
(2000) 09 BOM CK 0103

In the Bombay High Court

Case No : Criminal Writ Petition No. 172 of 2000

Vijay Damaji Gaidhane

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 05-09-2000

Acts Referred:

Bombay Prohibition Act, 1949 — Section 66
Constitution of India, 1950 — Article 22(5)
Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3, 3(1), 3(3)
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2001) ALLMR(Cri) 965 : (2001) 3 BOMLR 126 : (2001) 1 MhLj 159

Hon'ble Judges : R.K. Batta, J;P.S. Brahme, J

Bench : Division Bench

Advocate : S.A. Jaiswal, for the Appellant; D.B. Patel, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R.K. Batta. J.

1. The petitioner has been detained under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (For short, the "said Act"). The detention order was issued on 21.12.1999 by the Commissioner of Police, Nagpur in exercise of powers conferred by sub-section (1) of section 3 of the said Act read with Government Order. Home Department (Special). No. DOS. 1399/4/SPL 3(B) dated 19th November. 1999. The detention order was served on the petitioner on the same day and the grounds in support of detention order were served on 22.12.1999. The detention order was approved by the State Government on 1.1.2000. Reference u/s 10 of the said Act was made to the Advisory Board on 1.1.2000. The Advisory Board gave its opinion on 31.1.2000. The detention order was confirmed by the State Government on 10.2.2000.

2. The petitioner was ordered to be detained on the strength of his involvement in Crime No. 489/99 of Police Station. Sadar, Nagpur u/s 302 read with section 34 of the Indian Penal Code and four in-camera statements recorded by the police; complaint dated 2.11.1999 from some of the residents of Gitti Khadan as well as telephonic intimations which were recorded in the Station Dairy. The petitioner has been classified as "dangerous person" under the said Act.

3. The petitioner challenges his detention on various grounds including that the criminal case u/s 302 read with section 34 of the Indian Penal Code as also four secret complaints do not make out a case of breach of any public order; that the Detaining Authority failed to communicate to the petitioner that he had a right to make representation to the Detaining Authority within a period of 12 days: that the in camera statements are stereotype written in one sitting except change of date and name and they do not relate to public order; that the bail papers relating to the criminal offences have not been furnished; that only on the strength of one offence the petitioner could not be dubbed as habitual dangerous person; that though the cases referred in grounds 1 to 4 are said to have been not considered, yet the same have crept into the formation of opinion for the purpose of detention; that on the strength of cases relating to violation of provisions of the Bombay Prohibition Act, the petitioner could not be classified as "dangerous person" nor 24 offences referred to in the grounds of detention committed by others would have any bearing whatsoever for the detention of the petitioner; that the petitioner knows only Marathi and some of the documents have been furnished in English and no Marathi translations have been given as a result of which the petitioner could not make effective and purposeful representation and that the detention order is illegal and bad in law.

4. The contention of the petitioner that the grounds of detention were served on 24-12.1999 is factually incorrect since the record shows that the grounds of detention were served on the petitioner on 22.12.1999. The petition shows that the petitioner had not filed any representation to any authority and this fact has been confirmed by learned Advocate for the petitioner. The learned Advocate for the petitioner has basically urged before us the following grounds in the course of arguments : -

(i) The detention order does not mention that the petitioner could make representation within 12 days to the Detaining Authority.

(ii) Non-application of mind by the Detaining Authority inasmuch as the Detaining Authority has, in fact, considered the material which is said to have been not considered and the documents in support of the said materials have not been furnished.

(iii) Subjective satisfaction has not been recorded in accordance with law since the grounds of detention do not record whether the petitioner was on bail or in Jail.

(iv) The criminal case in question and the in camera statements do not reveal

breach of public order, and

(v) Marathi translations of documents in English have not been furnished.

We shall take up the grounds of challenge one-by-one.

5. (i) The detention order does not mention that the petitioner could make representation within 12 days to the Detaining Authority : -

In respect of this submission, learned Advocate for the petitioner has placed reliance on the judgment of the Full Bench in *Sunil Sadshiv Ghate v. State of Maharashtra and Ors.*,. The Full Bench, after placing reliance on the judgments of the Supreme Court in *Kamleshkumar Ishwardas Patel*, and *Amanulla Khan Kudeatalla Khan Pathan v. State of Gujarat*, has held that the Detaining Authority is bound to inform the detenu of his right to make a representation against the order of detention to the Detaining Authority and in case the Detaining Authority fails to inform the detenu of his right to make representation against the detention order, the detention order would stand vitiated. The grounds of detention in the case under consideration specifically, refer to the right of the petitioner to make representation to the Detaining Authority. Para 17 of the grounds of detention informs the detenu that he has right to make representation to the Detaining Authority against the detention order and such representation be addressed to the Commissioner of Police (City). Thus, the petitioner has been informed of his right to make representation to the Detaining Authority. The contention of the learned Advocate for the petitioner is that it is not specified therein that the representation has to be made within 12 days. In this connection, it is necessary to refer to section 3(3) of the said Act, which reads as under"

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."

The detention order in question has been issued by the Commissioner of Police u/s 3(1) read with sub-section (2) and the life of the said detention order is twelve days unless in the meantime, it is approved by the State Government. Thus, the State Government is empowered to approve the detention order issued by the Commissioner of Police at any time during the said period of twelve days which means that the detention order can be approved at any time during the said period and even within a couple of days. Therefore, it would not be feasible and appropriate to specify that the petitioner may make representation within 12 days since the detention order can be approved by the Government at any time during the said period of 12 days. A similar argument had been advanced before a Division Bench of this Court to which one of us (Brahme. J.) was a party in *Bandu @ Mobin Ahmad s/o Aminuddin v. State of Maharashtra & Anr.*,. The

argument advanced by the learned Advocate for the petitioner therein was rejected and we have no reason whatsoever to take a different view of the matter. Accordingly, we do not find any merit in this submission of the learned Advocate for the petitioner.

6. (ii) Non-application of mind by the Detaining Authority inasmuch as the Detaining Authority has, in fact, considered the material which is said to have been not considered and the documents in support of the said material have not been furnished.

The learned Advocate for the petitioner has urged that six offences referred to in para 2, 24 offences referred to in para 4 u/s 66(b) of the Bombay Prohibition Act and 24 instances referred to in para 5 of the grounds of detention, though stated to be not considered, have actually been considered for the purpose of coming to subjective satisfaction for the detention of the petitioner under the Act. In this connection, learned A.P.P. has submitted that only a reference was made to the said incidents to show the past history of the petitioner showing inclination/tendency towards commission of crime, but the same have not been taken into consideration at all by the Detaining Authority. In this respect, the learned Advocate for the petitioner has placed reliance on two judgments of the Division Bench of this Court in *Anil v. State of Maharashtra*, and *Sunil Ishwarlal Bhagat v. State of Maharashtra & Ors.*,

7. The Apex Court in *Fitrat Raza Khan v. State of U.P. and Ors.*, has pointed out that past conduct or antecedent history of a person can appropriately be taken into account in making a detention order and it is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order.

8. The Apex Court in *Abdul Sathar Ibrahim Manik v. Union, of India and Ors.*, has laid down that when the Detaining Authority has merely referred to certain incidents in the narration of events and has not relied upon them, the same will not cause any prejudice to the detenu in making a effective representation. Whether in a given case the Detaining Authority had casually or passingly referred or relied upon such instances would depend on the facts and the grounds which is required to be examined by the Court.

9. The Apex Court has in *Vashisht Narain Karwaria v. State of U.P. and Ors.*, laid down that submissions which are extraneous touching the character of the detenu though not referred to in the grounds of detention, might have influenced the mind of the Detaining Authority to some extent one way or other in reaching the subjective satisfaction to take the decision of directing the detention of the detenu. It was observed that had these extraneous materials not been placed before the Detaining Authority, he might or might not have passed the detention order as a result of which it would be held that the detention order is suffering from the vice of consideration of extraneous materials vitiating the validity of the

order.

10. Besides, this, it is now well settled by a series of Judgments of the Apex Court, viz. *Ajay Dixit v. State of U.P. and Ors.*, *Raj Kumar Singh v. State of Bihar*, and *Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police and Ors.*, that old and stale incidents cannot be construed as justifiable grounds for passing an order of detention. There should be proximity of such incidents and live link between the incidents and the detention order.

11. In the light of the above position of law, the submission made by learned Advocate for the petitioner is required to be examined. Though, it is stated in the grounds of detention that the offences mentioned in para 2, para 4 and para 5 have not been considered while arriving at satisfaction for the detention of the petitioner, yet it appears that the same have influenced the decision making process. Many of the cases referred to in the said paragraphs must have been disposed of by the Courts and if anyone had ended in favour of the petitioner, the same obviously could not be referred even to show course of conduct since acquittal obliterates the offence itself. The Apex Court in *Dharamdas Shamlal Aggarwal v. The Police Commissioner and Anr.*, has laid down that the order of detention would stand vitiated if the fact of acquittal in two of the cases mentioned in the table appended to the grounds are not placed before the Detaining Authority.

12. In respect of the offences referred to in para 5, there is no specific mention in the said paragraph that the same have not been considered for arriving at satisfaction for passing the detention order. In para 5 it is stated that since the day the petitioner had started Illegal business of bootlegging a number of incidents prejudicial to the maintenance of public order had occurred in and around the areas of his business and as such, inference could be drawn that those offences under various laws have been committed by the customers who had been daily consuming liquor from the business of petitioner. Though in para 11, para 5 does not find any reference and the said paragraph is excluded for the purpose of arriving at satisfaction, yet, it appears that what is referred to in paragraphs 2, 4 and 5 has influenced the judgment of the Detaining Authority. The tenor of the grounds of detention order does suggest the possibility of the Detaining Authority being influenced by what is recorded in paragraphs 2, 4 and 5 of the detention order.

13. Two Division Bench judgments of this Court in *Anil v. State of Maharashtra & Ors.*, and *Sunil Bhagat v. State of Maharashtra and Ors.*, (supra), have in a similar situation, taken similar view and we have no reason, in the facts and circumstances of this case, to take a different view of the matter. Thus, it appears that satisfaction of the Detaining Authority is influenced by the material of which copies were not furnished to the petitioner which has affected the right of the petitioner to make effective representation. The instances referred to in paragraphs 2, 4 and 5 have thus crept into the formation of subjective satisfaction, thereby vitiating the detention order.

14. (iii) Subjective satisfaction has not been recorded in accordance with law since the grounds of detention do not record whether the petitioner was on bail or in jail: -

This submission made by the learned Advocate for the petitioner has no merit in the facts and circumstances of the case since the grounds of detention itself show the awareness of the Detaining Authority that the petitioner had been ordered to be released on bail by order dated 11.10.1999. 15. (iv) The criminal case in question and the in camera statements do not reveal breach of public order :-

Strictly speaking, it is not necessary to go into this ground in view of our findings above. But it would suffice to point out that the criminal case in question and in camera statements do, in fact, suggest that the same relate to public order. The contention of the learned Advocate for the petitioner that in camera statements are stereo-type and written in one sitting except for change of date and name, is totally ill-founded as can be seen after going through the said in camera statements. Insofar as criminal case is concerned, it is stated in ground 6.1.2. that after Mehamood was attacked by the petitioner and he had shouted for help, no one in the vicinity had courage to come forward and save him and seeing this ghastly attack in public place, people in the vicinity closed their doors and the passersby changed their routes and ran helter-skelter to save their lives and property from the petitioner and his associates and that the citizens residing in the area were shocked and the place was deserted due to petitioner's terror. The in camera statements also show that they pertain to public order. This aspect is now well-settled by a series of Judgments in the case of *Arun Chosh v. State of West Bengal*, ; *Angooridevi v. Union of India*,; *Mushtak v. M.M. Mehta*,; *Harpreet Kaur v. State of Maharashtra*, ; *Kamleshkumar Patel v. Union of India and Ors.*, ; and *Amanulla Khan v. State of Gujarat*. . It would suffice to quote the following observations of the Apex Court in *Amanulla Khan v. State of Gujarat* (supra) :-"Even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or the same amounted to breach of law and order. The fallout and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of Society."

16. Therefore, in view of above, we do not find any merit in the submission of the learned Advocate for the petitioner that the criminal case in question and the in camera statements do not pertain to public order, but are mere matters falling within the ambit of law and order.

17. (v) Marathi translations of documents in English have not been furnished : -

The learned Advocate for the petitioner has submitted that some of the documents, viz. report of Forensic Laboratory, Post-mortem report and application u/s 167(2) of the Criminal Procedure Code have been furnished to the petitioner in English and no Marathi translations have been furnished to petitioner in Marathi. The stand taken by the respondent No. 2 is somewhat peculiar. It is stated in para 17 of the reply of respondent No. 2 that these documents are medico-legal and judicial documents and these documents cannot be translated in any other language as it may change the very meaning of the text and moreover, as per the Evidence Act, these documents are considered expert documents and expert documents, if translated, should be translated by expert only. The material on record shows that the petitioner was supplied with English as well as Marathi grounds of detention order as well as documents consisting of 1 to 65 pages and that all of them had been explained to him in Marathi by the officers serving the said detention order in the presence of Jailor, Nagpur Central Prison on 22.12.1999. The petitioner was detained on 21.12.1999. If the documents could be explained by the officer serving the grounds of detention, then we are not able to understand the plea taken by the respondent No. 2 that the said documents cannot be furnished in Marathi as it may change the very meaning thereof. There is thus contradiction in terms, viz. whereas the documents were explained orally in Marathi by the officer serving the grounds of detention, yet the respondent No. 2 states that these documents cannot be translated in any other language as it may change the very meaning of the text. It is now well settled that the grounds and documents in support of the detention order should be served on the petitioner in the language known to the detenu. The petitioner, admittedly, knows Marathi and he does not know English. The non-supply of translations in Marathi of some of documents in English on which reliance was placed by the Detaining Authority, therefore, affects the right of effective representation provided under Article 22(5) of the Constitution of India. This position is settled by a series of judgments of the Supreme Court in *Nainmal Pertap Mal Shah v. Union of India and Ors.*; *Lallubhai Jogibhai Patel v. Union of India and Ors.*; *Mrs. Tesring Dolkar v. The Administrator, Union Territory of Delhi and Ors.*, and *Powanammal v. State of Tamil Nadu and Anr.* It would suffice to state that the Apex Court in *Powanammal v. State of T. N. and Anr.* (supra) has laid down that the amplitude of the safeguard embodied in Article 22(5) of the Constitution extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu but also to supplying their translation in script or language which is understandable to the detenu and the failure to do so would amount to denial of the right of being communicated the grounds and of being afforded opportunity of making a representation against the order. The Apex Court has further pointed out that there is a distinction between a document which has been relied upon by the Detaining Authority in the grounds of a detention and a document which finds a mere reference in the grounds of detention. In case of non-supply of a copy of the document relied upon in the ground of detention, the same has been held to be fatal to continued detention and detenu need not show any prejudice

caused to him. This is because the non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. The position would, however, be different where document finds a mere reference in the order of detention and for non-supply for such document, detenu has to show the prejudice caused to him in making effective representation. The Apex Court has emphasized that what applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the documents be in a different language.

18. In view of the above, we find merit in the submission of the learned Advocate for the petitioner and non-supply of documents relied upon by the Detaining Authority in the language known to the petitioner has deprived the petitioner exercising his right of making effective representation under Article 22(5) of the Constitution of India.

19. For the aforesaid reasons, the petitioner is liable to succeed and the petition is allowed. The impugned detention order dated 21.12.1999 is hereby quashed and set aside. The petitioner shall be set at liberty in case he is not required in any other matter.