

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 546 OF 2016

(Kiran Suresh Shinde vs. The State of Maharashtra thr. Home Department (Special) & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
S.B. SHUKRE, JJ.
NOVEMBER 17, 2016.**

Heard Shri S.P. Bhandarkar, learned counsel for the petitioner and Mrs. K.S. Joshi, learned APP for the respondents.

Perused the memo of Criminal writ petition as also reply filed on behalf of Respondent Nos. 1 & 3.

Though there is some confusion about the date of order of preventive detention, it is not in dispute that the petitioner has been detained on 10.12.2015 and the order of detention is served upon him on that day.

Inviting attention to the order of detention, particularly nature of offences looked into therein and subjective satisfaction as recorded in para 10 thereof, Shri Bhandarkar, learned counsel submits that the subjective satisfaction does not show objective consideration of the material available on record and mechanically findings have been reached and hence the application of mind by the detaining authority cannot be appreciated by this Court. He submits that the offences which are allegedly committed by the petitioner are being dealt with under appropriate jurisdiction and appropriate law and hence preventive

detention was not warranted. To get over this difficulty, two in camera statements of witnesses have been looked into but the statements of those witnesses reveal similarity therein and hence the falsehood therein.

Inviting attention to time schedule disclosed in para 3 of the affidavit filed by Respondent No. 1, he submits that with undue haste, various stages have been complied with and representation made by the petitioner on 23.12.2015 has not been looked into. He has taken us through the judgments of the Hon'ble Apex Court in the case of Rekha vs. State of Tamil Nadu through Secretary to Government and Anr., reported at 2011 (5) SCC 244, particularly paras 21, 29 and onwards as also the judgment in the case of Munagala Yadamma vs. State of Andhra Pradesh & Ors., reported at (2012) 2 SCC 386, paras 7 & 9.

The learned APP has relied upon the reply affidavit. She submits that the representation of the petitioner has been looked into by the Competent Authority and it was rejected. Rejection has been communicated to the petitioner on 22.01.2016 itself. The stages through which the proposal has to go as per the provisions of Sections 3 and 8 read with Section 10, are fully complied with. She also points out that the challenge is of technical nature and the grounds specifically urged, can only be looked into.

There is no specific ground pointing out violation of time schedule or then breach of any statutory provision, a general ground has been raised vide para 9(i). There it is urged that the order is not only illegal but also unjust and

arbitrary. In the backdrop of this ground, we have appreciated the arguments as advanced.

A perusal of reply affidavit filed by Respondent No. 1, particularly para 3 shows that all stages including preliminary approval, submission of matter to Advisory Board, consideration by it and then consideration of report of Advisory Board by State Government are accomplished within the stipulated time and detention order has been confirmed on 29.01.2016.

Though consideration of objection raised by the petitioner on 23.12.2015 does not figure in para 3 of this reply, in para 2, there is specific reference to this representation and it is mentioned therein that representation dated 23.12.2015 was received by the Section Officer on 12.01.2016 and immediately remarks were called for on the very same day and the detaining authority submitted those remarks on 21.01.2016. The same were placed before the Joint Secretary of the State Government and were forwarded to the Additional Chief Secretary (Home). The Additional Chief Secretary (Home) looked into it and on 22.01.2016 rejected it. This rejection was communicated to the detenu vide communication of the same date. This reply affidavit is served upon the petitioner on 27.10.2016 and there is no counter to it. These developments, therefore, are not in dispute. As such, we find that time schedule mandated in the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons and Video Pirates Act, 1981, has been fully adhered to.

Insofar as the grounds which prompted detaining authority to order detention, relevant consideration is contained in para 4 up to para 10. Para 10 is culmination of the process of consideration. Past criminal record under Indian Penal Code as also preventive action under Criminal Procedure Code has been mentioned in paras 4 & 5. The recent crimes indulged into in the year 2015 appear in paras 8.1, 8.2 and 8.3. There, crimes looked into are dated 17.06.2015, 19.09.2015 and 24.09.2015. After this, in para 9.1, statement of in camera witness 'A' in relation to incidence which has taken place in the third week of October 2015 at about 8.30 PM has been evaluated. In para 9.2, the statement of in camera witness 'B' has been looked into. The perusal of these paras reveal that the events spoken of by these persons are different. We, therefore, do not find any merit in the contention that these witnesses are procured and ushered only to support the order of detention.

The judgment of the Hon'ble Apex Court in the case of *Rekha vs. State of Tamil Nadu through Secretary to Government & Anr.*, (supra), particularly paras 21, 29, 30, up to 33 and 39 show that personal liberty protected under Article 21 is sacrosanct and it can be taken away as per law. The Hon'ble Apex Court has found that if the situation can be dealt with by taking recourse to ordinary law, preventive detention is unwarranted.

The judgment in the case of *Munagala Yadamma vs. State of Andhra Pradesh & Ors.*, (supra), again reiterates the same view. In later judgment, the offences alleged were

only under Andhra Pradesh Prohibition Act.

Here, the offences looked into are under the provisions of Indian Penal Code. The offences allegedly committed in 2015 have got live link and statements of two in camera witnesses also support the findings that because of terror spread, the witnesses are not coming forward to depose against the petitioner. Thus, the situation could not have been dealt with under any other law.

In this situation, the process of reaching subjective satisfaction in para 10 cannot be faulted with. No case, therefore, is made out warranting interference. Criminal Writ Petition is, therefore, dismissed. No order as to costs.

JUDGE

JUDGE

*GS.