

ANANT SAKHARAM RAUT & ORS.  
v.  
STATE OF MAHARASHTRA AND ANR. ETC.

NOVEMBER 14, 1986

[R.S. PATHAK AND V. KHALID, JJ.]

*National Security Act 1980, s. 3(2)—Detention Order—Order not mentioning that detenu was an under-Trial prisoner, arrested in three cases & released on bail—Clear indication of non-application of mind by the detaining authority—Detention order quashed.*

The petitioner-detenu was detained pursuant to an order of detention passed under s. 3(2) of the National Security Act 1980. The detention was based on three incidents in respect of which criminal Cases were already pending against the petitioner. Before the detention order was passed, he had moved applications for bail and was released on three successive days in the three cases. The detention order did not mention the fact that the detenu had made application for bail in the three criminal cases relating to the aforesaid incidents and was enlarged on bail. The petitioner moved the High Courts for quashing the order of detention. The High Court dismissed the petition.

The petitioner in special leave petition against the judgment of the High Court and his wife in a Writ Petition under Art. 32 of the Constitution prayed for quashing the aforesaid order of detention on the ground that there was clear indication of non-application of mind by the detaining authority when it passed the detention order.

Allowing the petitions,

**HELD:** (1) This is not a fit case to resort to preventive detention. As there was clear non-application of mind on the part of the detaining authority, the judgment of the High Court under appeal is set aside and the order of detention is quashed and it is directed that the petitioner be released forthwith. [223E-G]

(2) There is absolutely no mention in the order about the fact that the petitioner was an under-trial prisoner, that he was arrested in connection with the three cases, that applications for bail were pending and that he was released on three successive days in the three cases. This indicates a total absence of application of mind on the part of detaining

**A authority while passing the order of detention. [223C]**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 575 of 1986.

**B** From the Judgment and Order dated 31.3.1986 of the Bombay High Court in CrI. W.P. No. 153 of 1986.

M.S. Gupte, Rajendra Desai and V.B. Joshi for the Appellant/Petitioner.

**C** S.V. Deshpande, A.M. Khanwilkar and A.S. Bhasme for the Respondents.

The Judgment of the Court was delivered by

**D** **KHALID, J.** The same questions of law and facts are involved in these two cases. One is a Criminal Writ Petition under Article 32 filed by the detenué's wife and the other a Special Leave Petition filed by him against the Judgment of the Bombay High Court rejecting his plea to quash the order of detention. Special Leave granted. Both are being disposed of by this common Judgment. We will refer to the detenué as the petitioner in this Judgment.

**E** The petitioner was detained pursuant to an order of detention dated 15th January, 1986, issued by the Commissioner of Police, Bombay who is respondent No. 2 herein, under Section 3(2) of the National Security Act, 1980. The grounds of detention are given in Annexure-C. The detention is based on three incidents; one on 16-9-1985, the other on 1-12-1985 and the third on 25-12-1985; the offences involved in the three cases being 324 & 336 I.P.C., 324 & 506(ii) I.P.C. and 452 I.P.C. respectively. There are three cases pending in respect of these three incidents.

**C** The order of detention discloses that the people within the jurisdiction of Bandra Police Station in Greater Bombay are experiencing a sense of insecurity and fear to their lives due to the petitioner's activities which are "prejudicial to the maintenance of public order in the said localities and areas."

**H** From the materials placed before us we find that the first two incidents involve the same person between whom and the petitioner there appears to be some enmity. The third incident relates to some

other person. The petitioner was an under trial prisoner at the time the detention order was made. A

We do not think it necessary to go into all the grounds urged before us by the petitioner's counsel in support of his prayer to quash the order of detention. The one contention strongly pressed before us by the petitioner's counsel is that the detaining authority was not made aware at the time the detention order was made that the detenu had moved applications for bail in the three pending cases and that he was enlarged on bail on 13-1-1986, 14-1-1986 & 15-1-1986. We have gone through the detention order carefully. There is absolutely no mention in the order about the fact that the petitioner was an under trial prisoner, that he was arrested in connection with the three cases, that applications for bail were pending and that he was released on three successive days in the three cases. This indicates a total absence of application of mind on the part of detaining authority while passing the order of detention. B C

In our view this is the short manner in which the two cases can be disposed of. If the petitioner is found disturbing law and order or misusing the bail granted to him, the authorities would be at liberty to move the appropriate Court to get the bail orders cancelled. One does not know how the detaining authority would have acted if he was made aware of the above details. D E

We are not satisfied that this is a fit case to resort to preventive detention. We refrain from referring to the other grounds urged before us and from examining them. The petitioner is entitled to succeed on the first ground. F

We hold that there was clear non-application of mind on the part of the detaining authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result we set aside the Judgment of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner be released forthwith. The Appeal and the Writ Petition are allowed without any order as to costs. G

M.L.A.

Appeal & Petition allowed. H