

(2005) BomCR(Cri) 498

Bombay High Court

Case No: Criminal Writ Petition No. 774 of 2003

Shri Raja " Raju
Namdev Kharade

APPELLANT

Vs

Shri V.D. Mishra,
Commissioner of
Police, The State of
Maharashtra and The
Superintendent,
Yerwada Central Prison

RESPONDENT

Date of Decision: Feb. 26, 2004

Acts Referred:

Arms Act, 1959 " Section 22(5), 25, 3#Bombay Police Act, 1951 " Section
135#Constitution of India, 1950 " Article 22(5)#Criminal Procedure Code, 1973 (CrPC) "
Section 154, 156, 157, 161#Maharashtra Prevention of Dangerous Activities of Slumlords,
Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 " Section 3(1)#Penal Code,
1860 (IPC) " Section 302, 307, 504

Citation: (2005) BomCR(Cri) 498

Hon'ble Judges: V.K. Tahilramani, J; S.S. Parkar, J

Bench: Division Bench

Advocate: S.R. Chitnis and Ujwal Agandsurve, for the Appellant; A.S. Pai, Assistant Public
Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

V.K. TAHILRAMANI, J.

Through this writ petition, the petitioner-detenu Raja " Raju Namdev Kharade, has
impugned the order of

detention dated 054.05.2003 passed by the Respondent No. 1 Shri V.D. Mishra,
Commissioner of Police, Solapur. By the said order, the

petitioner has been detained under Sub-section 1 of Section 3 of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug

Offenders and Dangerous Persons Act, 1981 (hereinafter referred to as "MPDA Act" for the sake of brevity). The detention order dated

05.05.2003 alongwith the grounds of detention which are also dated 05.05.2003 was served on the detenu on 05.05.2003.

2. Perusal of the ground of detention which are annexed at Exh.B to the petition, shows that the impugned order of detention is founded on one

C.R. viz. C.R. No. 92/2003 registered u/s 307 and 504 of I.P.C. r.w. Section 3 and 25 of the Indian Arms Act and r.w. Section 135 of the

Bombay Police Act. The said complaint dated 26.3.2003 has been registered on the basis of the complaint of Gajendra Dattatraya Harale lodged

at Faujdar Chawdi Police Station, Solapur. Besides C.R. No. 92/2003, the detention order is also based on two in camera statements of two

witnesses namely "A" and "B" which were recorded on 15.4.2003 and 16.4.2003 respectively.

3. We have heard the learned counsel for the parties at length. Although, in this writ petition, a large number of grounds have been pleaded i.e.

ground 6(A) to 6(L), the learned counsel for the petitioner has pressed only two grounds. The first ground is that the detention order has been

issued relying on three incidents i.e. C.R. No. 92/2003 and two in camera statements, however, none of the three incidents affect public order. The

ground that the incidents pertaining to the two in camera witnesses do not affect public order, is raised in para 6(B) of the petition and in para 6(E),

it is stated that the incident pertaining to C.R. No. 92/2003 does not affect public order.

4. Mr. Chitnis, the learned counsel for the petitioner has contended that none of the three incidents on which reliance has been placed by the

detaining authority to issue the order of detention affect public order and hence, the order of detention is vitiated on that ground. Shri Chitnis has

further contended that all the three incidents are confined to individual persons and they are private crimes as distinct from public crime. He has

further contended that none of the incidents in any way affect the even tempo of the life of the community nor do any of the incidents affect the

peace and tranquillity of the people of that particular locality where the crime had been committed and hence none of the incidents affect public

order. In support of this contention Mr. Chitnis has placed reliance on the decision of the Supreme Court in the case of State of Uttar Pradesh v.

Kamal Kishore Saini reported in AIR 1988 SC 206. In the said case, the detaining authority had relied on two incidents and issued the order of

detention. In case of the first incident i.e. Crime Case No. 109/1985, the Supreme Court came to the conclusion that the said incident did not

affect the public order whereas as far as the second case was concerned i.e. Crime Case No. 222/1985, the Supreme Court held that the public

order was disturbed by the said incident. In respect of the first incident the Supreme Court in para No. 12 observed thus:-

In the instant case, the criminal acts referred to in ground No. 1 are to the effect that on 4th June, 1985 at about 11 p.m. some persons informed

the complainant that his brother has been shot by some persons and when complainant reached the spot he found his brother Vishnu Narain

Awasthi lying in the pool of blood and he had already died. Crime Case No. 109/1985 u/s 302 I.P.C. was registered at Ghazipur Police Station.

This incident is confined to individual persons and it is private crime as distinct from public crime. It does not in any way effect the even tempo of

the life of the community nor does it affect the peace and tranquillity of people of that particular locality where the crime has been committed.

5. On perusal of the facts relating to Crime Case No. 109/1985, we have observed that the incident was confined to an individual person and it

did not affect the even tempo of the life of the community or the peace and tranquillity of the people of that particular locality where the crime was

committed and thus it did not affect public order. However, as far as the second incident i.e. C.R. No. 222/1985 is concerned, the detenu and his

accomplice came on a scooter and in a public street during the day time they had fired on one Ram Kumar. In respect of this incident, the Supreme

Court has observed that

This firing was made in a public street during the day time. This incident does affect the public order as its reach and impact is to disturb public

tranquillity and it affects the even tempo of the life of the people in the locality where the incident is alleged to have occurred.

Thus, it was held that the second incident did affect public order.

6. The contention raised in paras 6(B) and 6(E) of the petition, in respect of the incidents relating to the witnesses "A" and "B" and the incident

pertaining to C.R. No. 192/2003 not affecting public order, have been replied by the detaining authority in his affidavit in reply in para No. 8 and

11. In reply to para 6(B) which pertains to the incident relating to the in camera statements of the witnesses "A" and "B", it is inter alia stated by

the detaining authority in para No. 8 of the reply that:

It is stated by both the in camera witnesses that the incident has taken place in a public place viz. at 6 p.m. and 10 a.m. in the morning i.e. during

the board day light, hence, even though the witnesses have not stated that after witnessing the incident, people ran away helter-skelter, however,

both the witnesses have stated that after witnessing the incident, due to fear people did not come forward to help them. Further they have stated

that due to fear of reprisal they did not lodge complaint with respect to the said incident. Hence, considering the incidents as narrated by the in

camera witnesses "A" and "B", it would affect the public order as defined under the Act.

7. In respect of the contention that the incident pertaining to C.R. No. 92/2003 does not affect public order, the detaining authority has inter alia

stated in para No. 11 of his affidavit that (SIC) say that the complainant in C.R. No. 92/2003 had stated that after witnessing the said incident, due

to fear the witnesses ran away and nobody came to their help. The said fact as stated by the complainant in C.R. No. 92/2003 alongwith the other

material such as statement of eye witnesses and other witnesses having being considered clearly falls within the purview of public order under the

MPDA Act.

8. The learned A.P.P. Mrs. A.S. Pai has brought to our notice that in the grounds of detention, it is mentioned that the detenu assaulted the mother

of the complainant on the head with sword. Thereafter, the detenu assaulted the complainant Gajendra Harale on the head and on the left hand

finger. Due to assault Gajendra Harale collapsed. Seeing this brutal assault Dattatraya Harale, who was a heart patient sat down due to the chest

pains. Then to save Gajendra, his old grand mother Kausalyabai covered Gajendra Harale with her body, but the detenu continued his attack and

assaulted her on the head and on her hands. This incident had taken place in a public place. This atrocious act was witnessed by the nearby

witnesses, but due to fear they ran away and went into their house and nobody came to help them.

9. On the perusal of the material relating to C.R. No. 92/2003, it is clear that public order was affected. Public order is the even tempo of the life

of the community or even a section thereof in a specified locality. Disturbance of public order is to be distinguished from acts directed against

individuals which do not disturb the society to the extent of causing disturbance of public tranquillity. It is the degree of the disturbance and its

effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order or it affects

public order. Even if the reach and impact of an incident is such as to disturb public tranquillity and affect the even tempo of the life of the public in

the locality, the incident can be said to affect the maintenance of public order. It has been so observed by the Supreme Court in para 12 of the

judgment in the case of Kamal Kishore Saini (supra).

10. It has been observed by the Supreme Court in the case of Ashok Kumar Vs. Delhi Administration and Others, that:

The true distinction between the areas of "public order" and "law and order" lies not in the nature or quality of the act, but in the degree and extent

of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is a fine one but this does not mean that

there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one

case it might affect specific individuals only and therefore, touch the problem of law and order. The act by itself therefore, is not determinant of its

own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of

public order.

(Emphasis supplied by Court)

11. In the present case, the incident pertaining to C.R. No. 92/2003 undoubtedly affects the public order in as much as the incident created panic

and terror in the minds of persons who were nearby. Thus it is seen that the incident affected the public tranquillity and the even tempo of the life of

the public in that area. This incident certainly affects public order and not merely law and order, in as much as the reach, effect and potentiality of

the act of the detenu is such that it disturbs the even tempo of the life of the community in that area. The incident pertaining to C.R. No. 92/2003

cannot be said to be confined to individual persons and it cannot be said that it is a private crime as distinct from public crime. Though the detenu

attacked private individuals, other persons in the locality were affected by the said act of the detenu. In the grounds of detention, it is mentioned

that due to the atrocious act of the detenu, the nearby witnesses due to fear ran away and went into their houses and nobody came to help the

injured witnesses. From this, it is clear that a feeling of fear and terror was generated in the minds of the persons who were nearby and they have

run away from the spot. Moreover, in the said C.R. the statements of two witnesses has been recorded i.e. (1) Smt. Bhamabai Banne and (2)

Dnyaneshwar Bansode. Smt. Bhamabai Banne has stated that on witnessing the incident, she was terribly frightened and other persons on

witnessing the incident hurriedly shut the doors of the houses. Witness Dnyaneshwar Bansode has stated that on witnessing the incident he was

terribly frightened and ran away to his house so also the other witnesses ran helter-skelter. These statements also show that public order was

affected by the act of the detenu.

12. A grievance was raised on behalf of the petitioner that the detaining authority has not mentioned in the grounds of detention that these two

witnesses had so stated in their statements and hence, the learned prosecutor cannot rely on these two statements. However, it is well settled that

the detaining authority need not express its reaction to each and every reaction to each and every circumstance or document in the grounds of

detention. Useful reference may be made to the decision of the Supreme Court in the case of State of Gujarat Vs. Sunil Fulchand Shah and

Another, wherein it is held that, it is not necessary to mention in the grounds of detention the reaction of the detaining authority in relation to every

piece of evidence, separately. So far as the inference drawn by the detaining authority from the materials on record and his subjective satisfaction in

this regard are concerned i.e. the incidents relied on affect the maintenance of public order, it is expressly so stated in the grounds of detention and

there cannot be any grievance on that score. The statements of these two witnesses i.e. Smt. Bhamabai Banne and Dnyaneshwar Bansode had

been placed before the detaining authority and considered by the detaining authority, copies of the said two statements have been supplied to the

detenu and hence no fault can be found. While finding out the sufficiency or adequacy of the material in reaching a particular conclusion, the Court

can look into the order of grounds of detention or the documents accompanying the same. Thus, in our opinion, from the material on record, the

incident relating to C.R. No. 92/2003 clearly affected the maintenance of public order.

13. Thereafter, it was contended that besides the incident pertaining to C.R. No. 92/2003, two other incidents have been relied upon by the

detaining authority i.e. incident pertaining to witness "A" and witness "B" and these incidents do not affect public order. From a perusal of the

grounds of detention we have seen that witness "A" has stated that he knew the detenu as a goonda operating in the area. Many people were

victimized due to his criminal activities and they feared to complain about his atrocious activities.

He has further stated that in the third week of the month of March, 2003, on one evening at 19.00 hrs. this witness was passing from Tuljapur

Naka with his auto-rickshaw. At that time, the detenu and this one associate stopped his auto-rickshaw and asked to take him to Kali Masjid.

After leaving the detenu at Kali Masjid, the witness asked him to pay the fare of Rs. 20/-. At that time the detenu abused and threatened him that if

he asked for the fare, the detenu would kill him. Then the witness requested the detenu to pay him at least Rs. 10/- for petrol. Due to the request

made by this witness, the detenu get annoyed and took him out of the auto-rickshaw forcibly and abused and assaulted him. The associate of

detenu damaged the glasses of the auto-rickshaw with a stone. During this incident no one came to help the witness but ran away due to detenu's

fear. The two nearby shop-keepers closed their shops. While leaving the spot the detenu threatened this witness not to complain regarding this

matter otherwise the detenu would not allow him to do his business in that area. Due to fear of reprisal the witness did not complain about this

incident.

From the fact that the other persons instead of coming to help the witness ran away due to fear of the detenu, it is clear that the act of the detenu

generated a feeling of fear and terror in the minds of the persons who witnessed the incident. The reach and effect of this incident is that it disturbed

public tranquillity and thus it affected public order. It is also seen that two nearby shop keepers closed their shops on witnessing this incident. Thus,

it is clear that this incident affected public order.

14. In relation to the incident pertaining to witness "B", on perusal of the grounds of detention, it is seen that witness "B" has stated that he knew

the detenu as a notorious goonda operating in the area. Due to his criminal activities, ordinary people in the area are unwilling to complain against

him. His associates are involved in the offences of extortion. They often extort money from the witness and from small scale business persons. The

vegetable cart of the witness was burnt in the riots, which occurred in the month of October 2002, hence, the witness did not pay the amount to

the associates of the detenu.

This witness has further stated that in the first week of March, 2003 on one morning at 10.00 hrs. he was selling vegetables on his cart. When the

witness came near Dhangekar Automobiles in Budhwar Peth area, the detenu and his one associate were passing from that place on the detenu's

motorcycle. At that time, the detenu's associate told some thing to the detenu pointing towards this witness, due to which the detenu came to the

witness and started to assault him, threatening that the witness was doing the business in his area and he is not paying the detenu. The detenu

threatened the witness that if he saw this witness in that area, the detenu will kill him. This witness requested the detenu but without paying attention

towards the witness the detenu damaged the cart of the witness. At the time of the assault to the witness, no one came to help the witness sue to

the detenu's terror in that area. Due to the detenu's fear, the witness did not complain about the said incident.

From the above statement of this witness, it is seen that the detenu is indulging in acts of extortion. It has been held in various decisions of the

Supreme Court that act of extortion affects public order. Useful reference may be made to the decisions of the Supreme Court in the case of

Sharad Kumar Tyagi Vs. State of Uttar Pradesh and Others, and in the case of Amin Mohammed Qureshi Vs. Commissioner of Police, Greater

Bombay, . So also this Court has repeatedly held in various decisions that acts of extortion affect public order. We may refer to two such decisions

i.e. the decision in the case of Smt Kailas Laxman Joshi Vs. B. Akashi Commissioner of Police, Thane and others, and another decision in the case

of Prabhakar Menka Shetty Vs. V.S. Ramamurthy, Commissioner of Police for Greater Bombay and others, . In all these decisions it has been

held that act of extortion affects public order. In none of these decisions the Court has observed that the act of extortion reflected therein affects

public order only on account of the peculiar facts and circumstances of the said case. Thus it is clear that all acts of extortion affect public order.

This is so, because an act of extortion by its very nature affects public order. An act of extortion is not confined to an individual as anyone can be a

victim of extortion. Once the news spreads, which it is sooner or later bound to, that a particular shopkeeper or vendor has received a threat in

relation to extortion for money, there is bound to be fear and panic in the minds of the other shopkeepers and vendors in that area, which would

affect public order. The reach and impact of an act of extortion is to disturb public tranquillity as there would be a fear in the mind of a section of

the public in that area that any one of them would be the next victim of extortion. Thus, all acts of extortion affect public order.

Thus, it is seen that the incident pertaining to witness "B" was such as to affect public order. Thus it is clear that all the three incidents relied upon

by the detaining authority to issue the order of detention affected public order. Thus, there is no merit in the contention raised on behalf of the

petitioner that none of the incidents in which the detenu was involved affected public order.

15. The second ground which has been raised by the learned counsel for the petitioner is raised in para 6(H) of the petition. Para 6(H) reads as

under:-

The petitioner says and submits that no copy of F.I.R. in C.R. No. 92/2003, a criminal case which is referred to and relied on by the detaining

authority is either placed before the detaining authority or copy furnished to the detenu. It is a settled law that F.I.R. in a case is a vital document.

The order of detention is illegal and bad in law for non-placement of a vital document before the detaining authority. The satisfaction of the

detaining authority vitiates. The petitioner further submits that as a result of non furnishing the F.I.R. in the abovesaid C.R., the detenu could not

make effective representation as guaranteed under Article 22(5) of the Constitution. The order of detention is liable to be quashed and set aside.

16. The learned counsel for the petitioner has contended that the ""proforma"" F.I.R. pertaining to C.R. No. 92/2003 was not placed before the

detaining authority nor was it furnished to the detenu. He has contended that proforma F.I.R. is a vital document and it ought to have been placed

before the detaining authority and copies thereof ought to have been furnished to the detenu. In respect of this contention we find that nowhere in

the grounds raised in the petition including ground 6(H), it is merely mentioned that no copy of F.I.R. in C.R. No. 92/2003 was placed before the

detaining authority nor copy thereof was furnished to the detenu. In the present case, it is an admitted fact that the actual F.I.R. i.e. the statement of

the complainant Gajendra Harale had been placed before the detaining authority and copies thereof had been supplied to the detenu. No ground

has been specifically raised in the petition in relation to "Proforma" F.I.R. not being placed before the detaining authority nor copies thereof being

supplied to the detenu. However, the learned A.P.P. Mrs. A.S. Pai has not raised any objection in that behalf and she did not insist of any

amendment to the petition and time to file reply and she stated that she would go on with the matter. Hence, we have heard both the sides on this

issue raised now before us that copy of the ""Proforma"" F.I.R. was not placed before the detaining authority nor a copy thereof was furnished to the

detenu and due to this the detention order is vitiated.

17. The learned counsel for the petitioner has submitted that the ""Proforma"" F.I.R. is a vital document and therefore, it ought to have been placed

before the detaining authority and copies thereof ought to have been furnished to the detenu. In support of this contention, he has placed reliance

on the decision of this Court in the case of Smt. Elsy George Vs. Union of India (UOI) and Others, . He has placed reliance on the observations in

para No. 6 of the judgment which reads as under:-

It is well settled that a document which is likely to influence the subjective satisfaction of the detaining authority one way or the other in the matter

of issuance of the detention order is a vital document. In our judgment, the FIR lodged by C.B.I. a copy of which is annexed as Annexure E to the

petition was a vital document as it was capable of influencing the subjective satisfaction of the detaining authority either way.

This judgment would not apply to the facts of the present case as in the case of Elsy George (supra), this Court after perusal of the actual F.I.R. i.e

the statement of the complainant came to the conclusion that in the facts and circumstances of the said case it was a vital document. In the present

case, it is an admitted fact that the F.I.R. i.e. the statement of the complainant was placed before the detaining authority and a copy thereof was

furnished to the detenu. Thus, this decision would be of no avail to the petitioner.

18. Thereafter the learned counsel for the petitioner has placed reliance on para 13 of the decision in the case of Elsy George (supra) wherein it is

observed that if a vital piece of evidence which could have included the mind of the detaining authority is not placed before it, the detention order

would be vitiated on the vice of non-application of mind. These observations were made in relation to non placement of F.I.R. As stated earlier, in

this case, the copy of the F.I.R. was placed before the detaining authority and a copy thereof furnished to the detenu, hence, this decision would

not come to the aid of the petitioner in the present case.

19. Thereafter, the learned counsel for the petitioner has placed reliance on para 7 of the decision of the Supreme Court in the case of State of

U.P. Vs. Kamal Kishore and Another, . In the said case, the F.I.R. was furnished to the detenu, however, statements recorded u/s 161 of Cr.P.C.

were not furnished to the detenu. In this context, the Supreme Court has observed in para 7 that:

It is relevant to mention in this connection that the names of the detenus were not mentioned in the FIR in respect of incident in ground No. 1 and

the basis of their complicity came to be known only in the material found in the course of the investigation. The detenus were supplied only with the

copy of the FIR and also extract of the charge-sheet and not the statements u/s 161 of the Cr.P.C.

Obviously when the name of the detenu was not mentioned in the F.I.R. and his involvement came to be known only from the statements recorded

u/s 161 of Cr.P.C., the said statements u/s 161 of Cr.P.C. were vital documents in the facts and circumstances of the said case. It is in these facts

and circumstances, that the Supreme Court has observed that it was necessary to furnish such documents. In the present case, the F.I.R. was very

much placed before the detaining authority and copies thereof were supplied to the detenu. The involvement and role of the detenu is clearly seen

from the F.I.R. Besides this, the statements of witnesses recorded u/s 161 of Cr.P.C. were placed before the detaining authority and copies

thereof supplied to the detenu.

20. The learned counsel for the petitioner has further contended that the ""Proforma"" F.I.R. is a vital document. It is a statutory requirement looking

to the provisions of Section 154, 156 and 157 of Cr.P.C. We have carefully perused the provisions of Sections 154, 156 and 157 of Cr.P.C. In

respect of Section 154 we find that it is the "F.I.R." which shall be reduced into writing, which shall be signed by the person giving it and the

substance thereof shall be entered in the book as the State Government may prescribe and the copy of the said F.I.R. i.e. complaint shall be given

to the complainant/informant free of costs. Section 156 relates to power of a Police Officer to investigate cognizable cases and Section 157 states

that the copy of the F.I.R. shall be sent to the Magistrate. However, nowhere in any of these sections is there any reference to any proforma F.I.R.

The requirements u/s 154, 156 and 157 can be fulfilled on the basis of the complaint (F.I.R.) relating to a cognizable offence given by any person.

For compliance of any of these sections, "Proforma" F.I.R. would not be necessary.

21. The learned counsel for the petitioner has lastly submitted that the Supreme Court has observed that "Proforma" F.I.R. is a vital document and

hence he contended that non placement and non supply of the said document would vitiate the detention order. In support of his contention he has

placed reliance on para 7 of the decision of the Supreme Court in the case of Ravindra @ Ravi Bansi Gohar Vs. The State of Maharashtra and

Others, . The decision has been rendered in an appeal against conviction in a case which was mainly u/s 302 of I.P.C. In the said decision nowhere

has the Supreme Court observed that the Proforma F.I.R. is a vital document. Whatever observations have been made in the said decision, have

been made in an appeal against conviction under various sections of I.P.C. including Section 302 of I.P.C. Whereas in the present writ petition we

are concerned with the matter relating to detention of the detenu and we are not concerned with the prosecution and/or conviction of the detenu. It

is well settled that prosecution and detention are two entirely different fields and they are entirely distinct, separate and independent proceedings.

The aims and objects of preventive detention and prosecution are different. Useful reference may be made to the judgment of the Constitution

Bench of the Supreme court in the case of Haradhan Saha Vs. The State of West Bengal and Others, . In this view of the matter it is obvious that

different considerations apply in a case where a person is to be tried and convicted and in a case where a person is to be detained. In a case like

the present one, the only consideration of the detaining authority is whether the material before the detaining authority is sufficient for the detaining

authority to come to the conclusion that the activities of the detenu affect the maintenance of public order. On perusal of the material which was

placed before the detaining authority in the present case and copies of which were supplied to the detenu we find that there was sufficient material

before the detaining authority to come to the conclusion that the activities of the detenu were prejudicial to the maintenance of the public order and

hence it was necessary to detain the detenu. For determining whether the activities of the detenu are prejudicial to the maintenance of the public

order, the Proforma F.I.R. would not contain anything which would help the detaining authority to determine whether the incident is such that it

affected the maintenance of public order. Moreover, in the present case, it is submitted by the learned prosecutor that there is no Proforma F.I.R.

If the document in question is not in existence, we fail to understand how non placement of the said document would affect the subjective

satisfaction of the detaining authority or non consideration of such document would amount to non application of mind on the part of the detaining

authority. So also we fail to see how non supply of non-existent document would affect the right of the detenu in any manner.

22. Thus we see no merit in the submissions in this behalf made by the learned counsel for the petitioner. In view of the above, no interference is

called for in the impugned order of detention. Criminal writ petition is dismissed and disposed of accordingly. Rule discharged.