detention order while the detenu is in custody.

6. We have heard Mr. Thakur, learned Addl. P.P. for the State. He relied on a decision of this court in Criminal Writ Petition No. 1595 of 2002 in *Mrs. Sakshi w/o. Uday Mahadeo Sawant v. State of Maharashtra*, dated 10/6/2003. He drew our attention to the affidavit in reply filed by the detaining authority, more particularly paragraph 2 thereof, wherein the detaining authority has set out the compelling necessity. He submitted that in view of this, the present order of detention deserves to be confirmed.

7. In our opinion, whether in a particular case, there is compelling necessity to issue the order of detention while the detenu is in custody depends on facts and circumstances of each case. No hard and fast rules can be laid down in that behalf. In *Noor Salman Makani Vs. Union of India and others*, , the detaining authority had made a statement that there was a possibility that the detenu was likely to be released on bail. While meeting similar contention, the Supreme Court observed as under:

"5. The next mission is regarding non-application of mind by the detaining authority with regard to the circumstances that the detenu was in jail and a mere bald statement that the possibility that the detenu was likely to be released on bail cannot be ruled out is not enough and it only shows that there was no proper application of mind. In this context, the learned counsel relied on the judgment of this Court in *Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others*, . We see no force in this submission. We do not think that anything more could

have been said by the detaining authority in this context. As a matter of fact the apprehension of the detaining authority came to be true as the detenu was released on bail no doubt subject to certain conditions on 25-9-92. Therefore, there are no merits in this appeal."

8. In the present case also, in the grounds of detention, the detaining authority has stated in unequivocal terms that he was aware that the detenu has not been granted bail in connection with R.A.K. Marg Police Station C.R. No. 97 of 2002 and that he is in jail custody. He has further stated that the detenu has reason to believe that he may be granted bail under the normal law of the land and in view of the detenu's tendencies and inclination reflected in the offences committed by him, which are narrated in the grounds of detention, he was satisfied that after his release on bail and in the event of his being at large, being criminal, the detenu is likely to indulge in activities prejudicial to the maintenance of public order in future and that it was necessary to detain him under the MPDA Act to prevent him from acting in such a prejudicial manner in future.

9. Apart from this, in the affidavit, the detaining authority has given the following explanation:

"2. With reference to para 5 amended ground (k) of the petition, I deny the contention of the petitioner that the inference drawn by the Detaining Authority in CR No. 97 of 2002 that there is a likelihood of granting bail under the normal law of the land is erroneous and shows non application of mind by the Detaining Authority as alleged. It is submitted that even though the role attributed to the detenu was of a main accused person, who has fired at the deceased, but considering that the detenu was unknown to the complainant, and the Identification parade conducted by Shri Kamalakant Shahji Bansode, the Special Executive Officer, I prima facie came to the conclusion that the detenu is likely to be released on bail under the normal law of the land as the said identification parade was not conducted in Jail but was conducted in Bauddhajan Panchayat Samiti hall near the Police Station, where the Police had an access to even though the detenu was remanded to judicial custody for a day on the request of the Police for conducting the identification parade, and the dummies selected by the Special Executive Officer are of the age group of 18 to 23 years whereas the detenu was aged about 26 years, Coupled with the fact that there is no corroborative evidence in the form of recovery of weapons directly at the instance of the detenu u/s 27 of the Indian Evidence Act. I perused the entire material on record and on the aforesaid grounds based upon the sufficient material on record, I drew the conclusion that the detenu might be granted bail under the normal law of the land and I had reason to believe the same as in various cases of murder the bail is granted by Hon''ble Sessions Court and Hon''ble High Court and the accused persons have availed it. In view of his tendencies and inclinations, I was further satisfied that if the detenu is released on bail, he is likely to indulged in the activities prejudicial to the maintenance of public order in future and therefore, I felt it necessary to detain the detenu under

the M.P.D.A. Act to prevent him from acting in the manner prejudicial to the maintenance of public order. I deny the contention of the petitioner that looking to the charges and the role in the said CR, the Detaining Authority could not come to the conclusion that there is imminent possibility of Court of law granting bail to the detenu in future. The fact that the detenu applied for bail after the Order of Detention was passed and executed shows his efforts to get the bail in the said matter."

10. In our opinion, the averments made in the grounds of detention and the averments of the affidavit in apply clearly establish that the order of detention is issued by the detaining authority after due application of mind. The detaining authority has considered the manner in which the identification parade was conducted by the Special Executive Magistrate. It appears that he was of the opinion that there were some flaws in the holding of identification parade and that there was no corroborative evidence in the form of recovery of weapons directly at the instance of the detenu u/s 27 of the Indian Evidence Act. Having regard to these circumstances, the detaining authority has expressed an apprehension that the detenu might be released on bail. In our opinion, this satisfaction recorded by him cannot be faulted as having been based on no material at all. He has drawn this conclusion on the basis of the material in respect of this case, which was placed before him. The allegation that there was no cogent and subsisting material before the detaining authority is, therefore, without any basis. The fact that the application for bail is withdrawn once does not mean that the person cannot be released on bail again on a fresh application being made. Infact, in the affidavit, the detaining authority has stated that after the detention order was executed, the detenu had applied for bail. This has further strengthened the stand of the detaining authority that the detenu might make an application for bail and might be released on bail. Besides in Noor Salman Makani's case (supra), a mere statement made by the detaining authority that the detenu was likely to be released on bail was found to be sufficient. In view of this, we find no substance in this petition. Hence, we confirm the impugned order of detention.

11. Petition is disposal of in the aforesaid terms.