

(1989) 11 BOM CK 0025

In the Bombay High Court

Case No : Criminal Writ Petition No. 1101 of 1989

Suresh Kacher Vaity

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 28-11-1989

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (1990) CriLJ 2167

Hon'ble Judges : D.N. Mehta, J;A.A. Halbe, J

Bench : Division Bench

Judgement

Mehta, J.—In this Criminal Writ Petition, the Petitioner, Suresh Kacher Vaity, has challenged the order of detention passed against him by the Commissioner of Police, Thane as the detaining authority under sub-section (2) of Section 3 of the National Security Act, 1980 (Act No. 65 of 1980).

2. Shri. Lonkar, the learned Advocate appearing on behalf of the detenu, has impugned the order of detention on numerous grounds. We shall briefly deal with each one of those submissions. The first submission made by Shri Lonkar was that the detaining authority had placed reliance on certain grounds of detention which had been prepared for an earlier order of detention passed against the detenu. Shri Lonkar pointed out that an order of detention had been passed against his client on 20-1-1985. Shri Lonkar contended that whilst passing the present order of detention, the detaining authority had relied on instances which had been mentioned in the history-sheet and which instances formed part of the previous order of detention.

3. Now, we have perused the order of detention passed against the detenu, which spans over ten full-scap sheets, with some care. The detaining authority has taken into account and relied on certain instances involving the detenu commencing from 17-4-1989 to 25-7-1989. The detaining authority has taken only those incidents which had occurred within a period of three months prior to the order of detention into his consideration. We do not find any reference in the

grounds of detention to any of the incidents which had occurred beyond April 1989. Therefore, the submission made by the learned Advocate appearing on behalf of the detenu does not appear to be justified.

4. The next submission made by Shri Lonkar also relates to the history sheet of the detenu annexed at page 92 of the Paper-Book. Shri Lonkar stated that in the affidavit-in-reply filed by the detaining authority, the detaining authority had stated that right from 1979 till the present day, the petitioner, i.e., the detenu, had been involved in the offences of murder, rioting, assault, kidnapping, rape and extortion of money etc. Some of these cases were registered against the detenu and were sub judice. Shri Lonkar contended that the detaining authority had not relied on all these instances which he mentioned in paragraph 6 of his affidavit-in-reply and that the detaining authority had been selective and relied only upon certain incidents. This, according to Shri Lonkar, was not permissible to the detaining authority. If the record shows that the detenu had been involved in a number of activities, then it was incumbent upon the detaining authority to take all those incidents into account and mention them in the grounds of detention. In support of his submission, Shri Lonkar relied on a ruling of the Supreme Court in the case of Bablu Das Vs. The State of West Bengal, , wherein the detaining authority, in his affidavit-in-reply, had mentioned that the Petitioner was a notorious wagon-breaker and a railway criminal and was indulging in committing thefts from goods trains. Taking the averments in the affidavit-in-reply of the detaining authority, Their Lordships observed :-

"For one thing, a "notorious" wagon-breaker implies a course of conduct and not a single instance. For another, the factors which make up the notoriety and which are recited in the history sheet presented to the District Magistrate certainly must have induced him into the subjective satisfaction resulting in the detention. They were not communicated. The consequence is that the order is in violation of the constitutional provision in Art. 22(5) and is bad."

5. Now, in the instant case, in the affidavit-in-reply, the detaining authority stated that right from the year 1979, i.e., since the last ten years, the detenu had been involved in the offences of murder, rioting, assasult, kidnapping, rape and extortion of money. This is a conclusion arrived at by the detaining authority in his affidavit-in-reply on the basis of a record-sheet of the detenu. However, these activities had taken place in the distant past. To have relied on any of these incidents dating from the year 1979 would have meant that the detaining authority had taken stale or remote grounds for basing his order of detention. That would have vitiated the order of detention. What the detaining authority has done in the grounds of detention is to rely only upon such incidents which had taken place between April 1989 July, 1989. We cannot find fault with the procedure adopted by the detaining authority, because the causal connection between the incident and the order of detention must be maintained. To rely upon remote or stale grounds would mean that the nexus between the two would be snapped. We must, therefore, reject this submission of Shri Lonkar also.

6. Shri Lonkar next submitted that a representation made by the detenu to the detaining authority in his capacity was the Commissioner of Police, Thane on 15-6-1989 had not been considered by the detaining authority, and since the representation was not taken into consideration, the continued detention of the detenu must be struck down. Now, it needs to be pointed out that the order of detention was passed on 1-9-1989 and the representation referred to by Shri Lonkar is dated 15-6-1989, which means that the representation was made about 2 1/2 months earlier than the date of the order of detention. The statutory mandate for the detaining authority is to consider every representation made by the detenu against the order of detention at the earlier point of time. There is no statutory mandate that every representation made by a detenu prior to the order of detention had also to be considered by the detaining authority, or by the State Government or the Central Government. This submission of Shri Lonkar therefore cannot be accepted.

7. Shri Lonkar then contended that after the order of detention had been passed on 1-9-1989, a representation had been made by the detenu on 26-9-1989 to the State Government as also the Central Government. The Central Government had rejected the representation of the detenu on 26-10-1989, and the detenu was informed of this rejection on 31-10-1989. According to Shri Lonkar, there was, therefore, a delay of over one month in considering the representation made by the detenu, and on this ground also the continued detention of the detenu deserved to be struck down.

8. Now, the Union of India has filed an affidavit-in-reply through its Desk Officer, Ishwar Singh. In that affidavit-in-reply, it has been averred that the representation of the detenu dated 26-9-1989 had been received by the Central Government on 18-10-1989 through the Superintendent of the Yeravada Central Prison. On 20-10-1989, the State Government intimated to the Central Government that they were sending parawise comments on the representation of the detenu and other required information for its consideration. The parawise comments of the detaining authority on the representation of the detenu were received on 25-10-1989 vide the State Government's letter dated 21-10-1989. The representation was processed immediately and a final decision to reject the same was taken on 26-10-1989.

9. Shri Lonkar pointed out that there was no explanation as to why the representation which was sent to the State Government on 26-9-1989 had been forwarded to the Central Government only on 18-10-1989, i.e., after a delay of about twenty-two days. Now, the State Government has also filed an affidavit-in-reply through its Assistant Secretary, Home Department, one Shri A. J. Karnik, who has given an explanation for the delay involved. Shri Karnik deposed that the representation of the detenu had been received on 26-9-1989. It was addressed to the Union of India as also the Advisory Board and the State Government. As the hearing of the detenu's case before the Advisory Board was fixed on 29-9-1989, the detenu had requested the Prison Authority to send his

representation to the Chairman of the Advisory Board under the National Security Act. Four copies of the representation were, therefore, forwarded to the Chairman of the Advisory Board. The further copies of the representation were supplied by the detenu to the Prison Authority on 12-10-1989. The representation was then submitted to the Minister of State for Home, who rejected the representation on 6-10-1989. The detenu was informed accordingly on 6-10-1989. Shri Lonkar contended that there was a delay of fourteen days from 6-10-1989 and 20-10-1989, which time was taken by the State Government in supplying the parawise comments. Now, the averments made in the affidavit-in-reply filed by the representative of the State Government as also by the Desk Officer of the Union of India explain why it, took a space of one month to reject the representation of the detenu. The representation was dated 26-9-1989 and the Central Government rejected the same on 26-10-1989. The delay, if at all it can be called as such, was due to the fact that the initial representation was forwarded at the request of the detenu to the Advisory Board and it was only on 12-10-1989 when additional copies of the representation were furnished to the Jail Authority that these were forwarded to the State Government as also to the Central Government. In the course of consideration parawise comments were called for, as they usually are, from the detaining authority, and this took some time. It is, however, pertinent to point out that the concerned Minister or the Secretary in the State Government as well as the Central Government considered the representation of the detenu within twenty-four hours and rejected the same. It is settled law that there is no hard and fast rule with regard to the counting of days and that no mechanical test can be applied in considering the representation of the detenu. What is necessary is to see that there was no lethargic approach on the part of the State Government or the Central Government and that the representation was considered continuously by one or the other agency. The two affidavits-in-reply filed by the Respondents make it amply clear that the representation made by the detenu was considered with alacrity. There is, therefore, a plausible explanation for the time taken in considering the presentation of the detenu by the Central Government. We must, therefore, reject this ground submitted by Shri Lonkar.

10. Shri Lonkar also raised an objection that the State Government had not sent a report of the issuance of the order of detention within seven days to the Central Government as provided under sub-section (5) of Section 3 of the National Security Act. Now, we have perused the affidavit-in-reply of Shri A. J. Karnik, the Assistant Secretary to the Government of Maharashtra, Home Department (Special), wherein he has averred that the report under sub-section (5) of Section 3 of the National Security Act had been forwarded to the Government of India on 6-9-1989. Since the order of detention was passed on 1-9-1989, the report had been submitted within the stipulated time under the Act. We, therefore, find no substance in this submission made by Shri Lonkar.

11. Finally, Shri Lonkar contended that the incidents relied on by the detaining authority in the grounds of detention were incidents which affected only law and

order and were not such as would affect public order. According to Shri Lonkar, the incidents could not have any impact on the even tempo of the life of the community. Now, we have perused the seven incidents relied on by the detaining authority. It is true that some of the incidents are such which involved extortion of money from persons residing in the locality. We agree with Shri Lonkar that two or three incidents relied on by the detaining authority are not such as would affect the even tempo of the life of the people living in the locality where the detenu operated. However, there are a number of incidents which could certainly affect the tranquillity of the area in which these incidents took place. The detaining authority has relied on an incident dated 17-4-1989 which took place at 11 a.m. when the detenu, along with seven or eight of his associates, arrived in a Maruti Car at Anjurfata Zopadpatti and there he approached a resident who has been named only as "A" for the reason of security. The detenu his companions drove "A" along with his, Wife and children out of his house, threw out the utensils and other household articles belonging to "A" and pointing a sword at "A" the detenu threatened "This is not your father's place. Get out from here." Out of fear, "A" and his family left the Anjurfata Zopadpatti area.

12. On the same day, i.e. on 17-4-1989, the detenu accompanied by his associates armed with sword and other lethal weapons went to the Shivajinagar Zopadpatti and abused and threatened 30 to 40 hutment-dwellers. Not being satisfied with this, the detenu and his associates forcibly evacuated all the residents of the Zopadpatti after abusing and threatening them. The detenu told the residents who were dishoused that the place did not belong to their father, that they did not have any documents of title and that they should clear out of the place. This incident created panic and terror in the hearts of the residents of the Shivajinagar Zopad-patti. About 30 to 40 hutment-dwellers were thus rendered homeless. The detaining authority has relied on two incidents, one of which took place in June 1989 and the other on 25-7-1989, when the detenu along with two of his associates went to the hotel of persons named as "B" and "C" in the grounds of detention. The detenu and his associates had their dinner in the hotel. The bill came to a sizeable amount of Rs. 268/- When the bill was brought, the detenu and his associates refused to pay the bill. When called upon by the owners to pay the bill, the detenu and his associates abused and manhandled the owners of the hotel.

13. In yet another incident, which occurred on 25-7-1989, one "E", who was the owner of a powerloom factory, had a quarrel with one of his workers. The said worker left the factory of "E". On the next day, the worker returned accompanied by the detenu. The detenu then abused and assaulted "E" and demanded that he pay the worker a sum of Rs. 1,000/- instantaneously. "E" out of fear paid the said amount.

14. These incidents can by no stretch of imagination be said to affect only law and order. The incidents are such as would create panic and terror not only in the victims involved in the assault but in the hearts of the inhabitants of the locality.

We are convinced that the incidents which we have referred to are such as would disturb the even tempo of the life of the community. To that extent, they would affect public order. We are, therefore, not inclined to entertain this submission of Shri Lonkar.

15. In the result, Rule stands discharged and the Criminal Writ Petition dismissed.

16. Order accordingly.