

A RUSHIKESH TANAJI BHOITE
v.
STATE OF MAHARASHTRA & ORS.
(Criminal Appeal No.24 of 2012)

JANUARY 4, 2012

B [R.M. LODHA AND H.L. GOKHALE, JJ.]

Preventive detention – Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 – s.2(b-1) and s.3(1) – Detention order – Legality of – Challenged on ground of non-placing and non-consideration of bail order in favour of the dentenu – Held: In a case where detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail must be placed before the detaining authority to enable him to reach at the proper satisfaction – In the instant case, since the bail order granted in favour of the dentenu on August 15, 2010 in a criminal case registered on August 14, 2010 and referred to in the grounds of detention was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, the detention order dated 10th January, 2011 was rendered invalid – The subjective decision of the detaining authority was vitiated – Moreover, none of the criminal cases, except the offence registered on August 14, 2010, referred to in the grounds for detention, was proximate to the order of detention – Order of detention accordingly set aside.

On January 10, 2011, the District Magistrate, in exercise of the powers conferred upon him by subsection (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 and the Government Order Home Department (Special)

Mantralaya, Mumbai No. DDS 1210/Cr-207/SPL-3(B) dated 31.12.2010 directed the appellant's father to be detained under the provisions of the 1981 Act. This order was followed by another order of the same date directing that appellant's father shall be detained in Central Prison, Nagpur. The legality of the detention order dated January 10, 2011 was challenged by the appellant in the High Court. The Division Bench of that Court dismissed the Criminal Writ Petition filed by the appellant. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. In pursuance of Section 8 of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981, the detenu was supplied with the grounds for detention setting out therein particulars of offences and the action taken against him. The offences registered against the detenu way back in the year 1980 upto the last offence registered on August 14, 2010 have been noted by the detaining authority in reaching at the satisfaction that the detenu's activities were prejudicial to the maintenance of public order and he was dangerous person within the meaning of Section 2 (b-1) of the 1981 Act. The last criminal case referred to in the grounds is against the detenu for the offences under Sections 143, 147, 323, 504, 506, 353, 427 of IPC read with Section 7 of Criminal Law Amendment Act read with Section 37 (1)(3) for breach of Section 135 of the Bombay Police Act, 1951, registered at Police Station on August 14, 2010. [Para 6] [644-F-H; 645-A]

1.2. The admitted position is that detenu was arrested in connection with the above crime on August 15, 2010 and he was released on bail by the Judicial Magistrate, 1st Class, on that very day. One of the conditions imposed in the Order of Bail was that the detenu would appear at

A Police Station on every Monday between 10.00 a.m. to 12
O'Clock till the charge-sheet was filed. Later on, the
detenu made an application before the Judicial
Magistrate, 1st Class, seeking relaxation of the above
condition. That application was allowed and the above
B condition was relaxed by the concerned Judicial
Magistrate on January 4, 2011. [Para 7] [645-B-C]

1.3. It would be, thus, seen that the order releasing
the detenu on bail in the crime registered on August 14,
2010 and the order relaxing the bail condition were
C passed by the Judicial Magistrate, 1st Class, Dharangaon
much before the issuance of detention order dated
January 10, 2011. However, the detention order or the
grounds supplied to the detenu do not show that the
detaining authority was aware of the bail order granted
D in favour of the dentenu on August 15, 2010. [Para 8] [645-
D-E]

2.1. In a case where detenu is released on bail and
is enjoying his freedom under the order of the court at
E the time of passing the order of detention, then such order
of bail must be placed before the detaining authority to
enable him to reach at the proper satisfaction. [Para 9]
[645-F]

2.2. In the present case, since the order of bail dated
F August 15, 2010 was neither placed before the detaining
authority at the time of passing the order of detention nor
the detaining authority was aware of the order of bail, the
detention order is rendered invalid. Non-placing and non-
consideration of the material as vital as the bail order has
G vitiated the subjective decision of the detaining authority.
[Para 10] [645-G-H; 646-A]

2.3. The other offences referred to in the order of
detention suffer from remoteness and want of proximity
H to the order of detention. None of the criminal cases,

except the offence registered on August 14, 2010, referred to in the grounds for detention, can be said to be proximate to the order of detention. [Para 14] [647-C] A

2.4. In view of the above, it is clear that the order of detention dated January 10, 2011 cannot be sustained and has to be set aside. [Para 15] [647-D] B

Rekha v. State of Tamil Nadu Through Secretary to Government and Another (2011) 5 SCC 244 and Vijay Narain Singh vs. State of Bihar and Others (1984) 3 SCC 14 – relied on. C

Case Law Reference:

(2011) 5 SCC 244 relied on Para 11

(1984) 3 SCC 14 relied on Para 13 D

CRIMINAL APPELLAT ORIGINAL JURISDICTION :
Criminal Appeal No. 24 of 2012.

From the Judgment and Order dated 13.05.2011 of the High Court of Bombay at Aurangabad in Criminal W.P. No. 123 of 2011. E

Dr. A.M. Singhvi and Jayant Bhushan, Shivaji M. Jadhav, Anish R. Shah, Jayant Bhatt, Nishant R Katneshawarkar, Shankar Chillarge, Asha Gopalan Nair, Debasis Misra and Suhas Kadam for the appearing parties. F

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Leave granted.

2. We have heard Dr. A.M. Singhvi, learned senior counsel for the appellant, Mr. Shankar Chillarge, learned counsel for the State of Maharashtra and Mr. Suhas Kadam, learned counsel for the respondent no. 4. G

3. On January 10, 2011, the District Magistrate, Jalgaon in exercise of the powers conferred upon him by sub-section H

A (1) of Section 3 of the Maharashtra Prevention of Dangerous
 Activities of Slumlords, Bootleggers, Drug Offenders and
 Dangerous Persons Act, 1981 (for short 'the 1981 Act') and
 the Government Order Home Department (Special) Mantralaya,
 Mumbai No. DDS 1210/Cr-207/SPL-3(B) dated 31.12.2010
 B directed Tanaji Keshavrao Bhoite resident of Kishavkunj, Bhoite
 Nagar, Jalgaon to be detained under the provisions of the 1981
 Act. This order was followed by another order of the same date
 directing that Tanaji Keshavrao Bhoite shall be detained in
 Central Prison, Nagpur.

C 4. The legality of the detention order dated January 10,
 2011 was challenged by the present appellant, who is son of
 the detenu, in the Bombay High Court at Aurangabad Bench,
 Aurangabad. The Division Bench of that Court dismissed the
 Criminal Writ Petition filed by the appellant on May 13, 2011.
 D It is from this order that the present appeal, by special leave,
 has arisen.

5. Dr. A.M. Singhvi, learned senior counsel for the
 appellant urged diverse grounds in challenging the order of the
 E High Court. We do not want to deal with all the grounds urged
 by Dr. A.M. Singhvi as in our view, appeal deserves to be
 allowed on the short ground that we indicate hereinafter.

6. In pursuance of Section 8 of 1981 Act, the detenu was
 supplied with the grounds for detention setting out therein
 F particulars of offences and the action taken against him. The
 offences registered against the detenu way back in the year
 1980 upto the last offence registered on August 14, 2010 have
 been noted by the detaining authority in reaching at the
 satisfaction that the detenu's activities were prejudicial to the
 G maintenance of public order and he was dangerous person
 within the meaning of Section 2 (b-1) of the 1981 Act. The last
 criminal case referred to in the grounds is against the detenu
 for the offences under Sections 143, 147, 323, 504, 506, 353,
 427 of the Indian Penal Code read with Section 7 of Criminal
 H Law Amendment Act read with Section 37 (1)(3) for breach of

Section 135 of the Bombay Police Act, 1951, registered at A
Dharangaon Police Station on August 14, 2010.

7. The admitted position is that detenu was arrested in
connection with the above crime on August 15, 2010 and he
was released on bail by the Judicial Magistrate, 1st Class, B
Dharangaon on that very day. One of the conditions imposed
in the Order of Bail was that the detenu would appear at
Dharangaon Police Station on every Monday between 10.00
a.m. to 12 O'Clock till the charge-sheet was filed. Later on, the
detenu made an application before the Judicial Magistrate, 1st C
Class, Dharangaon seeking relaxation of the above condition.
That application was allowed and the above condition was
relaxed by the concerned Judicial Magistrate on January 4,
2011.

8. It would be, thus, seen that the order releasing the D
detenu on bail in the crime registered on August 14, 2010 and
the order relaxing the bail condition were passed by the
Judicial Magistrate, 1st Class, Dharangaon much before the
issuance of detention order dated January 10, 2011. However,
the detention order or the grounds supplied to the detenu do E
not show that the detaining authority was aware of the bail order
granted in favour of the dentenu on August 15, 2010.

9. In a case where detenu is released on bail and is
enjoying his freedom under the order of the court at the time of
passing the order of detention, then such order of bail, in our F
opinion, must be placed before the detaining authority to enable
him to reach at the proper satisfaction.

10. In the present case, since the order of bail dated August
15, 2010 was neither placed before the detaining authority at G
the time of passing the order of detention nor the detaining
authority was aware of the order of bail, in our view, the
detention order is rendered invalid. We cannot attempt to
assess in what manner and to what extent consideration of the
order granting bail to the detenu would have effected the H

A satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority.

B 11. A three Judge Bench of this Court in the case of *Rekha vs. State of Tamil Nadu Through Secretary to Government and Another*, reported in (2011) 5 SCC 244, decided recently held as under:

C *"In this connection, it may be noted that there is nothing on the record to indicate whether the detaining authority was aware of the fact that the bail application of the accused was pending on the date when the detention order was passed on 08.04.2010. On the other hand, in para 4 of the grounds of detention it is mentioned that*
 D *"Thiru. Ramakrishnan is in remand in crime No. 132/2010 and he has not moved any bail application so far". Thus, the detaining authority was not even aware whether a bail application of the accused was pending when he passed the detention order, rather the detaining authority*
 E *passed the detention order under the impression that no bail application of the accused was pending but in similar cases bail had been granted by the courts. We have already stated above that no details of the alleged similar cases has been given. Hence, the detention order in*
 F *question cannot be sustained."*

G 12. In the case of *Rekha* (supra), the detention order was held to be bad as the detaining authority was not aware of the fact that the bail application of the detenu was pending on the date when the detention order was passed. In the present case, the detenu was already released on bail but the detaining authority was not aware of the fact of grant of bail to the detenu.

H 13. A reference to the decision of the majority view in the case of *Vijay Narain Singh vs. State of Bihar and Others*, reported in (1984) 3 SCC 14, may not be out of the context. In

paragraph 32 of the Judgment, Venkataramiah, J. (as His Lordship then was) speaking for the majority observed as follows:

“When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.”

14. The other offences referred to in the order of detention suffer from remoteness and want of proximity to the order of detention. None of the criminal cases, except the offence registered on August 14, 2010, referred to in the grounds for detention, can be said to be proximate to the order of detention.

15. In view of the above, we are satisfied that the order of detention dated January 10, 2011 cannot be sustained and has to be set aside. We order accordingly.

16. Appeal is allowed and the order dated May 13, 2011 passed by the Bombay High Court, Aurangabad Bench, Aurangabad, is set aside. The detenu – Tanaji Keshavrao Bhoite - is ordered to be released forthwith, if not required in any other case.

17. In light of the above order, no order is required to be passed on the Application for Impleadment and the same stands disposed of accordingly.

B.B.B.

Appeal allowed.