

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.3732 OF 2019**

Pariga Bansi More
Aged 60 years, Occ : Housewife,
Indian Inhabitant of Mumbai,
Wife of Detenu – Ramesh @ Anna
Viraswami Naidu),
Residing at Ramanmama Zopadpatti,
In front of Plot No.31, Bainganwadi,
Govandi, Mumbai – 400 043.

...Petitioner

Vs.

1. The Senior Inspector of Police
Shivaji Nagar Police Station, Mumbai.

2. The Asst. Commissioner of Police,
Deonar Division, Mumbai.

3. Commissioner of Police
Brihan Mumbai, Mumbai.

4. Deputy Secretary (In-charge),
Home Department (Special),
Government of Maharashtra,
Mantralaya, Mumbai.

5. State of Maharashtra.

...Respondents

Mr. S. Pathak, advocate for the petitioner.
Mr. J.P. Yagnik, APP for the respondents-State.

**CORAM : S.S. SHINDE &
N.B. SURYAWANSHI, JJ.**

JUDGMENT RESERVED ON : 16TH OCTOBER, 2019.

JUDGMENT PRONOUNCED ON : 4TH NOVEMBER, 2019.

JUDGMENT : (Per N.B. SURYAWANSHI, J.)

. By this Petition, the petitioner challenges the detention order passed by the Commissioner of Police, Brihan Mumbai dated 19th March, 2019, under 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 “the said Act”).

2. This court granted Rule in the matter on 25th July, 2019. Rule is made returnable and with the consent of both the parties, the matter is heard finally.

3. Perused the original record of the matter, which was made available to us by the learned APP, with the assistance of the learned counsel for the petitioner and the learned APP.

4. The learned counsel for the petitioner pressed into service the grounds (B), (C), (D) and (E) to assail the detention order, which read as follows :-

(B) That the respondent No. 3 in paragraph-6 of Exh-A (supra) has held that the Detenu is selling drugs, whereas from a Table-A, Table-B and the F.I.R. No.571 of 2018 registered at Shivaji Nagar Police Station none of the charges of selling drugs has been spelt out. This demonstrates lack of application of mind on the part of detaining authority.

(C) That the Respondent No.3 has failed to consider the very fact that though the Respondent No.1 has furnished Table-A and Table-B in order to demonstrate the registration of F.I.R., however, these F.I.R.'s have not been filed or enclosed by Respondent No.1 and 2 to the charge-sheet Exh-G (supra). Therefore, there is a patent illegality order of the detaining authority.

(D) That the Detenu was released on bail by learned Magistrate in F.I.R. No.571 of 2018 on 21/12/2018, however, the said bail was availed on 22/12/2018 and it is on 22/12/2018 that the in-camera statement of the Witness-A has been recorded by Shivaji Nagar Police Station, which casts aspersions upon legality of the said in-camera statement.

(E) That the Respondent No.2 has not carried out proper verification of the in-camera statement of the Witness-A and Witness-B, therefore there is a clear cut illegality in the order of the Respondent No.4 Exh-A (supra), with respect to recording of verification.

5. It is the case of the petitioner that the Detenu was never charged for the offences punishable under The Narcotic Drugs and Psychotropic Substances Act, 1985, however the detaining authority has taken into consideration the offences under the provisions of that Act, while passing the impugned order, which reflects lack of application of mind on the part of the detaining authority.

6. The learned counsel further argues that the Detenu was given the list of documents alongwith documents on 20th March, 2019, whereas impugned order is passed on 19th March, 2019. This also spels out non-application of mind on the part of the respondent No.3.

7. It is further argued that the police authorities went to the house of witness-A to record his statement. Thus, he was invited by

the police authorities to give statement. Before the Assistant Commissioner, witnesses-A and B have not narrated the statement given by them. The Assistant Commissioner read out the in-camera statement to the witnesses in Marathi and asked them whether the same is true and correct. On this ground also the impugned order is vitiated.

8. It is also argued that the detention order was confirmed on 11th April, 2019, however it was served on the Detenu only on 24th April, 2019. Thus, there is inordinate delay. Section 8 of the said Act mandates that within five days, the detention order has to be served.

9. The learned APP placed reliance on paragraph 8 of the grounds of detention and also paragraphs 9 and 10 to argue that the Detenu's past history was only considered and subjective satisfaction of detaining authority is reflected in the detention order. He further states that all the documents were given to the Detenu which is part of record, viz., Exhibit 'G' to the Petition. It is further stated that the detention order was passed on 19th March, 2019 by the detaining authority, and the same alongwith the relevant

documents was served on the Detenu on 20th March, 2019. Hence, there is no substance in the argument of the learned counsel for the petitioner that in terms of section 8 of the said Act, the detention order was not served in time on the Detenu.

10. The learned APP points out that the Government has confirmed the detention order on 11th April, 2019, which was served on the Detenu on 24th April, 2019. Thus, there is no substance in the argument of the petitioner that in terms of section 8, the detention order was not served in time. It is further argued that the Detenu was produced before the Advisory Board on 4th April, 2019 and on 11th April, 2019, the Government of Maharashtra, after considering the opinion/report of the Advisory Board, confirmed the detention order. Since, in between, there were many public holidays on 13th April, 2019, 14th April, 2019, 17th April, 2019, 19th April, 2019 and 21st April, 2019 on account of Saturday, Sunday, Mahavir Jayanti, Good Friday and Sunday, respectively, the confirmation of detention order was communicated to the Detenu in jail on 26th April, 2019. Therefore, there cannot be said to be delay in the same. Hence, the learned APP prays for dismissal of the Petition.

11. The contention of the petitioner that the impugned order is vitiated as the Detenu is alleged to have been selling the drugs, cannot be accepted. The offence at C.R. No.462 of 2014 is registered against the Detenu at Shivaji Nagar Police Station, under section 328 of the IPC r/w sections 18(A), 27(B), 28 of the Drugs & Cosmetic Act r/w section 37(1)(A) r/w section 135 of the Maharashtra Police Act. The detaining authority has taken the gist of activities of the Detenu in Table-A as a background and the same does not form ground of detention, as is clarified by the detaining authority in its affidavit-in-reply.

12. The next argument of the petitioner that the FIR of the offences mentioned in Table-A and Table-B of the grounds of detention have not been supplied and/or enclosed by the respondents in the list of documents supplied to the Detenu, which is placed on record at Exhibit 'G'. It is necessary to mention here that the Detenu was supplied index alongwith copies of the documents mentioned in the same, on which the detaining authority relied while passing the detention order. Since the offences

mentioned in Table-A and Table-B were considered only as a background, the non-furnishing of the said FIR copies to the Detenu cannot be said to be fatal.

13. There is no substance in the ground raised by the petitioner that the Detenu was released on bail on 22nd December, 2018 and on the same day in-camera statement of witness-A is recorded and on that ground the in-camera statement is doubtful. The detaining authority, taking into consideration the criminal tendencies of the Detenu was compelled to take stringent and preventive action against the Detenu, so as to prevent him from further indulging in criminal activities, the detaining authority has conducted confidential inquiries and recorded in-camera statements of the witnesses. The detaining authority was alive to the fact that the Detenu was likely to be released in view of the bail order passed by the Magistrate on 21st December, 2018. Merely, because the statement was recorded on the same day, on which the Detenu availed bail, that by itself does not cast any doubt on the in-camera statement of witness-A. The said ground raised by the petitioner is devoid of any substance.

14. So far as the verification of the in-camera statements by the Assistant Commissioner of Police is concerned, we have perused the verification recorded by the Assistant Commissioner of Police. The Assistant Commissioner of Police has read over the statements of the in-camera witnesses to them and has further made inquiries with the said in-camera witnesses. No fault can be found with the verification of the in-camera statements on the part of the Assistant Commissioner of Police, and hence, we are unable to accept the said contention of the petitioner.

15. The detaining authority has recorded its subjective satisfaction, considering the modus operandi, criminal tendencies and inclinations reflected from the offences referred in the grounds of detention. The detaining authority was justified in coming to the conclusion that the Detenu is likely to continue the criminal and dangerous activities in future. While recording subjective satisfaction that with a view to prevent the Detenu from acting in any manner prejudicial to the maintenance of public order, the Detenu is required to be detained, the detaining authority has taken into consideration

the criminal record, the intensity of criminal activities and has rightly come to the conclusion that the Detenu is a 'dangerous person' and the Detenu being free at large is prejudicial to the maintenance of public order in the city and the normal laws are just not sufficient to curb the criminal and dangerous activities of the Detenu, as the witnesses are unwilling to come forward and depose against him.

16. In view of the discussion made hereinabove, we find no merit in the challenge raised by the petitioner. Hence, the following order :-

ORDER

- (i) Criminal Writ Petition is dismissed.
- (ii) Rule is discharged, with no order as to costs.

(N.B. SURYAWANSHI, J.)

(S.S. SHINDE, J.)