(2016) 10 BOM CK 0090

BOMBAY HIGH COURT

Case No: Criminal Writ Petition No. 2025 of 2016

Bhushan Vijay Rane		APPELLANT
	Vs	
State of Maharashtra		RESPONDENT

Date of Decision: Oct. 5, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 - Section 3, Section 8

Citation: (2017) 1 AIRBomRCri 81 : (2017) ALLMRCri 2066

Hon'ble Judges: Smt. V.K. Tahilramani and Mrs. Mridula Bhatkar, JJ.

Bench: Division Bench

Advocate: Mrs. M.H. Mhatre APP, for the State; Mr. Lokesh Zade a/w Mr. Prerak Sharma i/by M/s. Khandepakar & Asso., Advocates, for the Petitioner

Final Decision: Dismissed

Judgement

Smt. V.K. Tahilramani, J. (Oral) - Heard learned counsel for the parties.

2. The detenu is Bhushan Vijay Rane. The petitioner - Amit Vijay Rane is the brother of the detenu. The petitioner has preferred this petition questioning the preventive detention order passed against the detenu on 18.12.2015 by the District Magistrate, Sindhudurg. The detention order has been passed in exercise of the powers under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 (''MPDA Act'' for short) as the detenu is a dangerous person whose activities are prejudicial to the maintenance of public order. The order of detention is based on one C.R. i.e C.R. No. 121/2015 and two in-camera statements of witnesses A and B.

3. Learned counsel for the petitioner has raised a large number of grounds which we propose to deal with one by one. The first ground raised is found in ground (c) of the petition. In ground (c), it is stated that the offences complained of are trivial in

nature and do not affect the public at large. In short, in this ground, it is contended that the incident in which the detenu is involved do not affect the maintenance of public order. It is seen that to issue the order of detention, the detaining authority has relied on C.R. No. 121/2015 and two in-camera statements of witness ''A'' and ''B''. All the three incidents for the reasons mentioned below were such that it affected public order.

4. As far as C.R. No. 121/2015 is concerned, the complainant is a shopkeeper. On 21.10.2015 at about 7.30 p.m., the detenu along with his associates entered in the shop of the complainant and started to break the articles in the shop of the complainant. When the complainant questioned the detenu why he was damaging the articles, the detenu replied that he had done goondaism with the associates of the detenu. The detenu ordered the complainant to close his shop otherwise he will pour petrol on the shop of the complainant and will burn the shop. The detenu and his associates were abusing, threatening and damaging the articles in the shop of the complainant. The detenu also threatened the persons standing nearby. Due to the act of the detenu, the persons nearby got frightened and ran away. This shows that the incident was not such that it affected only an individual but it affected the public who had gathered at the spot. This is seen from the fact that the nearby people got frightened and ran away. Thus, this incident relating to C.R. No. 121/2015 was such that it affected public order.

As far as the incident relating to in-camera witness A is concerned, in the third week of September 2015, witness A was returning with his girlfriend from Kudal. At about 10.00 p.m., when they were near Nerur Jakat Naka, at that time, the detenu and his associates who were on motorcycle blew the horn of the motorcycle loudly. Witness A allowed the detenu to overtake him. Witness A questioned the detenu and asked for explanation whereupon the detenu got annoyed and abused witness A. Then the detenu stepped down from his motorcycle and abused and slapped witness A. On seeing this, the girlfriend of witness A talked to the detenu angrily. Thereupon, the detenu pushed her. Witness A came forward to help her and told the detenu that he will call the police. Then the associates of the detenu started to assault witness A. On seeing the incident, passersby tried to help witness A but the detenu took out a knife and threatened the people due to which the people ran away with their motorcycles and no one came to help witness A. The detenu then threatened witness A not to complain to the police otherwise he will kill him. Witness A begged the detenu to forgive him, only then the detenu went away from the place of the incident. Thus, it is seen that the activities of the detenu in relation to this incident affected not only witness A and his girlfriend but it also affected the public in the vicinity who had been threatened by the detenu with a knife and these people ran away from the place on their motorcycles and no one came forward to help witness A. This shows that the activities of the detenu affected not just an individual but they affected the public order.

As far as witness B is concerned, in the last week of August 2015 at about 9.00 p.m., when the witness was at his business place, the detenu and his associates started to drink liquor in front of the business place of witness B. Witness B requested them not to drink liquor there because then the customers would not come to his business place. The detenu got annoyed and took out a sword from his motorcycle. On seeing this, the customers at the business place of witness B got frightened and ran away. Nearby shopkeepers arrived at the spot, however, on seeing the violent nature and threats of the detenu and his associates, the people who had gathered at the spot ran away. Witness B also got frightened and ran away from his business place. Thereafter, the detenu and his associates went away. Only then the witness B came back to his business place and closed his business. Due to fear, witness B did not complain about the matter to the police. Thus, it is seen that in the incident relating to witness B also, the incident affected the public who was at the business place of witness B as well as shopkeepers who had gathered at the spot and the incident was not as such that it only affected in-camera witness B.

5. Learned counsel for the petitioner placed reliance on the decision of the Supreme Court in the case of **Arun Ghosh v. State of West Bengal, 1970(1) SCC 98** to contend that if the acts are stray acts and they are directed only against an individual and are not subversive of public order, then the order of detention would not be justified if it was passed to prevent the detenu from acting in a manner prejudicial to the public order. We are in respectful agreement with the decision in the case of Arun Ghosh (supra), however as pointed out in the above paragraph, all the three incidents which have been relied upon by the detaining authority to issue the order of detention are such that they did not affect only an individual but were such that they affected the public who had gathered at the spot and it is seen that all the three acts are such that they affected the public order.

6. The next contention is raised in ground (j) of the petition. In ground (j) of the petition, it is stated that the detaining authority erred in concluding that the offences as complained of above are sufficient enough to make out prima facie case of taking away the liberty of the petitioner. As far as this ground is concerned, we have already observed above that the three incidents on which the detention order has been based are such that they affected the public order. Looking to the nature of the three incidents, they are such that the detenu can be categorized as a dangerous person. In such case, there was sufficient material before the detaining authority to issue the order of detention. Thus, we find no merit in this contention.

7. The next ground raised is ground (l) of the petition in which it is stated that the detaining authority has failed to appreciate that the detenu has not violated the terms of his bonds executed by him in Chapter Case No. 189/2014 dated 12.6.2014 under Section 107 of Code of Criminal Procedure. As far as this contention is concerned, it is seen that though the detenu had entered into a bond dated 12.6.2014 to maintain peace, thereafter in the last week of August 2015, in the third

week of September 2015 and on 21.10.2015, the detenu has again indulged in activities which are prejudicial to the maintenance of public order. Thus, it is seen that though the detenu had entered into a bond to maintain peace, the detenu has indulged in a series of activities which are prejudicial to the maintenance of public order and as such, the detaining authority has rightly issued the order of detention.

8. It was next contended in ground (n) of the petition that the detaining authority failed to appreciate that on 3.8.2015, the Sub-Divisional Magistrate vide his order in Externment Case No. 21 of 2014 had out rightly rejected the proposal for externment of detenu on the ground that there was no supporting material or evidence to extern the detenu. It was next contended in ground (o) of the petition that the detaining authority failed to appreciate that the externment proceedings that were sought to be initiated against the petitioner were also based on the same material as the present detention order and after due consideration of the same, the Sub-Divisional Officer was pleased to reject the Externment Case No. 21/2014. As far as these contentions are concerned, in his return, the detaining authority has categorically stated that the incidents on which the externment proceedings were initiated and the incidents on which the detention order has been issued are entirely different. They are not based on the same material. Hence, in such case, even if the Sub-Divisional Magistrate had rejected the proposal for externment bearing Externment Case No. 21/2014, it would not stop the detaining authority from issuing the order of detention as the acts of the detenu in the recent past were such that they were prejudicial to the maintenance of public order. It is seen that after the proposal of externment was initiated i.e. Externment Case No. 21/2014, the detenu has indulged in three acts in August, September and October 2015 i.e. the incidents relating to witnesses A and B and C.R. No. 121/2015 which acts were clearly prejudicial to the maintenance of public order, hence, there was sufficient material before the detaining authority to issue the order of detention.

9. Thereafter, it was contended in ground (p) of the petition that the detaining authority has failed to appreciate that the Sub-Divisional Magistrate has arrived at a conclusion that there was no material on record on the basis of which it can be said that the detenu is a dangerous person and has breached the public order and tranquility. This contention is in relation to externment proceedings No. 21/2014. As far as this contention is concerned, the externment proceedings bearing Externment Case No. 21/2014 was based on different incidents than the incidents on which the present detention order has been issued. Three incidents on which the present detention order has been issued have taken place in the year after the externment proceedings i.e. Externment Case No. 21/2014 was initiated. In the externment proceedings, incidents of the year 2014 were relied upon and in the present detention proceedings, incidents which occurred in the latter part of the year 2015 were relied upon. The material relied upon in the said externment proceedings and the material relied upon to issue the order of detention is completely different. As stated earlier, there was sufficient material before the

detaining authority to reach his subjective satisfaction that the detenu is a dangerous person and has breached public order and as such, it was necessary to prevent him from acting in a similar manner prejudicial to the maintenance of public order in future. Thus, we find no merit in this ground.

10. It is next contended in ground (r) of the petition that the order of detention was passed on the basis of conjectures, surmises and bald statements. We have already reproduced in paragraph 4 above the grounds on which the order of detention is issued. There was sufficient material before the detaining authority to arrive at subjective satisfaction that it was necessary to issue the order of detention to prevent the detenu from acting in a manner prejudicial to the maintenance of public order. Copies of these documents have been furnished to the detenu. We have gone through the files and find that the copies of each and every document which was placed before the detaining authority has been furnished to the detenu and in token of receipt of the same, his endorsement has been taken on the copies of all these documents. Thus, this ground also fails.

11. Thereafter, the learned counsel for the petitioner raised amended ground (x) of the petition. It is stated therein that the truthfulness of the two in-camera statements was not verified, hence, without proper verification, it cannot be said that these in-camera statements are authentic and hence, they cannot be considered for detention of the detenu and the subjective satisfaction of the detaining authority based on such in-camera statements is illegal and bad in law, hence, the detention order is liable to be quashed and set aside. The grounds of detention as well as the affidavit of detaining authority show that confidential enquiries were made into prejudicial activities of the detenu and his associates in the jurisdiction of Kudal Police Station and it was revealed that a number of people were victimized due to criminal activities of the detenu and his associates in the recent past, however, the detenu being a dangerous person, nobody was willing to complain openly against the detenu due to fear of retaliation. It was only after giving them assurance that their names and identifying particulars would be kept secret and they would not be called upon to depose against the detenu in any court of law or any other open forum, that two witnesses i.e. witness A and witness B expressed their willingness to give their statements pointing out the atrocities suffered by them at the hands of detenu. Their statements were recorded in-camera on 5.11.2015 and 7.11.2015 respectively. The said statements were verified by the Sub-Divisional Police Officer, Kankavli.

We have perused the files which contain the compilation of the documents furnished to the detenu. This compilation contains the statements of the two in-camera witnesses as well as the verification of Sub-Divisional Police Officer who is equivalent to the rank of Assistant Commissioner of Police. This verification is at the bottom of the in-camera statements. The Sub-Divisional Police Officer in his verification of each of the in-camera statements has stated that the statements of

the in-camera witnesses were read over to the witnesses and the witnesses admitted that they were true. The Sub-Divisional Police Officer made enquiries with the in-camera witnesses and from them, he was satisfied that the incident was true and the fear in the mind of the in-camera witnesses relating to the detenu was true. In this view of the matter, it cannot be said that the truthfulness of the statements of in-camera witnesses was not verified. As stated earlier, the truthfulness and genuineness of both the in-camera statements has been verified by the Sub-Divisional Police Officer and based on the verification made by the Sub-Divisional Police Officer, the detaining authority was subjectively satisfied that the incamera statements were true and genuine. Thus, there is no substance in this ground.

12. Thereafter, amended ground (y) of the petition was raised. In ground (y) of the petition, it is stated that the statement of witness A does not disclose the area and/or locality, hence, the detenu was deprived of his right to make an effective representation. As far as this ground is concerned, it is seen that the detaining authority in paragraph 1 of the grounds itself has stated that, "Copies of the documents placed before me are enclosed, except the names and identifying particulars of the witnesses/victims in connection with the grounds mentioned in paragraph Nos. 4(b)(i) and 4(b)(ii) below which cannot be furnished in the public interest and for which I claim privilege".

It is seen that when the confidential enquiries were made into the criminal activities of the detenu within the area of Kudal Police Station, it was revealed that a number of people had suffered at the hands of the detenu, however, as the detenu was a weapon wielding desperado and dangerous person having no respect for law, the victims and the witnesses to the violent activities of the detenu were not willing to complain and come forward against the detenu, however, on getting assurance from the police that their names and identifying particulars will be kept secret and they will not be called upon to give evidence against the detenu in any court or any other open forum, only then witnesses A and B expressed their willingness to give their statements regarding the atrocities of the detenu. It is seen that in view of the fear of retaliation from the detenu, these witnesses were not willing to give their statements openly, hence, they had to be recorded in-camera. The grounds of detention shows that the detaining authority has referred to prejudicial activities of the detenu only within the jurisdiction of Kudal Police Station. On going through the incidents relating to in-camera witness A, it is seen that the incident occurred when they were returning from Kudal and were passing from Nerur Jakat Naka. In such case, it cannot be said that the area and locality was not disclosed in relation to the statement of in-camera witness A.

13. In any event, the exact locality in relation to in-camera witness cannot be revealed because in such case, it would amount to revealing identifying particulars of the in-camera witness which would prove dangerous to the in-camera witness. It

is on account of this that the detaining authority claims privilege to not reveal identifying particulars of incamera witness. Sub-Section (2) of Section 8 of the MPDA Act reads as under:-

Grounds of order of detention to be disclosed to persons affected by the order:-

1. When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

2. Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

Thus, in view of sub-Section 2 of Section 8 of the MPDA Act, it is clear that the detaining authority need not disclose the facts which are considered to be against the public interest. Informing identifying particulars of in-camera witnesses would be against the public interest, hence, the detaining authority need not reveal the same. The Constitution Bench of the Supreme Court in the case of **Lawrence Joachim Jospeh D''Souza v. The State of Bombay, 1956 SC 531** has observed as under:-

"The right of the detenu under Article 22(5) to be furnished particulars is subject to the limitation under Article 22(6) whereby disclosure of facts considered to be against public interest cannot be given.....

Hence, it follows that both the obligations to furnish particulars and the duty to consider whether the disclosure of any facts involved therein is against public interest, are vested in the detaining authority, not in any other....."

However, as stated earlier, as far as witness A is concerned, the area has been stated, hence, it cannot be said that the details relating to witness A are vague and on account of non-disclosure of area/locality, the detenu could not make an effective representation.

14. It was next contended in amended ground (aa) of the petition that the detaining authority has relied on three cases i.e. C.R. No. 30/2012, C.R. No. 73/2014 and C.R. No. 121/2015 and two in-camera statements. All these activities have taken place in the area of Kudal Police Station and nowhere else whereas the detaining authority in paragraphs 2, 3, 5, 6 and 7 of the grounds of detention has stated that the detenu has become perpetual danger to the people residing and carrying on their activities and vocations in "surrounding areas" of Kudal and community at large. There are two aspects to this ground. The first aspect is that the detention order has not been issued on the basis of C.R. No. 30/2012 and C.R. No. 73/2014. Reference to these C.Rs. has been made in paragraph 5 of the grounds of detention. In fact, in first paragraph of the grounds of detention, the detaining authority has clearly stated as

under:-

"I hereby communicate to you the grounds as mentioned in paragraph 4 below on which a detention order has been made by me."

[Emphasis supplied]

Thus, it is clear that the detention order has not been issued on the basis of any incident mentioned in paragraph 5 of the grounds of detention. Thus, it is clear that the detention order is not based on C.R. No. 30/2012 or C.R. No. 73/2014, hence, these incidents cannot be taken into consideration.

15. The second aspect is that it is contended that the detaining authority has stated that the detenu has become a perpetual danger to the lives and properties of the people residing and carrying on their daily activities and vocations in the "surrounding areas" of Kudal and community at large. On going through the grounds of detention, we find that everywhere, it is mentioned that the activities of the detenu have taken place within the jurisdiction of Kudal Police Station and nowhere in the grounds of detention, it is mentioned about surrounding areas of Kudal. Thus, we find no merit in this ground.

16. It was next contended in ground (bb) of the petition that all the prejudicial activities of the detenu have taken place on or about 2012, 2014 and October 2015 whereas the order of detention was passed on 18.12.2015 i.e. belatedly after about eight weeks. From paragraph 1 of the grounds of detention, it is clear that the detention order has been issued only on the basis of involvement of the detenu as stated in paragraph 4 of the grounds of detention. In this paragraph, there is only reference of C.R. No. 121/2015 and the statements of two in-camera witnesses A and B. The detention order has not been issued on the basis of the incidents which occurred in the year 2012 or 2014. The reference has been made to the incidents of the year 2012 and 2014 in paragraph 5 of the grounds of detention only to give the past history of the detenu and no reliance has been placed on any of these incidents to issue the order of detention. As observed by the Apex Court in the case of **Hasan Khan Ibne Haider Khan v. R.H. Mendonca, AIR 2000 SC 1146**, the facts in paragraph 5 of the grounds of detention were only to show the past criminal history of the detenu and nothing more. As the detention order is based only on C.R. No. 121/2015 and the statements of the two in-camera witnesses, we would have to compute the delay in issuing the order of detention on the basis of the last of these three incidents. The incident relating to in-camera witness A occurred in the third week of September 2015. The incident relating to in-camera witness B occurred in the fourth week of August 2015 and the incident relating to C.R. No. 121/2015 occurred on 21.10.2015. Thus, the delay in issuing the order of detention would have to be computed from 21.10.2015 which is the last incident.

17. As far as the issue of delay in issuing the detention order is concerned, mechanical calculation of days and months cannot be made. The rule is that as long

as live-link between the incident and the passing of order of detention is not snapped and as long as the alleged incident is not too remote to say that the propensity to indulge in future has ceased to exist, it cannot be said that there is delay in issuing the order of detention.

18. Delay by itself it not ipso facto fatal, however, if there is some delay in issuing the order of detention, two issues have to be kept in mind; the first is whether the delay has been satisfactorily explained and the second issue is whether the live-link between the prejudicial activities of the detenu and issuance of the order of detention has snapped. The time when the order is made or the live link between the prejudicial activity and the purpose of detention is snapped depends on the facts and circumstances of each case. Even in a case of undue or long delay between the prejudicial activity and the passing of detention order, if the same is satisfactorily explained and a tenable and reasonable explanation is offered, the order of detention is not vitiated. It is so observed by the Supreme Court in the case of **Licil Antony v. State of Kerala & Anr., Criminal Appeal No. 872 of 2014 @ SLP (Cri) 988 OF 2014 : 2014(5) SCALE 100.**

19. In a decision of the Supreme Court in the case of **Olia Mallick alias Oliruddin Mallick v. The State of West Bengal, (1974) 1 SCC 594**, there was delay of 5 months in issuing the detention order. The last incident in the said case had occurred on 3.11.1971 and the detention order was issued on 29.3.1972. Despite this fact, the Supreme Court upheld the order of detention.

20. In our opinion, mere delay in issuing the order of detention is not sufficient to hold that the detaining authority must not have been satisfied about the necessity of issuing the detention order. In the case of Olia Mallick (supra), it was held that since the activities of the petitioner marked him out as a member of a gang indulging systematically in the cutting of aluminium electric wire, the District Magistrate could have been very well satisfied, even after a lapse of 5 months; that it was necessary to pass the detention order to prevent him from acting in a manner prejudicial to the maintenance of the supply of electricity. In Olia Mallick (supra), it was further observed that, "We are not, therefore, inclined to interfere in this matter merely because there has been a delay of 5 months before the detention order was passed."

21. In the present case, the last prejudicial activity of the detenu occurred on 21.10.2015. In the affidavit of the detaining authority, it is stated that after preparing necessary sets of documents on 10.11.2015, the Senior Inspector of Police, Kudal Police Station prepared proposal for the preventive detention of the detenu. On 16.11.2015, the proposal was submitted before the Sub-Divisional Police Officer, Sawantwadi. On 19.11.2015, the Superintendent of Police recommended the proposal to the District Magistrate. The same was received on 30.11.2015 to Desk No. 3 of the office of the District Magistrate, Sindhudurg. After going through the proposal carefully, the said proposal was forwarded on 2.12.2015 to Deputy

Collector and thereafter on 9.12.2015, to the District Magistrate to approve the proposal. Thereafter, the draft of the detention order was prepared and on 18.12.2015, the detaining authority issued the detention order. Thus, in the present case, it cannot be said that the order of detention was not issued promptly and there was delay in issuing the same. We are of the opinion that the delay has been satisfactorily explained. Even otherwise looking to the activities of the detenu, it cannot be said that live-link between the activities of the detenu and the issuance of the detention order had snapped on account of the delay. Thus, this ground too fails.

22. The last ground raised by the petitioner is amended ground (cc) of the petition. This ground briefly stated is that the in-camera statements are not authentic, hence, it cannot be considered for detention and if the in-camera statements and C.R. No. 30/2012 as well as C.R. No. 73 of 2014 are excluded from consideration, then the only incident which remains is C.R. No. 121/2015 and on the basis of this sole C.R. No. 121/2015, it cannot be said that the petitioner is a dangerous person. The reason given by the petitioner for excluding in-camera statements is that they are not authentic and the reason given by the petitioner for excluding C.R. No. 30/2012 and C.R. No. 73/2014 are that no public order is disturbed on account of C.R. No. 30/2012 and C.R. No. 73/2014 as the incidents therein related to private individuals and did not disturb the public order. As far as C.R. No. 30/2012 and C.R. No. 73/2014 are concerned, we have already dealt with it in paragraph 14 above, hence, it is clear that the detention order is not based on C.R. No. 30/2012 and C.R. No. 73/2014.

23. As far as statements of in-camera witnesses A and B are concerned, we are of the opinion that the same are authentic as the truthfulness and genuineness of the same has been verified by the Sub-Divisional Police Officer who is a senior police official of the rank of Assistant Commissioner of Police. Based on the verification by the Sub-Divisional Police Officer, the detaining authority was also satisfied that the statements of in-camera witnesses are true and genuine we have already discussed this aspect in detail in foregoing paragraphs. Thus, the in-camera statements have been rightly taken into consideration by the detaining authority. In such case, it cannot be said that the detention order is based only on C.R. No. 121/2015 but the detention order is based on C.R. No. 121/2015 and two in-camera statements of witnesses A and B. Thus, this ground too fails.

24. In view of the above, we are of the opinion that no good ground has been made for quashing the order of detention, hence, the petition is dismissed. Rule is discharged.