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SMT. PHULWARI JAGDAMBAPRASAD PATHAK

v

SHRI R.H. MENDONCA AND ORS.

JULY 26, 2000

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[A.P. MISRA AND D.P. MOHAPATRA, JJ.]

Maharashtra prevention of Dangerous Activities of Slumlords, Bootleggers, Drug offenders and Dangerous Persons Act, 1981: Sections 2(a)(iv), 2(b-1) and 3.

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Preventive detention—Dangerous person—Detention order passed against—Validity of—Subjective satisfaction of detaining authority—Judicial review of detention order passed by Police Commissioner—Satisfaction of detaining authority that (i) Detenu was persistently engaged in criminal activities (ii) Had unleashed terror in the locality (iii) victims and witnesses mortally afraid of detenu to make complaint and statements against him—On assurance of anonymity statements made in camera—Such statements not assailed as untrue—Held in such circumstances conclusion arrived at by the detaining authority that detenu was a dangerous person was not vitiated—Detention order held valid.

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Preventive detention—Detention order—Statements of victims and witnesses recorded in camera—Held such statements can form the basis of detention order.

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The Commissioner of Police, Brihan, Mumbai passed an order under Section 3 (1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 detaining the appellant's son. The said detention order was passed with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. In the grounds of detention the detaining authority recorded his satisfaction that the detenu was a dangerous person as he has unleashed a reign of terror and had become a perpetual danger to the society at large in the locality; he was persistently engaged in criminal activities; witnesses and the victims were normally afraid of the detenu to complain and make statements against him openly but on assurance of anonymity they expressed their willingness to make their statements in camera. The detention order

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passed by the Commissioner of Police was confirmed by the State Government. The said order was unsuccessfully challenged before the Bombay High Court. A

In appeal to this Court it was contended on behalf of the petitioner that (1) the order of detention was vitiated as it was based on a single report registered by police; (2) on the materials placed on record the detenu could not be said to be a 'Dangerous person' within the meaning of Section 2(b-1) and therefore could not be detained under the provisions of Section 3 (ii); and (3) statements of victims and witnesses recorded in camera cannot form the basis of a detention order under the Act. B

Dismissing the appeal, the Court C

HELD : 1. The detention order under challenge does not suffer from any infirmity. For consideration of the question whether the appellant could be said to be a dangerous person it is necessary to read the definition of the term in Section 2(b-1) and the provisions of Section 2(a) (iv) regarding the meaning of the term "acting in any manner prejudicial to the maintenance of public order". Under the explanation under Section 2 (a) (iv) it is provided that public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely if any of the activities of any of the persons referred to in the clause directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof, or a grave or widespread danger to life or public health. The deeming clause in the explanation widens the scope of the provision in Section 2(a)(iv). It follows that if a person found to be repeatedly engaged in such activities as mentioned in Section 2(b-1) which affect adversely or are likely to affect adversely the maintenance of public order he can be detained as a dangerous person in exercise of the power under Section 3 of the Act. [694-B-E] D E F

2. Preventive detention measure is harsh, but it becomes necessary in larger interest of society. It is in the nature of a precautionary measure taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken G H

A into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve the power vested in the detaining authority should not be unduly restricted. It is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. Presumably, that is why the Parliament did not make any provision in the Act in that regard

B and left the matter to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed.

[694-H; 695-A-B]

C 3. From the grounds of detention and the papers enclosed with it, copies of which were served on the detenu it is clear that the detaining authority based his subjective satisfaction on a series of contemporaneous incidents in which the detenu was involved. The satisfaction was not based on a single or stray incident. In the in-camera statements separate incidents of criminal activities of the detenu were stated. The assertions are not assailed as untrue

D nor can they be said to be irrelevant for the purpose of the order. On such materials on record it cannot be said that there was no basis for the detaining authority to feel satisfied that the detenu was either himself or as a member or leader of a gang habitually committed or attempted to commit or abetted the commission of any of the offences stated in Section 2(b-1). Therefore, the

E contention raised by the petitioner that the conclusion arrived at by the detaining authority that the detenu was a 'dangerous person' within the meaning of Section 2 (b-1) was vitiated cannot be accepted. [695-C-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 577 of 2000.

F From the Judgment and Order dated 19.1.2000 of the Bombay High Court in CrI.W.P. No. 872 of 1999.

S.R. Chitnis and Shivjai M. Jadhav for the Appellant.

G Altaf Ahmed, Addl. Solicitor General and S.V. Deshpande for the Respondents.

The Judgment of the Court was delivered by

D.P. MOHAPATRA, J. Leave granted.

H In this appeal filed by the mother of Shyamsunder @ Navin @ Amar

@ Mahesh Jagdambaprasad Pathak, the detenu, the judgment of the Bombay High Court in Criminal Writ Petition No. 872 of 1999, dismissing the writ petition is sought to be assailed. In the aforementioned criminal writ petition the appellant had challenged the order of detention dated 19-6-1999 passed by the Commissioner of Police, Brihan Mumbai, detaining Jagdambaprasad Pathak under sub section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (No. LV of 1981) (for short referred to as the Act).

The detaining authority passed the order in exercise of the power conferred by sub section (1) of Section 3 of the Act read with the government order, Home Department (Special) No.DDS-1399/1/SPL- 3(B) dated 30th March, 1999, on being satisfied that it was necessary to make an order directing detention of the detenu with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. By a separate order passed on the same day, the detenu was directed to be detained at Nasik Road Central Prison, Nasik. The grounds on which the detention order was made were communicated by the detaining authority to the detenu by a separate communication on the same day. It was specifically stated in the said communication that copies of the documents placed before the detaining authority were enclosed excepting the names and identifying particulars of the witnesses/victims in connection with the grounds mentioned in paragraph No.4 (b)(i) and 4(b)(ii) which could not be furnished to the detenu in public interest. In paragraph 2 of the communication, it was averred :

“Your criminal record shows that, you are a dangerous person of violent character and also a weapon wielding desperado. You have created terror in localities of Kherwadi Road, Teen Bungalow, Chamdewandi, J.P. Road, Khar (East) and the areas adjoining thereto within the jurisdiction of Nirmal Nagar Police Station in Brihan Mumbai.

“You and your like-minded associates always move in the above areas armed with dangerous weapons like Revolver and Chopper and do not hesitate to use the same while committing the offence like robbery, extortion, assault, attempt to commit murder, criminal intimidation etc. Due to your criminal activities which are prejudicial to the maintenance of public order, the people residing in the said areas, businessmen are living under constant show of fear. Due to your such habitual criminal activities, the lives and properties of the

A people in the aforesaid areas are in danger.”.

The recent incidents showing intensified terrorising criminal activities on the part of the detenu and his associates, were stated in detail in paragraphs 4(a), 4(a)(i) and 4(a)(ii). All the incidents referred to had taken place between March and April, 1999.

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Relevant portions of paragraphs 4(b), 4(b)(i), and 4(b)(ii) on which much stress has been laid by the learned counsel appearing for the appellants read as follows:

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4(b) Confidential inquiries made into your activities disclosed that, you have been indulging in criminal activities persistently and have victimised number of people in the areas of Kherwadi, Teen Bungalow, Chamdewandi, J.P. Road, Khar (East) and adjoining areas in the jurisdiction of Nirmal Nagar Police Station in Brihan Mumbai. However, the witnesses including the victims are mortally afraid of you to complain and to make statements against you openly. On the assurance of anonymity and that they would not be called upon to depose in the Court of Law or any other open forum to make statements against you only then the following witnesses expressed their willingness to make their statements and thus their statements are recorded “IN CAMERA”. The gist of their statements is as under:-

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4(b)(i) Witness “A” is having a bakery and residing at Kherwadi Road. In his statement recorded on 29-4-1999, he has stated that, he knows you and your associates as goondas from his locality and move in the areas of Khar (East) armed with weapons and collect money from traders, businessman and residents of the said locality.

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One day in the second week of March, 1999, at about 19.30 hours, when the witness was present in his bakery, you and your two associates approached him and you pointing out revolver towards the witness threatened him saying,

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When the witness showed his inability, you and your associates started assaulting witness and his servants and started damaging the material in his bakery. Seeing this scene, nearby shopkeepers closed their shops. Pedestrians, hawkers on the road started running helter skelter you then put your revolver on the head of the witness and your associates threatened his servants to stand at the corner in

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bakery, when you exhorted him saying,

Due to mortal fear, the witness paid Rs. 5,000 to you. While leaving you threatened the witness saying, “ A

Then all of you went away. Due to fear, the witness did not dare to lodge any complaint.”

4(b)(ii) Witness “B” is having a garment factory at Kherwadi Road, Bandra (East), Mumbai 51. In his statement recorded on 29-4-1999, he has stated that he knows you and your associates as notorious and terror creating goondas from his locality. B

One day in the third week of March, 99 at about 11.30 hours, when the witness was working in his factory along with his workers, you along with your two associates approached the witness and you whipped out revolver and threatened the witness saying, C

When your associates whipped out choppers and threatened his servants not to move. Seeing this scene, nearby shopkeepers closed their shops, pedestrians and hawkers on the road started running helter skelter. The witness showed his inability to pay such huge amount and requested to give some relief you assaulted the witness with kicks and abused in filthy language and robbed Rs. 7900 from the cash box of the witness and while leaving, you threatened the witness saying, ‘and thereafter all of you went away. Due to your terror and revengeful attitude, witness did not lodge the complaint.” E

In paragraph 5 of the ground the detaining authority has recorded his satisfaction that the detenu is a dangerous person within the meaning of Section 2(b-i) of the Act; he unleashed a reign of terror; he had become a perpetual danger to the society at large in the localities in question; and that the people there were experiencing a sense of insecurity and were leading and carrying out their daily avocation under constant shadow of fear whereby the even tempo of life of citizens was badly disturbed. The detaining authority went on to record that the actions taken against the detenu under the ordinary law of the land were found to be insufficient and ineffective to put a stop to his criminal activities which were prejudicial to the maintenance of public order. F G

In paragraph 6 of the grounds, the detaining authority summed up his conclusion in these words :

“In view of your tendencies and inclinations reflected in the H

A offences committed by you as stated above I am further satisfied that, after having availed of the bail facilities and becoming free person and being a criminal you are likely to indulge in activities prejudicial to the maintenance of public order in future and that it is necessary to detain you under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggars, Drug Offenders and Dangerous Persons Act, 1981 (No. LV of 1981) (Amendment 1996) to prevent you from acting in such a prejudicial manner in future.”

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C In the grounds it was made clear that the detenu had the right to make a representation to the State Government against the detention order and also to the Advisory Board.

D The detention order passed by the Commissioner of Police was confirmed by the State Government by order dated 4.8.1999 and the detenu was ordered to be continued in detention for a period of 12 months. The said order was challenged in the criminal writ petition filed before the High Court by the appellant which was dismissed by the judgment under challenge.

E The principal contention raised by Shri S.R. Chitnis, learned counsel appearing for the appellant was that the order of detention was vitiated as it was based on a single report registered by the police and some statements of persons recorded in-camera. This according to the learned counsel was not permissible under the provisions of the Act. Elucidating the contention the learned counsel submitted that it has become a practice with the Mumbai Police to register a single case and place on record a few in-camera statements of witnesses in support of an order of detention under Section 3(i) of the Act. According to the learned counsel on the materials placed on record the detenu cannot be said to be a ‘dangerous person’ within the meaning of Section 2(b-1) and therefore could not be detained under the provisions of Section 3(ii) of the Act. The learned counsel strenuously urged that statements of persons/witnesses recorded in-camera cannot form the basis of a detention order under the Act.

G Shri Altaf Ahmad, learned Additional Solicitor General, appearing for the respondents, on the other hand contended that on the facts and circumstances emerging from the materials on record the order of detention passed against the detenu is legal and justified.

H On the facts of the case and the contentions raised on behalf of the

parties as noted in the proceeding paragraphs the question that arises for determination is whether statement of a person/witness recorded in-camera can be used by the detaining authority for passing an order of detention under section 3 of the Act. As noted earlier it is the contention of the learned counsel for the appellant that such a statement cannot form the basis of a detention order. In support of the contention it was urged that to bring the detenu within the purview of the term "dangerous person" as defined in section 2(b-1) of the Act it has to be shown that the person either himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or under Chapter VII of the Indian Penal Code or punishable under Chapter V-B of the Arms Act, 1959. The phrase "habitually commits" means and suggests persistent and repetitive involvement in incidents which fulfil the conditions required for commission or the offence or offences or attempt at the commission of such offence or abetment of commission of such offence. Mere recording of some statements in camera which at best can be said to contain certain allegations regarding involvement of the detenu, without anything more cannot be said to fulfil the requirement of "habitually commits or attempts to commit or abets the commission of any of the offences".

In Section 2(b-1) of the Act the expression "dangerous person" is defined in these terms :

"dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959".

Under Section 2(a) the phrase "acting in any manner prejudicial to the maintenance of public order" means :

"XXXXXXXXX

(iv)"in the case of a dangerous person, when he is engaged, or is making preparation for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order.

Explanation : For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely *inter alia*, if any of the activities of any of the

A persons referred to in this clause directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof, or a grave or widespread danger to life or public health.”

B The detention order against the appellant herein was passed on the allegations that he was persistently engaged in criminal activities which adversely affected the maintenance of public order in the localities, and therefore, with a view to prevent him from engaging in such activities it was necessary to preventively detain him under the provisions of the Act. For consideration of the question whether the appellant could be said to be a dangerous person it is necessary to read the definition of the term in section 2(b-1) and the provision of section 2(a) (iv) regarding the meaning of the term “acting in any manner prejudicial to the maintenance of public order”. Under the explanation under section 2(a)(iv) it is provided that public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely if any of the activities of any of the persons referred to in the clause directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof, or a grave or widespread danger to life or public health. The deeming clause in the explanation widens the scope of the provision in section 2(a)(iv). It follows that if a person found to be repeatedly engaged in such activities as mentioned in section 2(b-1) which affect adversely or are likely to affect adversely the maintenance of public order he can be detained as a dangerous person in exercise of the power under section 3 of the Act.

F Then comes the crucial question whether ‘in-camera’ statements of persons/witnesses can be utilised for the purpose of arriving at subjective satisfaction of the detaining authority for passing the order of detention. Our attention has not been drawn to any provision of the Act which expressly or impliedly lays down the type of material which can form the basis of a detention order under section 3 of the Act. Preventive detention measure is a harsh, but it becomes necessary in larger interest of society. It is in the nature of a precautionary measure taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to

the maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve the power vested in the detaining authority should not be unduly restricted. It is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. Presumably, that is why the Parliament did not make any provision in the Act in that regard and left the matter to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed.

From the grounds of detention and the papers enclosed with it copies of which were served on the detenu it is clear that the detaining authority based his subjective satisfaction on a series of contemporaneous incidents in which the detenu was involved. The satisfaction was not based on a single or stray incident. In the in-camera statements separate incidents of criminal activities of the detenu were stated. The assertions are not assailed as untrue nor can they be said to be irrelevant for the purpose of the order. On such materials on record it cannot be said that there was no basis for the detaining authority to feel satisfied that the detenu was either himself or as a member or leader of a gang habitually committed or attempted to commit or abetted the commission of any of the offences stated in section 2(b-1). Therefore, the contention raised by learned counsel for the petitioner that the conclusion arrived at by the detaining authority that the detenu was a 'dangerous person' within the meaning of section 2 (b-1) was vitiated cannot be accepted. In our view the detention order under challenge does not suffer from any infirmity. The appeal being devoid of merit is dismissed.

T.N.A.

Appeal dismissed.