

(2001) 03 BOM CK 0013

In the Bombay High Court

Case No : Criminal Writ Petition No. 397 of 2000

Veronica Sharad Salvi

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 27-03-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 326, 498A

Citation : (2001) ALLMR(Cri) 2122 : (2002) 104 BOMLR 50 : (2001) 4 MhLj 537

Hon'ble Judges : T.K. Chandrashekhara Das, J;A.B. Naik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

T.K. Chandrashekhara Das, J.—Petitioner is the sister of Raju alias Philips Kamalakar Shirsat, who is a resident of Byculla (W), Mumbai. Raju has been detained under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act by order dated 14th November, 2000. The petitioner challenges the said detention order on the following grounds:

(a) The offence registered against him was only domestic, in the sense, that he is alleged to have committed an offence u/s 498-A of the Indian Penal Code;

(b) Two in-camera statements recorded were relating to the incidents which took place in January, 2000 and March, 2000, and the in-camera statements are recorded on 30.6.2000 and 1.7.2000. On account of this inordinate delay, the live link between the prejudicial activities of the detenu and the rationale of clamping a detention order on him has been snapped and as a result of which, the detention order became punitive rather than preventive;

The Writ Petition was allowed to be amended and additional ground was taken as stated in Paragraph 22 of the Writ Petition as under:

(c) After release of the detenu on bail on 14.6.2000 in the offence u/s 498-A,

Indian Penal Code, the alleged two in-camera statements were recorded on 30.6.2000 and 1.7.2000 and, therefore, those in-camera statements have to be treated as false statements and the verification by Assistant Commissioner of Police of the in-camera statements cannot be treated as a proper verification.

2. Apart from the above grounds, the learned Counsel for the petitioner raised another ground at the time of hearing:

(d) According to him, the Police Commissioner, who passed the detention order, though taken a decision to detain the petitioner on 21.9.2000, the order detaining the detenu was passed only on 14th November, 2000.

3. The Police Commissioner, Brihan Mumbai, Mr. M.N. Singh, has filed reply in this Writ Petition refuting the allegations contained in the Writ Petition. He has stated that the petitioner is a weapon wielding desperado who is required to be detained under the Act because of his criminal records. In Paragraph 10 of the reply, the Police Commissioner stated that Crime No. 102 of 2000 was registered against the detenu on 5.6.2000 and during the course of investigation of that offence, it is revealed that the detenu had committed several offences and witnesses were not willing to come forward to make any complaint openly against the detenu due to reign of terror unleashed by the detenu. After giving proper assurances to them, at least two witnesses, namely "A" and "B", came forward to give their statements. In the in-camera statements, it is revealed that the detenu is a notorious goonda and is affiliated to "Arun Gawali Gang" and he is threatening people for extorting money from them. Regarding the delay in passing the detention order, the Police Commissioner has stated in Paragraph 14 that:

Their statements were recorded on 30.6.2000 and 1.7.2000 respectively. The Sr. Inspector of Police, Agripada Police Station submitted a proposal on 3.7.2000. The same was sent to the Deputy Commissioner of Police, Zone-II on 4.7.2000. After scrutinising the Deputy Commissioner of Police, Zone-II, sent the proposal to the Additional Commissioner of Police, South Region on 7.7.2000. The Additional Commissioner of Police recommended the proposal and forwarded it to the P.C.B., C.I.D. on 16.7.2000. The said proposal was received in the P.C.B., C.I.D., on 16.7.2000. The Sr. P.I., P.C.B. C.I.D., prepared detailed note and forwarded the papers to the Dy. Commissioner of Police (Preventive) on 2.8.2000. After receipt of the papers the Dy. Commissioner of Police (Preventive) went through all the papers and gave her endorsement thereon on 2.8.2000. All the papers were thereafter forwarded to the Additional Commissioner of Police (Crime). He gave his endorsement on 5.8.2000. All the papers were thereafter forwarded to the Joint Commissioner of Police (Crime). He gave his endorsement on 7.8.2000. After considering the proposal and all the papers and was of opinion that it was a fit case and gave endorsement to that effect on 21.9.2000.

Thereafter, all the papers were placed before me on 21.9.2000. I carefully went through the proposal and all the papers and was of opinion that it was a fit case

and gave endorsement to that effect on the same day. I say that I carefully went through all the papers and formulated the draft grounds of detention. All the papers then forwarded to the Sponsoring Authority for purpose of fair typing, preparing the translation of the documents in the language known to the detenu and for preparing necessary sets of documents etc. The papers were returned to the P.C.B., C.I.D. by the Sponsoring Authority as per the usual practice on 7.11.2000. Sr. P.I., P.C.B., C.I.D. checked all the documents and put them before the Additional Commissioner of Police (Crime) by endorsement on 8.11.2000. The Additional Commissioner of Police (Crime) went through all the papers and put his endorsement thereon on the same day and submitted the papers to me. On 14.11.2000, I once again carefully went through the proposal and papers accompanying the same and finalized the grounds of detention and issued the order of detention on 14.11.2000. The time required for moving the file has been explained and there has been no delay or latches in issuing order of detention.

4. On going through the above-quoted explanation, it appears to us that there was a delay in passing the detention order in two pockets - one while recording the in-camera statements and also the initiation of proceedings. Nearly six months" delay was occurred between recording the in-camera statements and passing the detention order. According to counsel for the petitioner, this delay vitiates the order of detention, as it tends to taint the subjective satisfaction of the Detaining Authority. The learned counsel, in support of his argument, has relied upon a decision of this Court in the case of Savita Prakash Manjrekar v. R.H. Mendonca 2000 (3) Mh.L.J. 227. We have gone through this decision. We fail to see that, that decision rests on the delay occurred between recording of in-camera statement and passing of detention order. The Division Bench of this Court has observed thus:

7. We make no bones in observing that the delay contained in (i) to (iv) and (vi) by itself would not be adequate in vitiating the detention order on the vice of delay in its issuance but, we have no reservations in observing that the delay of one month and 12 days taken by the P.C.B., C.I.D., Mumbai, in preparing the compilation is indefensible and the said delay coupled with the delay referred to above is fatal.

In our view, there was no justification for the P.C.B., C.I.D., Mumbai, in taking one month and 10 days in preparing the compilation. After all, in the instant case, the prejudicial activities of the detenu, contained in the grounds of detention, which have been referred to above, were not of such an extensive nature that a mass of documents were involved for which a time of one month and ten days would have been taken in preparing the compilation.

In our view, this long time was taken by the P.C.B., C.I.D., Mumbai, in preparing the compilation because, it was completely oblivious of the fact that the compilation in preventive detention matter, was to be prepared with greatest urgency and promptitude and not in a cavalier fashion.

8. Mr. Rajiv Patil, learned Counsel for the respondents strenuously urged that even assuming that there was some delay in the issuance of the detention order, the said delay on account of the propensity and potentiality of the detenu would not snap the live-link between the prejudicial activities of the detenu and rationale of clamping a detention order on him. We have examined his submission. Earlier, we have mentioned in some detail the prejudicial activities of the detenu. Excepting the C.R. giving rise to the case u/s 326, Indian Penal Code, other complaints mentioned in the grounds of detention are non-cognizable complaints.

9. Whether on account of propensity and potentiality of the detenu the live-link between the prejudicial activities of the detenu and the rationale of clamping a detention order on him is snapped, is a question of fact and not one of law.

The petitioner's counsel then points out another decision of the Division Bench of this Court in *Begum Bee v. R.H. Mendonca* 2000 (1) Mh.L.J. 100, to which one of us (Chandrashekhara Das, J.) is a party. In that decision, this Court has struck down preventive detention order on the ground of delay of six months which was unexplained between 19.6.1998 and 14.8.1998; between 20.8.1998 and 18.9.1998; and between 25.9.1998 and 26.10.1998, the date of recording the last in-camera statement and passing of the detention order. This Court held in paragraph 6 thus:

6. We have examined the ground 5B and the reply of the Detaining Authority contained in para 9 of his return and in our view at three different stages there was a substantial unexplained delay in the issuance of the detention order. Those stages are as under:

A : Between 19.6.998 and 14.8.1998;

B : Between 20.8.1998 and 18.9.1998;

C : Between 25.9.1998 and 26.10.1998.

The Supreme Court in the case of *Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another*, , in paragraph 6 has observed thus:

...Delay ipso facto in passing an order of detention after an incident not fatal to the detention of a person, for in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the Detaining Authority.

In our view the delay in the three pockets, referred to above, has not been satisfactorily explained and therefore, the impugned detention order would be vitiated on the vice of delay in its issuance.

We also feel it pertinent to refer to the decision of the Supreme Court in *Pradeep Nikanth Paturkar Vs. S. Ramamurthi and others*, . A perusal of the said decision, particularly para 14, would show that where a plea of delay in the issuance of detention order is taken, the unexplained delay, whether short or long, should be

explained and if the same is not explained, the detention order would have to be quashed.

In our view the ratio laid down in the said case would have full application to the present case. To repeat the substantial delay in three pockets stipulated in the preceding paragraph has not been satisfactorily explained by the Detaining Authority.

5. We have referred to the plea of the learned Counsel for the petitioner regarding the delay in issuing the detention order after the Police Commissioner has taken a decision to pass the detention order. From the affidavit of the Police Commissioner as extracted above, it is noticed that the Detaining Authority has taken a decision after perusing the proposal and sending it to the Sponsoring Authority and higher officers, on 21.9.2000. It has to be noted that all the papers were forwarded to the Joint Commissioner of Police (Crime) by the Sponsoring Authority on 7.8.2000 and after giving endorsement to the proposal that it is a fit case to initiate action under the Act, ultimately the file has been forwarded to the Additional Police Commissioner. On perusal of the file, we see that the Additional Commissioner of Police (Crimes) had made an endorsement recommending action under the Act on 5.8.2000, and sent the same to Joint Commissioner of Police (Crimes) and Joint Commissioner of Police (Crimes) repeated the same recommendation and submitted the file for final approval on 7.8.2000; but the Police Commissioner finally gave approval only on 21.9.2000. Here we notice inordinate delay in two pockets. After the Joint Commissioner of Police (Crimes) forwarded the file to Police Commissioner on 7.8.2000, the Police Commissioner took a decision only on 21.9.2000. There was absolutely no explanation for the delay between 7.8.2000 and 21.9.2000. Again, as contended by the learned Counsel for the petitioner, after taking a decision by the Police Commissioner, the final order of preventive detention was passed only on 14.11.2000. According to the explanation offered by the Police Commissioner in his affidavit, this time was taken in preparing the papers by the Sponsoring Authority. The Police Commissioner has explained that this delay has occurred in P.C.B., C.I.D. and also at the instance of the Additional Commissioner of Police. This explanation, according to us, is found not to be satisfactory and the detention order is, therefore, vitiated. According to us, after taking a decision, the P.C.B., C.I.D. and other officers took fifty-three days in passing the final order. In similar circumstances, this Court has held in *Savita Prakash Manjrekar v. R.H. Mendonca and Ors.* 2000 (3) Mh.L.J. 227.

6. In our view, there was no justification for the P.C.B., C.I.D., Mumbai, in taking one month and 24 days in preparing the compilation. After all, in the Instant case, the prejudicial activities of the detenu, contained in the grounds of detention, which have been referred to above, were not of such an extensive nature which require such a long duration.

7. As noted above, in the decision in *Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another*, , the Supreme Court has held that where there is a

delay in issuing a detention order, the same has to be satisfactorily explained by the Detaining Authority, in absence of which, the issuance of the detention order has snapped the live-link between the prejudicial activities of the detenu and the rationale of clamping a detention order on him. In view of this, the delay, which was unexplained in the above two pockets vitiates the order of detention. The detention order, is therefore, liable to be set aside on that ground alone.

8. In the result, Writ Petition is allowed. The order passed by the Police Commissioner, Brihan Mumbai, on 14.11.2000, detaining the petitioner's brother-Raju alias Philips Kamalakar Shirsat under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981, is set aside and consequently he is directed to be released forthwith unless he is required in any other case.