



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.545 OF 2009

Shri Pawan Kharetilal Arora,
Age : 35 years, residing at
C 6/6/2:1, Rajanigandha
Apartment, Sector No.5,
C.B.D. Navi Mumbai. ..Petitioner.

Versus

1. Shri Ramrao Wagh,
Commissioner of Police
Navi Mumbai.
2. Dy. Commissioner of Police,
Crime Branch, Navi Mumbai.
3. Sr.Inspector of Police,
A.P.M.C. Police Station,
Navi Mumbai.
4. The Addl. Chief Secretary
(Approving & Confirming
Authority), Home Department
(Spl.), Mantralaya, Mumbai.
5. The State of Maharashtra,
(Through the Secretary,
Home Department, Mantralaya,
Mumbai. ..Respondents.

....
Mr.U.N. Tripathi, Advocate for the Petitioner.

Mr.S.R. Borulkar, Public Prosecutor, for the State.

Mr.Ramrao Wagh, respondent No.1 present in-person.
....

CORAM : SMT.RANJANA DESAI AND
MR.R.G.KETKAR, JJ.

DATED : 17TH APRIL,2009.

ORAL JUDGMENT (PER SMT.RANJANA DESAI,J.)

. Rule. Respondents waive service. By consent

of the parties taken up for hearing forthwith.

1. Against the petitioner, the Commissioner of Police, Navi Mumbai respondent No.1 herein issued an order of detention under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 (for short "MPDA"). The said order was dated 29.2.2008. It was issued with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order. Pursuant to this order, the petitioner was detained on 16.5.2008. The petitioner filed Writ Petition No.1220 of 2008 challenging the said detention order. The Commissioner of Police, Navi Mumbai (the detaining authority for convenience) filed an affidavit-in-reply to the petition. The petition was finally heard by the Division Bench of this Court (Bilal Nazki & A.V.Mohta,JJ) on 23.1.2009. By a detailed order of the same day, the Division Bench quashed and set-aside the detention order.

2. The reasons which persuaded the Division Bench to set-aside the detention order are of great importance to this Petition. In the opening paragraph of the grounds of detention, the detaining

authority stated as under :

"I hereby communicate to you the grounds mentioned in paragraph Nos.4 to 8(2) below on which the detention order has been made by me on this day against you under sub section (1) of section 3 of the said Act. Copies of documents placed before me are enclosed except the names and identifying particulars of the witness/victim in connection with the grounds mentioned in paragraph No.8 to 8(2) below."

3. The Division Bench found that out of 28 cases which were referred to in paragraph No.4(a), the petitioner was not concerned with 1 to 24 cases. The detaining authority had towards the end of paragraph No.4(a) of the grounds of detention stated that in all the cases referred to in paragraph No.4(a) after investigation the police filed charge-sheet against the petitioner and those cases are pending in the Court and the petitioner has been granted bail facility in all the cases. So far as the 24 cases with which the petitioner is not concerned, this statement is obviously incorrect.

4. A point was raised in this connection in the

Writ Petition filed by the petitioner challenging the order of detention. In his reply, the detaining authority stated that paragraph 4(a) to 5 were by way of preamble to the prejudicial activities of the detenu. However, in the same paragraph of the affidavit, the detaining authority stated that the statement made in paragraph 1 of the grounds of detention that the grounds start from paragraph 4 to 8(2) is a typographical mistake. The Division Bench observed that "If the material mentioned in paragraphs 4 to 8(2) was taken as a background material then it could not be a typographical mistake and if it was a typographical mistake, then the material could not have been taken into consideration even as a background material." Thus the affidavit further aggravated the matter. The Division Bench observed that in view of the above, the petitioner has been deprived of his right to make an effective representation and as such the detention cannot be sustained. The detention order was, in the circumstances, quashed and set-aside. Pursuant to this order, the petitioner was released from jail after he had spent nine months in the jail.

5. The present Writ Petition was filed by the Petitioner on 27.2.2009 with following material

prayers :

"(a)

(b)

(c) Respondent No.1, the Commissioner of Police, Navi Mumbai in gross misuse and abuse of powers without proper scrutiny of material facts and documents has mechanically in a casual manner exercised the draconian and extra-ordinary powers conferred upon him under Preventive Detention Law i.e. M.P.D.A. Act, 1981 (Amended-96) and thus, violating the fundamental rights and personal liberties of the Petitioner, be directed to satisfy this Hon'ble Court the bonafide exercise of detention power, failing which the Respondent No.5, the State of Maharashtra be directed to take necessary legal and disciplinary action as per law;

(d) Respondent Nos.2, 3 and 4 who have

also exercised powers in the capacity of Sponsoring Authority, Approving and Confirming Authority in this case in confirming the order of detention negligently without taking due care and caution in discharge of public duties be directed to show their bonafide by filing Affidavit, failing which necessary disciplinary and legal action be taken against them as per law;

- (e) The Petitioner has undergone more than nine months and has suffered physically, mentally and financially under a wrong order with wrong declaration, for which a compensation of Rs.2 lakhs be paid by the detaining authority to the petitioner;

- (f)"

6. Taking note of the grievance made in this petition inter alia that the first Respondent grossly

misused and abused his powers by considering 24 false cases against the petitioner while issuing the order of detention which resulted in illegal detention of the petitioner, the Division Bench (Bilal Nazki & F. M. Reis, JJ) in its interim order dated 1st April, 2009 observed that power of detaining a person under Preventive Detention laws is very very extraordinary power and therefore, it must be used sparingly and with care; an order cannot be passed mechanically and the person cannot be deprived of his cherished right of freedom and liberty at the whims of a Police Officer. The Division Bench issued notice to the respondents. After expressing anguish about the manner in which the detention order was issued, the Division Bench directed that the detaining authority shall not exercise any powers of detaining persons under Preventive Detention law until further orders of this Court.

7. Counter affidavit has been filed, as directed, by the detaining authority. In the affidavit, the detaining authority has inter alia stated that he had not verified the proposal submitted to him and had relied upon his sub-ordinate officer. He has further stated that while issuing the order of detention he had acted in good faith. He has further given an

assurance to this Court that he will take necessary precautions and due care in future. We must also note that the detaining authority is present in Court today and he has tendered an apology to us through Mr.Borulkar learned Public Prosecutor. Mr.Tanaji Dadasaheb Patil, Police Inspector attached to Raigad Security Branch, District - Raigad has filed affidavit on behalf of the Sponsoring Authority. In paragraph-3 he has tendered an unconditional apology and undertaken that such error shall not ever be committed by him in future.

8. Section 16 of the MPDA states that no suit, prosecution or other legal proceeding shall lie against the State Government or any officer or person, for anything done in good faith or intended to be done in pursuance of the MPDA. As already noted in the affidavit, the detaining authority has made it clear that he did not verify the proposal and relied upon his subordinate officers. The petitioner's case is that the detaining authority has misused his powers by relying upon 24 cases in which the petitioner is not involved; that he has displayed total non-application of mind; that he has not discharged his public duties and responsibilities as required by law and his action is careless and

mechanical. No sinister motives are attributed to the detaining authority. Having considered the case in its proper perspective, though we are of the opinion that the detaining authority has committed a serious mistake in relying upon his subordinate officers and has displayed non-application of mind, it is not possible for us to hold that there is a lack of good faith. The unconditional apology tendered by the detaining authority and by the sponsoring authority appears to us to be genuine and, hence, we accept it.

9. In view of the unconditional apology tendered by the detaining authority and in view of the assurance given by him in the affidavit that in future he will take care, we are of the opinion that the interim order passed by the Division Bench restraining him from exercising any powers of detaining persons under the Preventive Detention laws must be vacated and is vacated as such.

10. So far as the prayer made by the petitioner that action may be taken against the erring officers is concerned, a statement is made by the detaining authority in his affidavit that he has already taken action by initiating departmental enquiry against

Tanaji Patil P.I. and Shri Dubal, Senior Police Inspector who were at the relevant time attached to A.P.M.C. Police Station and the enquiries are in progress. In view of this, we do not want to issue any directions in that behalf. We are sure that the enquiries will be conducted fairly and necessary action will be taken in accordance with law.

11. That takes us to the prayer for compensation made by the petitioner. On several occasions, orders of detention are set aside on account of non-application of mind of the detaining authority. Sometimes, there are minor mistake in the grounds of detention or in the affidavit in reply. Minor mistakes have been condoned by courts in some cases (See Tejpal K. Mandot Vs. The Asstt. Secretary, Government of Maharashtra, Home Dept. (Spl.), Mantralaya & others 1983 Mh.L.J. 46). It is not in all cases, where detention orders are set aside on account of non-application of mind to vital material, or on account of mistakes in grounds of detention and in affidavit in reply or on account of some such lacunae, can claim be made by the detenu for compensation. In such cases section 16 of the MPDA would protect the detaining authority. Claims for compensation cannot be raised and decided in every

matter by this court in it's writ jurisdiction.

12. However, facts of this case are gross. This is an exceptional case which shocks judicial conscience. The petitioner was informed that he was involved in 24 cases when he had nothing to do with those cases. A solemn statement was made in the grounds of detention that those cases are pending and that the petitioner was released on bail in those cases. Justification given by the detaining authority in his affidavit in reply for this gross mistake was rejected by the Division Bench and the detention order was set aside on this ground. Pursuant to this order, the petitioner remained in jail for 9 months till it was set aside. According to him during this period he lost his child. If this is true, it is very unfortunate. Mr. Borulkar learned Public Prosecutor submitted that though the petitioner is not involved in the 24 cases mentioned in the grounds of detention, there are several other cases pending against him. Pendency of some other cases do not furnish a ground to the detaining authority to pass an order of detention based on 24 cases with which the petitioner is not concerned. Nothing prevented him from including the correct cases in the grounds of detention and pass a detention order. This is not

a case of a minor error. The instant detention order is singular by reason of the gross nature of mistakes committed in the grounds of detention. The sheer number of wrong cases makes it a unique case. The petitioner has prayed for compensation of Rs.2 lakhs. However, he has not substantiated his claim by producing any material. The peculiar facts of this case persuade us to direct the State Government to pay Rs.10,000/- to the petitioner as compensation. We make it clear however that this order is restricted to it's peculiar facts and circumstances and cannot be interpreted to mean that in every case where the detention order is set aside on account of some flaw in the detention order, or the grounds of detention, or in affidavit in support thereof, the detenu will be entitled to compensation. That would make mockery of Preventive Detention laws. Such attempt must not be allowed to succeed. This order in our opinion should serve as a reminder to various sponsoring authorities and detaining authorities of the heavy responsibility which lies on their heads when they decide to preventively detain a person.

13. Before we close we must state what has been stated very often by courts. Preventive detention is a very drastic measure. Orders of preventive

detention have to be issued with great care and circumspection. A person cannot be deprived of his liberty without trial in a light-hearted manner. The detaining authority cannot abdicate his responsibility of going through the record by relying on his subordinate officers. While placing the proposal before the detaining authority, the sponsoring authority must be extremely careful. It must get the proposal scrutinised by higher officers and legal adviser and then place it before the detaining authority. The detaining authority must independently apply his mind to the proposal and then issue the order of detention. The grounds of detention must reflect his application of mind. The State must also be careful while dealing with detention orders as required by law. We hope and trust that this order of ours is circulated amongst all detaining authorities and sponsoring authorities of the State and in the concerned department of the State so that in future such gross mistakes do not occur.

14. The petition is disposed of in the aforestated terms.

15. Certified copy expedited.

[SMT.RANJANA DESAI , J .]

[MR.R.G.KETKAR , J .]