
(1987) 09 BOM CK 0002

In the Bombay High Court

Case No : Criminal Writ Petition No. 690 of 1987

Senmogam " Tiger Muttu Harijan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-09-1987

Acts Referred:

National Security Act, 1980 — Section 3
Penal Code, 1860 (IPC) — Section 114, 392, 397

Citation : (1987) 3 BomCR 368

Hon'ble Judges : C.S. Dharmadhikari, Acting C.J.; V.P. Tipnis, J

Bench : Division Bench

Advocate : P.D. Naik, appointed, for the Appellant; N.M. Kachare, Public Prosecutor, for the Respondent

Judgement

C.S. Dharmadhikari, Ag. C. J.

1. The order of detention issued by the Commissioner of Police, Greater Bombay, date the 22nd of April, 1987 under the provisions of the National Security Act is challenged before us on various grounds. It is contended by Mr. Naik, the learned Counsel appearing for the petitioner, that while passing the order of detention the detaining authority in terms has relied upon the earlier detention order dated 15-11-1984 which came to be set aside by the High Court on the 16th of April, 1985 as well as the externment order issued on the 31st of July, 1985 u/s 57 of the Bombay Police Act. Though specific reliance is placed on the earlier detention order as well as the externment order and for this reason a copy of the externment order is supplied to the detenu, the copies of the earlier detention order and the judgment passed by the High Court were not supplied to him. Since it was a material on the basis of which the externment order came to be passed and the copies of which were not supplied to the detenu, the detenu had no reasonable opportunity to make an effective representation under Article 22(5) of the Constitution of India. It was then argued by the learned Counsel that the detention order is practically based on a solitary instance which took

place on the 23rd of January, 1987 which reads as under :

"On 23-1-1987 at about 22.00 hours, you along with your associates Ganesh and Shashidharan Mani Nair in motor Taxi No. MMQ-1737 intercepted the rider of motor cycle No. MQO-3042 Shri Amarsingh Jatsingh Rathod, at Ramkrishna Mission Marg, Bandra (West). You and your associate Ganesh accosted Shri Amarsingh and you whipped out a knife and pointing it at Amarsingh and snatched his wrist watch. At the same time, Ganesh removed cash of Rs. 5,000/- and purse containing cash of Rs. 150/- Motor driving licence and Railway season Ticket from his pant pocket. Thereafter, you and your said associate sat in the taxi and sped away, chased by Amarsingh. When the taxi approached at the 8th Road, Khar, you and your said associates stopped the taxi and you pointed out a knife at Amarsingh and snatched the ignition key of the motor cycle and sat in the taxi and sped away. In this connection, a case u/s 392-397-114 I.P.C. was registered against you and your said associate at Bandra Police Station vide C.R. No. 77/87. On 1-3-1987 you were arrested. On 5-3-1987 witness identified you in an identification parade. On 21-3-1987 at our instance a wrist watch was recovered under a panchanama."

The second ground viz. seizure of Colt make revolver and 4 live cartridges at the instance of the detenu was connected with the first incident itself and was not an independent one nor it had any connection with the maintenance of public order. The incident referred to in ground No. 1 has no nexus with the public order as such, but at the most it might involve a question of law and order. A preventive detention is not a punitive detention. For every small infraction of law, an action under the National Security Act is not called for. The detenu is being prosecuted for the said offence and is released on bail by the competent Court law. Even before he could avail of the bail he came to be detained under the National Security Act. Therefore, there was no material before the detaining authority to come to the conclusion that the detenu was likely to continue similar activities in future.

2. We find much substance in the second contention. If the grounds of detention are read in the context of the law laid down by the Supreme Court in *State of U.P. Vs. Hari Shankar Tewari*, and *Ramveer Jatav Vs. State of U.P. and Others*, , it can safely be said that the grounds of public order. In the first incident a knife was used and it is not the case of the detaining authority nor there is any material on record to show that the Colt make revolver was used by the detenu in any of these incidents. The satisfaction of the detaining authority that the detenu is likely to act in a manner prejudicial to the maintenance of public order in future is based upon the antecedent history which, according to the detaining authority, shows its inclination. This history is not disclosed in the grounds of detention Further, there is no material on record to show that on account of the first incident the peace-loving citizens in the locality were experiencing a sense of insecurity or were living under the constant shadow of fear. There is nothing to suggest that even tempo of the life in the locality was disturbed because of the

alleged incident.

3. In this view of the matter, it will have to be held that the order of detention is based on extraneous considerations and, therefore, liable to be set aside. It is needless to say that if ultimately it is found that the activities of the detenu are dangerous, then the authorities concerned are not powerless because they can approach the competent Court of law for the cancellation of the bail by placing relevant material before the competent Court of law. But only because the bail order is passed recourse could not have been taken to the provisions of the National Security Act.

4. Hence the rule is made absolute and the detenu is directed to be released forthwith if not required in any other case.