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HASAN KHAN IBNE HAIDER KHAN

v.

R.H. MENDNOCA AND ORS.

MARCH 14, 2000

B

[S. RAJENDRA BABU AND S.N. PHUKAN, JJ.]

Maharashtra Prevention of Dangerous Activities of Slum-lords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 : Section 3(1).

C

Preventive detention—Detenu—Breach of public order by—Detention order—Detenu a notorious goonda of locality—Extorting money from residents—Threat and assault to people—Held activities of detenu affected even tempo of life affecting public order—Detention order held valid—Held on facts there was no undue delay in passing the impugned order.

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The appellant was detained under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slum-lords, Bootleggers, Drug offenders and Dangerous Persons Act, 1981. The detention order was passed with a view to preventing the appellant from acting in any manner prejudicial to the maintenance of public order. Gist of statement of witnesses recorded and stated in the grounds of detention revealed that the

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appellant was a notorious goonda of the locality. He alongwith his associates armed with deadly weapons used to collect money from the residents and assaulted those who refused to pay. Because of the fear of the appellant none dared either to help the victims or inform the police. The detention order was unsuccessfully challenged before the Bombay High Court.

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In appeal to this Court it was, contended for the appellant that (i) the activities of the detenu constituted breach of law and order and not public order; (ii) there was delay in passing the detention order.

Dismissing the appeal, this Court

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HELD : 1. The High Court rightly dismissed the petition of the appellant. The appellant extorted money from businessmen and also gave threats to the people at the public place and thereby undoubtedly affected the even tempo of life of the society. Such activities cannot be said to be mere disturbance of law and order. The activities of the appellant disturbed the life of the people of the area. There is no reason to interfere

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with the order of the High Court. [275-F; C; A]

Amanulla Khan Kudeatalla Khan Pathan v. State of Gujarat & Ors., [1999] 5 SCC 613, relied on.

Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police, [1995] 3 SCC 237, referred to.

2. In this case the inquiry was completed during the last part of February at the level of Deputy Commissioner of Police and the final order was passed on 12.4.1999. It cannot be said that there was undue delay in passing the order and action was being taken in a routine manner.

[275-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 286 of 2000.

From the Judgment and Order dated 23.8.99 of the Bombay High Court in W.P. No. 590 of 1999.

P.C. Jain, Aman Vachher for M/s. K.L. Mehta & Co. for the Appellant.

H.W. Dhabe and S.V. Deshpande for the Respondents.

The Judgment of the Court was delivered by

PHUKAN, J. Leave granted.

The appellant challenged the order of detention dated 12 the April, 1999, passed by the Commissioner of Police, Brihan Mumbai under sub-section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 read with Government Order, Home Department (Special) dated 30th March, 1999, detaining the appellant with a view to prevent him from acting in any manner prejudicial to the maintenance of public order before the High Court of Bombay by filing a writ petition which was dismissed and hence this appeal.

Before the High Court, the detention order was challenged on two grounds, namely (1) the documents supplied to the appellant were illegible and (2) if the alleged prejudicial activities of the detenu were accepted on their face value, they would demonstrate a breach of law and order and not public order. The High Court rejected both the grounds. Before this Court only ground No. 2 has been canvassed.

A We may refer to some of the grounds of detention which require out consideration in view of the contentions raised on behalf of the appellant.

B In the grounds of detention, reference had been made to a criminal proceeding registered against the appellant and his associates with reference to occurrence which took place on 9.12.98. Harishchandra Gupta went near his place of business and noticed that his younger brother was being assaulted by the appellant and his associates and when he rushed to see his brother, appellant and his associates assaulted him and when Harishchandra Gupta and his brother sought for help, none dared to come forward for their help.

C Gist of the statements of witnesses "A and B" recorded have been stated in the grounds of detention and their entire statement have also been produced before this Court. From the statement of witness "A", we find that the appellant is a notorious goonda of the locality and with his associates moved about armed with deadly weapons and collected money from the residents and assaulted those who refused to pay. The appellant with his associates went to the fruit stall of this witness and took out a chopper and started threatening him by using filthy language and on seeing the incident the nearby vegetable and fruit vendors started running away with their baskets. The passerby also ran away to fright. From the statement of witness "B", we find that the appellant and his associates used to collect money from the businessmen on threats of assault and out of fear of the appellant none could dare to inform the police.

F This Court in *Amanulla Khan Kudeatalla Khan Pathan v. State of Gujarat and Ors.*, [1999] 5 SCC 613 considered the expression "acting in any manner prejudicial to the maintenance of public order" and referring to earlier decision of this Court in *Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police*, [1995] 3 SCC 237 held that the fallout and the extent and reach of the alleged activities must be of such a nature that they travel beyond capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a section of society and it is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to breach of "public order".

H Mr. Jain, learned senior counsel for the appellant has urged that the above activities of the appellant were stray incidents and as such did not disturb the public order.

Applying the above ratio to the grounds of detention, we find that the appellant extorted money from businessmen and also gave threats to the people the public place and thereby undoubtedly affected the even tempo of life of the society, therefore, such activities cannot be said to be mere disturbance of law and order. The contention of Mr. Jain has no force.

Mr. Jain has further urged that the criminal proceeding which was started on the complaint of Harishchandra Gupta was under Sections 341, 323, 334, 504, 506(II) and 34 IPC and all these Sections were bailable and in fact bail was granted and, therefore, this act cannot be said to disturb public order. From the grounds of detention, we find that when Harishchandra Gupta and his brother sought for help, none came forward for their help out of fear of the appellant and this fact would show that the activities of the appellant disturbed the life of the people of the area.

In the grounds of detention, reference was made to the conviction of the appellant under MRTP Act. According to Mr. Jain, this cannot be a ground for detention of the appellant. Mr. Dhabe, learned senior counsel for the respondent, has rightly submitted that reference was made to the above conviction only to show the past criminal history of the appellant.

Mr. Jain has further submitted that there was delay in passing the detention order. We find that the inquiry was completed during the last part of February at the level of Deputy Commissioner of Police and the final order was passed on 12.4.1999. It cannot be said that there was undue delay and action was being taken in a routine manner, as after completion of inquiry matter had to be examined at various levels and finally the orders were passed by the Commissioner.

For the reasons stated above we hold that the High Court rightly dismissed the petition and we find no reason to interfere with the order of the High Court.

The appeal is dismissed.

T.N.A.

Appeal dismissed.