

Pradeep Nilkanth Paturkar

Vs

S. Ramamurthi and others

Criminal Appeal No. 186 of 1992

(S. R. Pandian, M. Fathima Beevi JJ)

24.03.1992

JUDGMENT

1. Special leave granted.

2. This appeal is preferred by the appellant, Pradeep Nilkanth Paturkar, who is the brother of the detenu, Raju Nilkanth Paturkar, alias Paturkar assailing the correctness of the judgment of the High Court of Bombay rendered in Criminal Writ Petition No. 1093 of 1991 dismissing the writ petition filed by the appellant challenging the validity and legality of the order of detention passed against his brother, the detenu herein.

3. The first respondent, viz, the Commissioner of Police, Greater Bombay in exercise of powers conferred by sub-section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 (hereinafter referred to as 'the Act') read with Govt. Order Home Department (Special) No. DDS /1391/ 1 / SPL-3 (B) dated 26th July 1981 passed the impugned order of detention and directed the detenu to be detained in the Nasik Road Central Prison, Nasik.

4. The detaining authority after reaching his subjective satisfaction on the materials placed before him by the sponsoring authority has passed the order of detention in question on the basis of five cases registered against the detenu for manufacturing and selling illicit liquor and also on the basis of the statements given by witnesses A to E. The five criminal cases registered under the provisions of Bombay Prohibition Act of 1949 relate to the occurrences dated 2-10-90, 11-11-90, 22-11-90, 5-1-91 and 26-2-91. Of the witnesses, witnesses Nos. A and B examined on 26-3-91 speak of the incidents dated 2-10-90 and 27-2-91 respectively. Witnesses Nos. C and D examined on 27-3-91 speak of the incidents dated 4-10-90 and 23-1-91. Witness No. E/lc his statement dated 20-3-91 speaks of an incident dated 16-2-91. It transpires from the grounds of detention that in all the criminal cases registered against the detenu under the provisions of the Bombay Prohibition Act, the detenu has been released on bail on the very same day of his arrest or the registration of the cases.

5. The sponsoring authority after collecting all the materials submitted his proposal on 4-4-91 along with the list of documents and the same was accepted by the detaining authority on 25-7-91 and thereafter the impugned order of detention dated 6-8-91 was passed in pursuance of which the detenu was secured and detained.

6. Mr. Gupta. the learned counsel for the appellant though has raised a number of contentions in the appeal memorandum has pressed only one contention before us, viz. that there was an undue and unreasonable delay in passing the order by the detaining authority and that the delay which stands

unexplained vitiates the impugned order.

7. Admittedly, of the five criminal cases three are of the year 1990 and the remaining two are dated 5-1-91 and 26-2-91. In respect of the five incidents referred to in the grounds of detention, as mentioned above witnesses A to E have been examined in the later part of March 1991 that is long after the detenu has been released on bail in all the five criminal cases.

8. The question for our consideration is as to whether the delay in passing the detention order has vitiated the said order. The High Court before which a similar contention has been raised has negated that contention observing thus:

"The period of four months required by the authorities to pass the order can by no stretch of imagination be tested as unduly long. Though the statements were available in March 1991, the procedure required some time before the powers are exercised. In our judgment, the order of detention does not suffer from the vice of delay."

9. According to Mr. Gupte, the explanation given by the High Court for the delay that the "procedure required sometime before the powers are exercised" is not the explanation offered by the detaining authority and therefore that explanation should not be accepted to the prejudice of the right of the detenu. In support of his submission that the unexplained and undue delay in passing the order vitiates the impugned detention order, he drew our attention to a decision of this Court in T. A. Abdul Rahinan v. State of Kerala, (1989) 4 SCC 741 (AIR 1990 SC 225) to which one of us (S. Ratnavel Pandian, J.) was a party. In that case after recapitulating the various decisions on this point the following dictum has been laid down (at p. 229 of AIR):

"The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

10. Reference also may be made to Hemlata Kantilal Shah v. State of Maharashtra, (1981)4 SCC 647 : (AIR 1982 SC 8) in which case this Court observed (at p. 13 of AIR):

"Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority."

11. We feel that it is not necessary to refer to all the decisions on this point.

12. Countering the argument of Mr. Gupte, the learned Additional Solicitor General drew our

attention to 'Rajendrakumar Natvarlal Shah v. State of Gujarat, 1988 (Suppl) 1 SCR 287 : (AIR 1988 SC 1255) in which this Court held that the non-explanation of the delay between 2nd February and 28th May, 1987 could not give rise to legitimate inference that the subject of satisfaction arrived by the District Magistrate was not genuine. In the same decision, the learned Judges have pointed out "It all depends on the nature of the acts relied on, grave and deter-mined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation". A perusal of the various decisions of this Court on this legal aspect shows that each case is to be decided on the facts and circumstances appearing in that particular case.

13. Coming to the case on hand, the detention order was passed after 5 months and 8 days from the date of the registration of the last case and more than 4 months from submission of the proposal. What disturbs our mind is that the statements from the witnesses A to E were obtained only after the detenu became successful in getting bail in all the prohibition cases registered against him, that too in the later part of March, 1991. These statements are very much referred to in the grounds of detention and relied upon by the detaining authority along with the registration of the cases under the Act:

14. Under the above circumstances, taking into consideration of the unexplained delay whether short or long especially when the appellant has taken a specific plea of delay, we are constrained to quash the detention order. Accordingly we allow the appeal, set aside the judgment of the High Court and quash the impugned detention order. The detenu is directed to be set at liberty forthwith. Appeal allowed.

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