STATE OF MAHARASHTRA & ORS. A

v.

MEHAMUD

JUNE 19, 2007

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.] B

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981:

ss. 2(1-b) and 3—'Dangerous person'—Order of detention—Expression "habitually commits or attempts to commit"—Connotation of—Held: Detenu being involved in fourteen cases and several cases being pending which related to offences punishable under Chapters XVI and XVII of I.P.C. and Chapter V of Arms Act, and considering the nature of jurisdiction which the detaining authority exercises, the conclusion of High Court that there must be a conviction in order to say that detenu habitually commits offences is clearly unsustainable—In this regard the reasonable belief of police officials is sufficient—Preventive Detention. C D

Words and Phrases : Expressions "habitually" and "habitually commits or attempts to commit" occurring in s.2(1-b) of Mahrashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981—Connotation of. E

An order of detention was passed against the respondent u/s. 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 treating him as a 'dangerous person'. The High Court set aside the said order holding that the expression "habitually commits" conveys a situation where a person is conclusively known to have surely committed the crime for which he was convicted in the past by a Court of competent jurisdiction as on that basis alone it could be said that he was repeatedly indulging in such acts and mere pendency of cases would not be sufficient to treat a person as dangerous person. F G

It was submitted on behalf of the appellant State that through the detenue had suffered about 10 months' detention out of the total detention for one year, yet since the order of the High court was clearly unsustainable, the

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A appeal was being pressed.

Allowing the appeal in part, the Court

HELD: 1.1. At the outset it is to be noted that the order under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers
B and Drug Offenders Act, 1981 is preventive in nature and character. The expression "habitually" is very significant. A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and *prima facie* there should be continuity in the commission of those offences. In this regard the reasonable belief of the police officials is sufficient.
C [Para 5, 8 and 11] [1046-F; 1049-G-H; 1049-A]

Mustakmiya Jabbarmiya Shaikh v. *M. M. Mehta, Commissioner of Police and Ors.*, [1995] 3 SCC 237; *Dhanji Ram Sharma* v. *Superintendent of Police,* AIR (1966) SC 1766 and *Ayub alias Pappukhan Nawabkhan Pathan* v. *S. N*
D *Sinha,* [1990] 4 SCC 552, relied on.

1.2. The word 'habitually' does not refer to the frequency of the occasions but to the invariability of a practice and the habit has to be proved by totally of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular
E person is a "dangerous person" unless there is material suggesting his complicity in such cases, which lead to a reasonable conclusion that the person is a habitual criminal. The word 'habitually' means 'usually' and 'generally'. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts.
F [Para 10] [1049-E-G]

Vijay Amba Das Diware and Ors. v. *Balkrishna Waman Dande and Anrr.*, [2000] 4 SCC 126; *Mustakmiya Jabbarmiya Shaikh* v. *M. M. Mehta, Commissioner of Police,* [1995] 3 SCC 237, relied on.

G *Advanced Law Lexicon (3rd Edn.) by P. Ramanatha Aiyer; Aiyer's Judicial Dictionary,* 10th Edition, p 485, referred to.

1.3. In the instant case, as the order of detention shows the detenu was involved in fourteen cases and several cases were pending which related to offences punishable under Chapter XVI and XVII of the IPC and Chapter V
H of the Arms Act, 1959. Considering the nature of the jurisdiction which the

detaining authority exercise, the conclusion of the High Court that there must be a conviction before it can be said that the detenu habitually commits offences clearly unsustainable. [Para 12] [1050-B] A

1.4. Since it has been fairly stated on behalf of the State that because of passage of time there may not be any necessity for sending back *detenu* for detention to serve the unexpired period in the present case, the *detenu* need not surrender to serve the remaining period of sentence. [Para 13] [1050-C] B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 133 of 2001.

From the Final Order and Judgment and dated 23.06.2000 of High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Crl. Writ Petition No. 350 of 1999. C

Ravindra Keshavrao Adsure for the Appellants.

The Judgment of the Court was delivered by D

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment rendered by a Division Bench of the Bombay High Court, Nagpur Bench quashing the order of detention passed by the District Magistrate, Nagpur Bench. By the order dated 12th August, 1999 the District Magistrate had directed detention of the respondent (hereinafter referred to as the 'Detenu') under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act , 1981 (in short the 'Act'). By the said order the District Magistrate had ordered that the detenu was to be treated as a "dangerous person" and therefore there was need to detain him. The order of detention was served on the detenu on 14th August, 1999 and the period of detention was to last for one year. The order of detention was challenged before the High Court primarily on two grounds; firstly there should have been a contemporaneous or simultaneous service of the grounds on the detenu as the said grounds alone contained intimation to him that representation could be made by him to the State Government; secondly, there was no material to show that detenu was habitually committing or attempting to commit crimes mentioned in Chapters XVI and XVII of the Indian Penal Code, 1860 (in short the 'IPC'). The High Court did not find any substance in the first plea but accepted the second plea on the ground that use of the expression "habitually commits or attempts to commit" must be established by facts. According to the High Court, expression "habitually commits" conveys a situation where a person is conclusively known to have E F G H

A surely committed the crime for which he was convicted in the past by a Court of competent jurisdiction and on that background alone it can be said that he was repeatedly indulging in such acts. Mere pendency of cases would not be sufficient to treat a person as dangerous person. It was held that since there was curtailment of liberty, same has to be based on a foundation of complaint before the Court, a charge against him, a full-fledged trial and then B recording of the judgment of conviction which alone may enable such person being described to have committed a crime. With the aforesaid observations and conclusions the High Court set aside the order of detention.

2. Learned counsel for the appellant submitted that though the detenue C had suffered about 10 months' of detention before the High Court's judgment yet the conclusion of the High Court and the views expressed are clearly unsustainable in law and therefore, the appeal is being pressed.

3. There is no appearance on behalf of the respondent.

D 4. The crucial question is the true import of the expression "habitually commits or attempts to commit". Section 2(b-1) defines "dangerous person" as follows:

> *"Section 2(b-1)* "dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or E 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."

5. At the outset it is to be noted that the order is preventive in nature F and character.

6. This Court had occasion to consider similar questions in several cases. In *Mustakmiya Jabbarmiya Shaikh* v. *M.M. Mehta, Commissioner of Police and Ors.*, [1995] 3 SCC 237 it was *inter alia* observed in paras 7 & 8 as follows:

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> "7. A reading of the preamble of the Act will make it clear that the object of provisions contained in the Act including those reproduced above is to prevent the crime and to protect the society from anti-social elements and dangerous characters against perpetration of crime by placing them under detention for such a duration as would disable

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them from resorting to undesirable criminal activities. The provisions of the Act are intended to deal with habitual criminals, dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of the penal laws and the mortal fear of punishment for crime are not sufficient deterrents for them. Section 3 of the Act is, therefore, intended to deal with such criminals who cannot readily be apprehended to be booked under the ordinary law and who for special reasons, cannot be convicted under the penal laws in respect of the offences alleged to have been perpetrated by them. But this power under the Act to detain a person should be exercised with restraint and great caution. In order to pass an order of detention under the Act against any person the detaining authority must be satisfied that he is a "dangerous person" within the meaning of Section 2 of the Act who habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act as according to sub-section (4) of Section 3 of the Act it is such "dangerous person" who for the purpose of Section 3 shall be deemed to be a person "acting in any manner prejudicial to the maintenance of public order" against whom an order of detention may lawfully be made.

8. The Act has defined "dangerous person" in clause (c) of Section 2 to mean 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 Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression 'habit' or 'habitual' has however, not been defined under the Act. According to The Law Lexicon by P. Ramanatha Aiyar, Reprint Edn. (1987), p. 499, 'habitually' means constant, customary and addicted to specified habit and the term habitual criminal may be applied to anyone who has been previously convicted of a crime to the sentences and committed to prison more than twice. The word 'habitually' means 'usually' and 'generally'. Almost similar meaning is assigned to the words 'habit' in Aiyar's Judicial Dictionary, 10th Edn., p. 485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular

person is a "dangerous person" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. In *Gopalanachari* v. *State of Kerala*, AIR (1981) SC 674 this Court had an occasion to deal with expressions like "bad habit", 'habitual', 'desperate', 'dangerous" 'hazardous'. This Court observed that the word habit implies usual practice. Again in *Vijay Narain Singh* v. *State of Bihar*, [1984] 3 SCC 14 this Court construed the expression 'habitually' to mean repeatedly or persistently and observed that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit. It, therefore, necessarily follows that in order to bring a person within the expression "dangerous person" as defined in clause (c) of Section the Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or Chapter XVII ofl or under Chapter V of the Arms Act and that a single or isolated act f" under Chapter XVI or Chapter XVII of IPC or Chapter V of is cannot be characterised as a habitual act referred to in Section 2(c) of the Act."

7. In *Dhanji Ram Sharma* v. *Superintendent of Police*, AIR (1966) SC 1766 in the background of the Police Act 1861 it was observed as follows:

"6. Under Section 23 of the Police Act, 1861, the police is under a duty to prevent commission of offences and to collect intelligence affecting the public peace. For the efficient discharge of their duties, the police officers are empowered by the Punjab Police Rules 1934 to open the history sheets of suspects and to enter their names in police register No. 10. These powers must be exercised with caution and in strict conformity with the rules. The condition precedent to the opening of history sheet under Rules 23.9 (2) is that the suspect is a person "reasonably believed to be habitually addicted to crime or to be an aider or abettor of such person". Similarly, the condition precedent to the entry of the names of the suspects in Part II of police register No. 10 under Rule 23.4 (3)(b) is that they are "persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not". If the action of the police officers is challenged, they must justify their action and must show that the condition precedent has been satisfied."

8. As the quoted portion goes to show, this Court observed that reasonable belief of the police officials is sufficient. A

9. Habitual: The meaning of the words "habit" and "habitually" as given in the Advanced Law Lexicon (3rd Edn.) by P. Ramanatha Aiyer is: "Habit settled tendency or practice, mental constitution. The word 'habit' implies a tendency or capacity resulting from the frequent repetition of the same acts. B The words by 'habit' and 'habitually' imply frequent practice or use. "Habitual Constant; customary; addicted to a specified habit". The Court in *Vijay Narain Singh* v. *State of Bihar,* [1984] SCC (Crl.) 361), considered the question of a habitual criminal and in para 31 the expression "habitually" was explained as follows: "The expression 'habitually' means 'repeatedly' or 'persistently'. C It implies a thread of continuity stringing together similar repetitive acts - repeated, persistent and similar, but no isolated, individual and dissimilar acts are necessary to justify an inference of habit". The expression "habitual" would mean repeatedly or persistently and implies a thread of continuity stringing together similar repeated acts. An isolated default of rent would not mean that the tenant was a habitual defaulter. (See: *Vijay Amba Das Diware* D *and Ors* v. *Balkrishna Waman Dande and Anr.,* [2000] 4 SCC 126).

10. In *Mustakmiya Jabbarmiya Shaikh* v. *M.M. Mehta, Commissioner of Police,* [1995] 3 SCC 237, it was held that the expression "habit" or "habitual" has not been defined under the Gujarat Prevention of Anti Social Activities Act, 1985. The word 'habitually' does not refer to the frequency E of the occasions but to the invariability of a practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases, which lead to a reasonable F conclusion that the person is a habitual criminal. The word 'habitually' means 'usually' and 'generally'. Almost similar meaning is assigned to the words 'habit' in Aiyer's Judicial Dictionary, 10th Edition, at p.485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts.

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11. The expression "habitually" is very significant. A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there should be continuity in the commission of those offences. (See: *Ayub alias Pappukhan Nawabkhan Pathan* v. *S.N.* H

A *Sinha*, [1990] 4 SCC 552.

12. As the order of detention shows the detenu was involved in fourteen cases and several cases were pending which related to offences punishable under Chapter XVI and XVII of the IPC and Chapter V of the Arms Act, 1959 (in short the 'Arms Act'). Considering the nature of the jurisdiction B which the detaining authority exercises, the conclusion of the High Court that there must be a conviction before it can be said that the *detenu* habitually commits offences is clearly unsustainable.

13. The appeal is bound to succeed. Since learned counsel for the State has fairly stated that because of passage of time there may not be any C necessity for sending back *detenu* for detention to serve the unexpired period in the present case, the detenu did not surrender to serve the remaining period of sentence.

14. The appeal is allowed to the aforesaid extent.

D R.P. Appeal Partly allowed.