SUPREME COURT OF INDIA

Rushikesh Tanaji Bhoite

Vs.

State of Maharashtra

(R.M. Lodha and H.L. Gokhale JJ.)

04.01.2012

JUDGMENT

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.

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

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. 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 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 there in 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 the Indian Penal Code 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 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, 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 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 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 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 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 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 affected the 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.

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:

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 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 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 question cannot be sustained.

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.

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.