

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3703 OF 2023

Firoz Mohammad Shaikh,)
Aged 28 years,)
R/o. Lane No.5, Home No.22,)
MAHADA Colony, Vimannagar, Pune.)

....Petitioner

V/S.

- 1) The Commissioner of Police, Pune)
- 2) The State of Maharashtra,)
(Through Addl. Chief Secretary)
to Government of Maharashtra)
Mantralaya, Home Department)
Mantralaya, Mumbai.)
- 3) The Superintendent,)
Nagpur Central Prison,)
Nagpur.)

....Respondents

Ms. Jayshree Tripathi with Anjali Raut for the Petitioner.
Ms. M. H. Mhatre APP for the Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 6th FEBRUARY 2024.

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JUDGMENT : [PER- SHYAM C. CHANDAK, J.]

1) Present Petition mounted a challenge to the detention Order dated 27th September 2023, passed against the Petitioner by the Respondent No.1–Commissioner of Police, Pune under Section 3 (2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black Marketing of Essential Commodities Act, 1981 (for short “said Act”).

2) Heard Ms. Tripathi, learned Advocate for the Petitioner and Ms. M. H. Mhatre, learned APP for the Respondent-State.

2.1) We have perused the Petition, the detention Order, the grounds of passing the detention Order, Affidavits-in-Reply of the Respondent Nos.1 to 3, respectively. As per our direction, the learned A.P.P. also produced for our perusal the original file of C.R.No.263 of 2023 registered with Mundhwa police station, Pune for the offences punishable under Sections 354, 324, 323, 504, 143, 147, 149, and 427 of I.P.C., against the Petitioner and others.

3) Ms. Tripathi, learned Advocate for the Petitioner, at the outset, submitted that, even though the detention Order has been challenged on various grounds, the Petitioner mainly relies upon grounds (d) and (j).

3.1) In ground '(d)' the Petitioner has stated contended that, in the grounds of detention at para 5.1, there is clear reference to the facts that, in the incident related to said Cr.No.263 of 2023, four customers namely Vaibhav Goswami, Drumika Lalwani, Revati Rathod & Rohan Choudhari, present in hotel were injured, they were given Medical *Yadi*, they were accordingly medically examined at Sassoon Hospital, Pune, they after treatment came to the police station and then their statements were recorded. The statement of the said injured persons, hospital admission documents and their injury certificate/s were vital documents, which ought to have been placed before the Respondent No.1 detaining authority, before issuance of the detention Order and copy thereof should have been given to the petitioner to afford him the earliest opportunity of making an effective representation. However, no injury certificate or statements of said injured persons were placed before the detaining authority nor copy thereof was furnished to the petitioner. Hence, the subjective satisfaction recorded by the Respondent No.1 that the Petitioner is a 'Dangerous Person', is defective. Non furnishing of these vital documents amounts to non-communication of grounds of detention and it deprived the Petitioner of making any effective representation. Thus, both facets of Article 22 (5) of the constitution of India are violated. Hence the detention Order is illegal and bad in law.

3.2) In ground ‘(j)’ it is stated that, Petitioner’s representation dated 07th November 2023 was sent to the Respondent No.2-State through the Respondent No.3, whereby the Petitioner sought for revocation of the detention Order in view of ground ‘(d)’ and supplying the aforesaid documents. However, the Petitioner did not get any response in time. For this reason also the Petitioner could not submit an effective representation under Article 22 (5) of the Constitution of India. Therefore, on this count also the detention Order is liable to be quashed.

4) To buttress the aforesaid submissions, Ms. Tripathi, learned Advocate has relied upon the following decisions :-

- i) *Monty Karotiya Vs. State of Maharashtra & Ors., Cri.W.P.No.1849/2022,*
- ii) *Akash A. Mudgal Vs. Comm. Of Police & Ors., Cri.W.P. No.1713/2023,*
- iii) *Ramchandra Kamat Vs. Union of India & Ors., (1980) 2 SCC 270,*
- iv) *Mehrunissa Vs. State of Maharashtra, (1981) 2 SCC 709,*
- v) *Nafisa K. Ghanem Vs. Union of India & Ors., (1982) 1 SCC 422.*

5) Per Contra, Ms.Mhatre, learned A.PP. appearing on behalf of the Respondent-State has invited attention of this Court to the following Affidavits-in-Reply by i) Respondent No.1-Commissioner of Police dated 9th December 2023, ii) Respondent No.2-Deputy Secretary, dated 21st December 2023 and iii) Respondent No.3-Superintendent, Nagpur Central Prison dated

14th December 2023.

5.1) In view of the said Affidavits, Ms.Mhatre, learned A.P.P. submitted that, the F.I.R. of said Cr.No.263 of 2023 clearly recorded as to how the said incident occurred. Further, the F.I.R. distinctly mentions the acts on the part of the Petitioner and his accomplices which constituted the said offence. The facts that, certain persons had sustained injuries in the occurrence, they were referred for medical examination with Medical *Yadi* and they were medically examined are clearly stated in the said F.I.R. This very F.I.R. was considered by the Respondent No.1 for recording his subjective satisfaction that, the Petitioner is a 'Dangerous Person'. Copy of said F.I.R. was supplied to the Petitioner, hence the detention Order is perfectly legal. Consequently, the Petitioner cannot question the legality of the detention Order on the ground that, it was passed without considering the vital documents and that, the said Order is bad in law for non communication of the grounds of the detention. In the backdrop, the Petition may be dismissed.

5.2) To support the aforesaid submissions, learned A.P.P. cited following decisions : i) *Kamarunnissa Vs. Union of India & Anr., AIR 1991 SC 1640*. In this case it is held that, documents referred in ground of detention but not relied upon by detaining authority while arriving at

subjective satisfaction to detain, need not be supplied to detenu.

ii) *Abdul Sathar Ibrahim Manik Vs. Union of India & Ors., AIR 1991 SC 2261*. In this case it is held that, “....even if the documents (*i.e.* bail application and the order refusing bail) are not placed before the detaining authority or even if placed, if the detaining authority does not refer to or rely upon or has failed to take them into consideration, that by itself does not lead to an inference that there was suppression of relevant material or in the alternative that there was non application of mind or that subjective satisfaction was impaired. When the documents are neither referred to nor relied upon, there is no need to supply the same to the detenu”

6) The Petitioner has enclosed with the Petition the list of documents of the detention Order which were considered for passing the detention Order. Said documents also include certain documents related to said Cr.No.263 of 2023.

6.1) In the grounds of detention, there is reference to the criminal history of the Petitioner, the preventive action under Section 110 (e),(g) of Cr.P.C. and consideration of the particulars/narration in the F.I.R. of said crime No.263 of 2023. In this regard the Respondent No.1 noted that, during the incident of said crime No.263 of 2023, the Petitioner and co-accused Ajay Gore beat one Surekha Gavali by hand and pushed her. As a

result, she got injured. That, the Petitioner, co-accused Sumit Choudhari and their accomplices beat the four customers namely Vaibhav Goswami, Drumika Lalwani, Revati Rathod and Rohan Choudhari and the four got injured. When the complainant/first informant tried to settle the fight, the Petitioner slapped him. All the injured persons were given Medical *Yadi* of Sassoon hospital, at Pune and after treatment they came to the police station. Accordingly, the first information report was lodged against the Petitioner and his accomplices. Further it is noted that, during the investigation of the said crime, statement of the witnesses were recorded and Spot Panchnama was prepared.

6.2) There is also consideration of what the Witness-A and Witness-B have stated in their in-camera statement about the offence of extortion / robbery committed against them by the Petitioner. The Witness-A has stated that the Petitioner and his accomplices roaming in certain area and extort money from petty shop keepers. On 31st March 2023, around 09:00 hours, the witness was selling vegetables. At that time the Petitioner and his accomplices came there, the Petitioner beat the said witness for he did not give *hafta* money and threw at him a koyta. Then, the Petitioner and his accomplices threw vegetables on road and the Petitioner snatched Rs.800/- from the cash box and threatened the witness to pay the *hafta* regularly, else

he will not be allowed to do the business. Further, the Petitioner threaten to kill the witness if he lodges a police complaint.

6.3) The Witness-B had stated that, he runs a *Pan* shop. The Petitioner and his accomplices extort money from petty shop keepers, rickshaw drivers on ABC road. In the month of June, around 01:00 hours, while the witness was closing his shop, the Petitioner and his accomplice came there on a bike and demanded him Rs.1,000/- as *hafta*. The witness said that he would give the money tomorrow. However, the Petitioner and his accomplice threw his material on road, beat him with kicks and fists and robbed Rs.1,500/- from him by showing sickle like weapon. Then, the Petitioner threatened the witness to give money whenever he would come there.

7) In view of the above consideration, in para 8 of the grounds of the detention, the Respondent No.1 recorded that, he has incorporated the above circumstances to show the Petitioner that he is a habitual criminal involved in continuous criminal activities. Accordingly, he has relied upon the material mentioned above to arrive at his subjective satisfaction that, the Petitioner is a 'Dangerous Person' as defined in the law.

8) From the discussion above, it is clear that, in the grounds of the detention Order the Respondent No.1 has considered the facts that the persons namely Vaibhav Goswami, Drumika Lalwani, Revati Rathod and

Rohan Choudhari were injured in the said incident, they were sent for their medical examination at Sassoon Hospital, at Pune, they were medically examined, thereafter the said injured returned to the police station, then the first informant lodged the report and said Cr.No.263 of 2023 was registered. The Respondent No.1 also considered the statement of the witnesses recorded during the investigation.

9) However, the learned APP on perusal of original record fairly conceded that, the Medical *Yadi* and the injury certificate of the said four injured witnesses were not placed before the Respondent No.1 along with the proposal for passing the detention Order. That, the injury certificate of the said four injured customers were received subsequently and the statement of said four injured are not at all recorded till date. This fact is also evident from the list of documents of the detention Order. In his Affidavit-in-reply also the Respondent No.1 has categorically stated that, the injury certificates as well as the hospital documents were not placed before him by the sponsoring authority. As such, the lodging of F.I.R. No.263 of 2023 was not corroborated by the injury certificates and statements of the said four injured customers. There is no clarity as to whose statements were recorded during the course of the investigation. Thus, it is not clear on what basis the Respondent No.1 concluded that the Petitioner has committed the

offence under Section 323 and 324 of the I.P.C. against the injured persons.

10) It is admitted that, investigation of said C.R.No.263 of 2023 was not completed when the detention Order was passed. Therefore, on that date, the sponsoring authority had not finally concluded that the Petitioner and his accomplices have committed the said offences punishable under Sections 354, 324, 323, 504, 143, 147, 149 and 427 I.P.C. against the victims of the said crime. However, the particulars of the said Cr.No.263 of 2023 were considered as ground for the detention to pass the detention Order.

10.1) In view of above circumstances, it is not sufficiently clear as to how the 'subjective satisfaction' was arrived at by the Respondent No.1 to pass the detention Order.

11) In his letter-cum-representation dated 7th November 2023, addressed to Respondent No.2, the Petitioner had specifically mentioned about the averments of said ground '(d)' and not only demanded the documents stated in this ground but also requested to set aside the detention Order on the same and other grounds. However, the Respondent No.2 neither supplied those documents to the Petitioner nor mentioned in its Affidavit-in-reply the reason of not supplying the said documents to the Petitioner. Even in the Affidavit-in-reply of the Respondent No.2, it has not clarified as to whether the statement and injury certificates of the said four

injured were in existence at the time of issuance of the detention Order or whether those were relied upon by the Respondent No.2. That apart, the reasons of rejection of the said representation are not mentioned in the Affidavit-in-Reply of the Respondent No.2. It is settled law that reasons are hallmark of a decision recorded by a statutory authority. Therefore, the said rejection, according to us, is undoubtedly issued mechanically. No doubt, in his Affidavit-in-reply the Respondent No.1 has stated that, his subjective satisfaction is not based upon the injury certificates of witness and/or hospital documents, but this plea is taken just to improve his case and nothing else.

12) Therefore, we are in agreement with the submissions by learned Advocate for the Petitioner that, non furnishing of the vital documents based on which the Respondent No.1 arrived at his subjective satisfaction against the Petitioner amounts to non communication of the grounds of detention and deprivation of valuable right of the Petitioner to make an effective representation under Article 22 (5) of the Constitution of India.

13) As held by the Hon'ble Supreme Court in *Smt. Shalini Soni Vs. Union of India*, AIR 1981 SC 431, if the detenu is not supplied with vital documents relied upon for passing the detention Order, the opportunity solemnly guaranteed by Article 22 (5) of the Constitution of India becomes

reduced to an exercise of futility. Thus, the Hon'ble Supreme Court held that, copy of documents to which reference is made in the grounds must be supplied to the detenu as part of the grounds.

13.1) As held by this Court in the case of *Monty Karotiya (supra)*, “*the law on the subject is well established in catena of decisions passed by the Hon'ble Supreme Court. The said law mandates that, the documents and material mentioned in the grounds of detention have to be supplied to the detenu immediately on demand. Such demand should not be ignored or taken lightly. On the contrary, the detaining authority must always be prepared to supply at least this material or documents immediately on its demand. Otherwise, the detenu cannot make an effective representation to the concerned authority. The right to get such material is an independent right available to the detenu under the provision of Article 22 of the Constitution of India, therefore, supplying such material is not an empty formality. If the detaining authority has right to pass a detention Order, the detenu is equally entitle to know the exact grounds of passing the detention order and material supporting the same which ultimately causes his detention*”.

14) In view of the above discussion, the impugned detention Order is liable to be quashed.

14.1) Hence, the following Order :-

- (i) Petition is allowed in terms of prayer Clause (b).
- (ii) The Detention Order dated 27th September 2023 bearing No.Crime PCB/DET/MUNDHWA/SHAIKH/464/2023 passed by Respondent No.1 is quashed and set aside.
- (iii) Petitioner be released from Jail forthwith on production of the Operative part of this Order, if not required in any other crime(s).
- (iv) All concerned to act on the basis of an authenticated copy of this Order.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)