
(2012) 10 BOM CK 0184

In the Bombay High Court

Case No : Criminal Writ Petition No. 2013 of 2012

Vatan Bramhanand Waghmare

APPELLANT

Vs

The Commissioner of Police and Others

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Constitution of India, 1950 — Article 22, 22(5), 226

Citation : (2013) ALLMR(Cri) 39

Hon'ble Judges : Sadhana S. Jadhav, J;A.S. Oka, J

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; J.P. Yagnik, App for the State, for the Respondent

Judgement

Smt. Sadhana S. Jadhav, J.—By this Petition under Article 226 of the Constitution of India, the petitioner is challenging the order of detention dated 24th April, 2012 passed against his brother Shri Chetan Bramhanand Waghmare under sub-section (1) of Section 3 read with sub-section (2) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons Act, 1981 and Video Pirates Act, 1981 (hereinafter referred to as "the said Act"). The learned Counsel for the petitioner submits that by a recommendation dated 2nd February, 2012, the API of Upanagar Police Station, Nashik City, had sponsored a proposal for detention against the detenu viz. Chetan Brahmanand Waghmare (hereinafter referred to as "the detenu"). The Sponsoring Authority had placed the material before the Detaining Authority for the consideration of the said proposal. The Index of the said material placed before the authority is annexed to the petition and marked as Exhibit "C". After consideration of the material placed before the authority, the respondent No. 1 passed an order of detention on 24th April, 2012. The grounds of detention were also recorded on 24th April, 2012. The Respondent No. 1, on the basis of the material placed before him, had recorded a subjective satisfaction to the effect, that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order directing him to be

detained under the said Act. The detenu had made a representation on 8th May, 2012. According to the Counsel for the petitioner, the representation was placed before the Advisory Board for consideration and revocation of the order on the date scheduled for the Advisory Board's meeting. According to the Counsel, the State Government had mechanically confirmed that the order of detention for one year is a very casual manner. The Counsel for the petitioner has raised the challenge to the order of detention on various grounds. The main grounds of detention challenging the order of detention are:

(i) That the detenu was on bail when the order of detention was passed against him.

(ii) The grounds of detention reveal that the Detaining Authority has not considered that the detenu was on bail in all the offences. However, the applications filed by the detenu along with the orders granting bail to him were not placed before the Detaining Authority and the same has affected adversely the decision of the Detaining Authority.

(iii) Copies of bail applications along with the orders passed thereupon have not been served upon the detenu and therefore he was unable to make effective representation.

(iv) That In-camera statements of the three witnesses were recorded as is disclosed in the grounds of detention. The copies of In-camera statements duly verified by the Senior Police Officer were neither placed before the detaining authority nor copies were furnished to the detenu. However, the three In-camera statements have been considered as vital documents for recording subjective satisfaction.

2. We have perused the record of the Petition.

3. The respondent Nos. 1 and 2 have filed their affidavits to answer the grounds raised in the petition. The respondent No. 1 has stated in his affidavit that he had recorded the subjective satisfaction on the basis of the material which were produced before him. He has admitted that bail applications filed by the detenu and the orders passed thereupon were not placed before him and hence they are not relied upon by him for recording subjective satisfaction.

4. The factual position that the detenu was on bail when the order of detention was passed is not disputed. The Apex Court in the case of Abdul Sathar Ibrahim Manik Vs. Union of India and others, has observed as under :-

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.

It is clear from the Index of documents annexed at Exhibit "C" and the affidavit

filed by the respondent No. 1 read in consonance with the grounds of detention that the application for bail and the orders thereupon were not placed before the detaining authority. Hence, they were left out of consideration and the same were also not supplied to the detenu. Hence, we uphold the submission of the learned Counsel for the petitioner that there was a violation of Article 22 sub-clause (5) of the Constitution of India as the vital documents were not furnished to the detenu and hence he could not make effective representation.

5. The learned APP has submitted that the In-camera statements of witnesses "A", "B" and "C" are not supplied to the detenu as the life and liberty of the witnesses would be jeopardised. The respondent No. 1 stated in his affidavit that the In-camera statements were duly verified by the Assistant Commissioner of Police and the same clearly establish that there was a disturbance of public order and non-supply of the copies of the statements to the detenu would not affect the right of the detenu to make effective representation guaranteed under Article 22(5) of the Constitution of India.

6. The learned APP submits that the right of detenu to be furnished with facts and particulars is subject to the limitation mentioned in clause 6 of Article 22 of the Constitution of India and even if the grounds. communicated are not precise and specific, the detaining authority has a right to withhold particulars in the public interest at large. The detaining authority could have supplied the copies of the statements omitting objectionable part of the statement.

7. The right of the detenu to be furnished with particulars is no doubt subject to limitation under Article 22 clause (6) of the Constitution. Hence, we do not agree with the contention of the learned APP.

8. To substantiate his contention that the In-camera statements are vital documents, the learned Counsel for the petitioner has placed reliance upon the judgment of this Court in the case of Charanjitsingh " Sonu Nanaksingh Digwa Vs. State of Maharashtra and Another, . This Court has held that the In-camera statements are vital documents and not placing the same before the detaining authority and not furnishing the copy of the same to the detenu is in violation of Article 22(5) of the Constitution. Hence, we hold that the In-camera statements of witnesses "A", "B" & "C" were vital documents which should have been furnished to the detenu subject to the limitation envisaged under Article 22 sub-clause (6) of the Constitution and the detenu was deprived of his right to make effective representation as guaranteed under Article 22 sub-clause (5) of the Constitution of India.

9. The learned Counsel has further urged before us that in paragraph 12 of the grounds of detention, it is clearly stated that the Assistant Commissioner of Police had verified the statements of witnesses "A", "B" and "C" and had submitted a report to the detaining authority, whereas neither the report is placed before the detaining authority nor the copy thereof is furnished to the detenu. The respondent No. 1 has stated in the affidavit in reply that the

truthfulness of the incidents narrated in the three statements are verified by the A.C.P. as per law. The incident, the date of incident, timing etc. have been given in the in-camera statement and in the grounds of detention. In paragraph 5, it is stated that the in-camera statements are considered, but they have not been given to the detenu in public interest. It is, therefore, clear that the in-camera statements of witnesses "A", "B" and "C" were not verified, examined, appreciated and considered in letter and spirit by the detaining authority as being vital documents. We agree with the submissions of the learned Counsel for the petitioner. It is an admitted position in law that the "grounds" contemplated by Article 22 sub-clause (5) of the Constitution of India do not mean mere factual inferences but would mean an inference drawn on the factual material placed before the detaining authority. The grounds of detention while recording subjective satisfaction should not just be self-sufficient but ought to be self-explanatory. Hence, we hold that the right of the detenu as contemplated under Article 22 sub-clause (5) of the Constitution of India has been violated and hence the order of detention passed against the detenu Chetan Bramhanand Waghmare dated 24th April, 2012 needs to be quashed and set aside. The Petition is allowed in terms of prayer clause (c) of the Petition.