Vishal Popat Sangle Vs Commissioner Of Police Nashik And Ors

Court: Bombay High Court

Date of Decision: Jan. 9, 2020

Acts Referred: Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers And Persons Engaged In Black Marketing Of Essential Commodities Act, 1981 â€" Section 3(2)
Indian Penal Code, 1860 â€" Section 34, 323, 387, 504, 506
Arms Act, 1959 â€" Section 4, 25
Maharashtra Police Act, 1951 â€" Section 142
Constitution Of India, 1950 â€" Article 22(5)

Hon'ble Judges: S.S. Shinde, J; N.B. Suryawanshi, J

Bench: Division Bench

Advocate: Udaynath Tripathi, Jayshree Tripathi, M.H. Mhatre

Final Decision: Dismissed

Judgement

N.B. Suryawanshi, J

1. By this Petition, the petitioner (detenu) impugns the detention order passed by the Commissioner of Police, Nashik City dated 26th September, 2019,

under section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video

Pirates, Sand Smugglers and Persons engaged in Black Marketing of Essential Commodities Act, 1981 (for short Ã¢â‚¬Å“the said ActÃ¢â‚¬â€‹).

2. Rule. Rule made returnable forthwith. Heard with the consent of parties.

3. The learned counsel for the petitioner (detenu) challenges the detention order by invoking grounds (b) and (d) raised in the Petition. Ground (b) is to

the effect that the petitioner (detenu) was in jail in connection with C.R. No.358 of 2019, registered under sections 387, 323, 504, 506, 34 of the I.P.C.,

section 4/25 of the Arms Act and section 142 of the Maharashtra Police Act and his two bail applications were already rejected on 29th July, 2019

and 28th August, 2019. The third bail application, viz., Bail Application No.1647 of 2019 filed by the petitioner (detenu) was kept for hearing on 30th

September, 2019. Without waiting for the result of the said Bail Application, in hasty manner detention order was passed on 26th September, 2019,

without there being relevant and cogent material before the detaining authority to come to the conclusion that there was imminent possibility of grant

of bail to the petitioner (detenu). In ground (d), the petitioner (detenu) claims that the documents supplied to the petitioner (detenu) at pages 33 to 37 of

the compilation were wholly and/or partly illegible and could not be read with normal vision. Thus, the petitioner (detenu) was deprived of the

opportunity of making effective representation, which resulted into violation of right guaranteed under Article 22(5) of the Constitution of India.

4. The learned counsel for the petitioner (detenu), by taking us through the documents on record and the grounds of detention, vehemently argued that

there was no necessity for the detaining authority to resort to the stringent action of detention when the petitioner (detenu) was already in judicial

custody and bail was denied to him. There was no imminent possibility that the petitioner (detenu) was likely to be released on bail. No material was

there before the detaining authority to come to the conclusion that there is a possibility of petitioner (detenu) being released on bail in near future. In

this view of the matter, the impugned order is vitiated. To support this point, the learned counsel for the petitioner (detenu) placed reliance on

unreported decision of this court in the case of Shahabaj Ejaj Sayyad Vs. The Commissioner of Police, Thane & Ors. in Criminal Writ Petition

No.3988 of 2019, so also in the case of Vishal s/o. Shahaji Kasabe Vs. The Commissioner of Police, Pune & Ors. [2017 ALL MR (Cri) 816] and in

the case of Rekha Vs. State of Tamil Nadu Through Secretary to Government & Anr. [(2011) 5 SCC 244].

5. The learned counsel further argued that since the documents at page Nos. 33 to 37, supplied to the petitioner (detenu) were illegible and/or partly

illegible, the same has caused serious prejudice to the petitioner (detenu) in making effective representation and the fundamental right of the petitioner

(detenu) guaranteed under Article 22(5) of the Constitution of India is violated. To buttress this submission, the learned counsel for the petitioner

(detenu) placed reliance on the judgment of this Court in Munna Dilawar Khan Vs. The Commissioner of Police, Mumbai & Ors. in Criminal Writ

Petition No.3953 of 2013, in Chandra Shekhar Ojha Vs. A. K. Karnik & Ors. [1982 CRI. L. J. 1642] and the judgment of this Court in the case of

Shri Pramod Laxman Talbhandare Vs. The Commissioner of Police, Solapur & Anr. In Criminal Writ Petition No.3258 of 2010.

6. Per contra, the learned APP supported the order of detention by taking us through the reply affidavits filed by the respective respondents. The

learned APP would submit that the detaining authority was aware of the fact that earlier two bail applications of the petitioner (detenu) were rejected

and the third bail application was posted on 30th September, 2019. After analysing the material on record, the detaining authority has recorded its

subjective satisfaction that the activities of the petitioner (detenu) are prejudicial to the maintenance of public order in future and therefore the

detaining authority was justified in passing the detention order. In this behalf, the learned APP placed reliance on the judgment of this Court in the

case of Mohammed Asif @ Mental Abdul Sattar Shaikh @ Mohd. Asif @ Mental Abdul Sattar Khan Vs. The Commissioner of Police, Mumbai &

Ors. in Criminal Writ Petition No.1099 of 2016 and Naeem Abdulla Khan Vs. The Commissioner of Police, Mumbai & Ors. [2017 ALL MR (Cri)

952].

In reply to the ground of supply of illegible documents, the learned APP submitted that the documents at page 33 to 37 are the copies of arrest

panchanama of the petitioner (detenu) as well as his associates in C. R. No. 339 of 2019. Those are legible and cannot be said to be illegible. It is

further submitted that the detaining authority has not relied upon the said documents while passing the detention order. Legible copies of these

documents were supplied to the petitioner (detenu), on his request, on 26th September, 2019. She further claims that there is no substance in the said

ground raised by the petitioner (detenu) and no case is made out by the petitioner (detenu) to interfere in the impugned order of detention. In support

of her submission, she placed reliance in Ravi Chabiram Sharma Vs. R.H. Mendonca, Commi. of Police & Ors. [1999 ALL MR (Cri) 853], E.

Subbulakshmi Vs. Secretary to Government & Ors. [2017(1) BCR page 1] and Istiyak Ahmed Siddiqui Vs. A.N. Roy, Commissioner of Police,

Brihan Mumbai & Ors. [2005 ALL MR (Cri) 2367]. She therefore prays that the Writ Petition may be dismissed.

7. The first ground pressed into service by the learned counsel for the petitioner (detenu) is that since the petitioner (detenu) was in jail in connection

with C.R. No.358 of 2019, the detaining authority was not justified in passing the detention order. It is further submitted that there was no material

before the detaining authority to show that the petitioner (detenu) was likely to be released on bail in near future and the detaining authority ought to

have waited till 30th September, 2019 for the order on bail application of the petitioner (detenu). The grounds of detention reflect that the detaining

authority was alive to the fact that two bail applications of the petitioner (detenu) were rejected by the competent courts and third bail application was

filed on 20th September, 2019 in the Sessions Court, which was kept for hearing on 30th September, 2019. The detaining authority has recorded in

paragraph 8 of the grounds of detention that there was imminent possibility that the detenu would be released on bail in the said offence. The detaining

authority has also stated in its reply that earlier bail applications of the detenu were filed prior to the filing of charge-sheet, which were rejected as

investigation was in progress. The subsequent bail application, which was pending before the Sessions Court, was filed after filing of the charge-sheet

and after going through the entire charge-sheet of the said offence, the detaining authority came to the conclusion that the detenu would be granted

bail in future and would be a free person, as bail is usually granted by the courts after completion of investigation and after filing of charge-sheet. It is

further pointed out that the imminent possibility of detenuÃ¢â‚¬â„¢s release on bail in future came to be true as the detenu was granted bail on 10th

October, 2019, after issuance of the order of detention dated 26th September, 2019. Thus, there was sufficient material before the detaining authority

on the basis of which the authority has reached to the subjective satisfaction by taking into consideration the propensity of the detenu towards

criminality and that he is likely to be released on bail and there is imminent possibility that the detenu would revert to the similar activities prejudicial to

maintenance of public order in future, in these circumstances the detention order cannot be faulted.

8. The ratio relied upon by the learned counsel for the petitioner (detenu) in the case of Shahabaj Ejaj Sayyad (supra) will not be of any help to the

petitioner (detenu) as in that case the detaining authority failed to record its subjective satisfaction that there was imminent and real possibility of

release of the detenu on bail. In that view of the matter, by placing reliance on the HonÃ¢â‚¬â„¢ble Supreme CourtÃ¢â‚¬â„¢s judgment in Binod Singh Vs.

District Magistrate, AIR 1986 SC 2090 and Kamarunnissa Vs. Union of India & Anr., (1991) 1 Supreme Court Cases 128, this court came to the

conclusion that Ã¢â‚¬Ëœthe material on record does not show any real possibility of the detenuÃ¢â‚¬â„¢s release on bail and there was absolutely no material

before the detaining authority to apprehend that the Petitioner was likely to be released on bailÃ¢â‚¬â„¢. The facts of this authority are different.

9. In Vishal s/o. Shahaji Kasabe (supra) relied upon by the learned counsel for the petitioner (detenu), it is observed that, Ã¢â‚¬Ëœthere is no material on

record on which the detaining authority could conclude that the petitioner may be released on bail in the said C.R. As a matter of fact, on the date of

passing the detention order, the application of the petitioner for bail was not pending and nothing is brought on record to show that, his application

seeking bail was pending before the Higher Court on the date of passing the order of detentionÃ¢â‚¬â„¢. Hence, this court allowed the petition.

10. Similar is the ratio in the case of Rekha (supra), wherein it is held that, Ã¢â‚¬ËœWhere a detention order is served on a person already in jail, there

should be a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It

follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention

order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been

granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no

bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given,

otherwise the bald statement of the authority cannot be believedÃ¢â‚¬â„¢.

11. In view of the facts stated in the forgoing paragraphs, since in the present case, there was sufficient material before the detaining authority to

arrive to the conclusion that the petitioner (detenu) is likely to be released on bail in near future, these authorities would not help to the petitioner

(detenu).

12. The next ground raised by the learned counsel for the petitioner (detenu) about illegible documents at pages 33 to 37 needs to be considered now.

As a matter of fact, it is admitted position that documents at pages 33 to 37 are the copies of arrest panchanamaÃ¢â‚¬â„¢s of petitioner (detenu) and his

associates in C.R. No. 339 of 2019. They are partly legible. The learned APP points out that they were part of the charge-sheet. It is further pointed

out that the said documents were not referred and relied upon by the detaining authority while arriving at the subjective satisfaction. The learned APP

was therefore justified in arguing that those documents have no bearing on the detention order.

13. In the detention order, the detaining authority in paragraph 14 has stated thus, Ã¢â‚¬Å“14. You are also further informed that, the offences and

preventive actions are mentioned in para No.3(a) and 3(b) against you are showed only to highlight your criminal back history. I have just referred on

it.

Further inform you that all relevant documents mentioned in Para No. 4(a), 4(a)(i) & 4(a)(ii) and 5(i) & (ii) which are considered by me at the time of

passing the detention order are enclosed. If any fault found in the said documents or some papers are not readable in a bunch supplied to you and if

you want the documents which are referred by me in Para No. 3(a) and 3(b). I am ready to supply it to you, if you make representation in written to

anyone, to me i.e. The Commissioner of Police, Office of the Commissioner of Police, Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦.Ã¢â‚¬â€‹

14. It is necessary to mention here that in ground (4) and (4) (a)(i), the cognizable offences registered against the detenu in the recent past are

mentioned. Further it is stated that during the investigation, the detenu was arrested alongwith his two associates on 7th April, 2019. They were

remanded to police custody by the learned Judicial Magistrate, First Class, Nashik on 7th April, 2019 till 10th April, 2019 and thereafter magisterial

custody was granted. The recoveries were effected from the petitioner (detenu). The first bail application filed by the petitioner (detenu) on 10th April,

2019 was rejected on 30th April, 2019 and the bail application before the Sessions Court was filed on 2nd May, 2019, which was granted on 6th May,

2019. In paragraph 4(a)(ii), similar details are given in respect of C.R. No.358 of 2019 under sections 387, 323, 504, 506, 34 of the IPC, section 4/25 of

the Arms Act and section 142 of the Maharashtra Police Act. So also it is stated that the charge-sheet was filed on 31st August, 2019 and Criminal

Bail Application No.1647 of 2019 dated 20th September, 2019 in the Sessions Court is kept for hearing on 30th September, 2019.

15. The learned APP was justified in contending that the detaining authority has not relied upon the illegible documents from pages 33 to 37, being

arrest panchanamas of the petitioner (detenu) and his associates, to arrieve at subjective satisfaction at the time of passing of the detention order. In

Naeem Abdulla Khan (supra), wherein by placing reliance in the exposition of the law of the HonÃ¢â‚¬â„¢ble Supreme Court in Syed Farooq Mohammad

Vs. Union of India & Anr., AIR 1990 SC 1597 and Abdul Sathar Ibrahim Manik Vs. Union of India & Ors., AIR 1991 SC 2261, it was held that, non-

furnishing of documents which are not referred to or relied upon by the detaining authority would not vitiate the detention order. So also in Ravi

Chabiram Sharma (supra), this court has held that illegibility of certain words and sentence in not so very vital documents was not an impairment of

the rights of the detenu by Article 22(5) of the Constitution of India. Similar is the view taken by the HonÃ¢â‚¬â„¢ble Supreme Court in E. Subbulakshmi

(supra).

16. In the light of the abovementioned facts as well as grounds in the detention order, we are unable to accept the argument of the learned counsel for

the petitioner (detenu) that illegible documents were supplied to the petitioner (detenu), which has caused prejudice to the petitioner (detenu). Since all

the factual details were given to the petitioner (detenu) alongwith the charge-sheet and the dates of his arrest and remand, it cannot be said that the

illegible copies of the arrest panchanama of the petitioner (detenu) and his associates has caused prejudice to the petitioner (detenu) in making

effective representation.

17. In the light of aforestated reasons, we find no merit in the challenge raised by the petitioner (detenu) in this Petition. The detaining authority was

justified in passing the detention order by recording subjective satisfaction and after applying its mind to the facts, documents on record, no case is

made out by the petitioner (detenu) to interfere in the impugned order of detention. In the result, following order is passed:-

ORDER

a) The Writ Petition is dismissed.

b) Rule is discharged.