

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1873 OF 2015

Siddharth Vijay Dhayதாக.

... Petitioner.(detenu)

Vs

1.The Commissioner of Police, Pune & Ors. ... Respondents

Mr.Udaynath Tripathi, for the Petitioner.

Mr.J. P. Yagnik, APP for the State.

**CORAM : S.C. DHARMADHIKARI &
G.S. KULKARNI, JJ.**

DATE : 22nd JULY, 2015.

PC. :

1. This petition under Article 226 of the Constitution of India challenges the order of detention dated 1.10.2014 passed under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (for short 'MPDA').

2. The detenu himself has filed this petition and there are two grounds which have been raised to impugn this order. The first ground in paragraph 5(a) is that there are references made to the cases registered against the petitioner. There is a reference to about five C.R. numbers. Fifth one is C.R.no.134 of 2014. The detaining Authority while recording his subjective satisfaction was unaware of the fact that as far as C.R.no.134 of 2014 is concerned, the petitioner was arrested on 23.7.2014. As on the date of making of the detention order, the petitioner was in judicial custody and remanded as such in the said C.R. by the competent Criminal Court. The petitioner did not apply for bail in so far as that C.R. is concerned. Therefore, there was no material before the detaining Authority that firstly, the petitioner has been detained inasmuch as he was remanded to judicial custody. If the petitioner was in the custody, then, the subjective satisfaction that he is likely to be released on bail and, therefore, in order to prevent him from indulging in criminal activities in future, it is necessary to make a detention order, is totally absent. Secondly, it is submitted that the tests laid down by the Hon'ble Supreme Court in the decision which has been rendered in the case of "*Huidrom Konungjao Singh Vs. State of Manipur &*

Ors., (AIR 2012 SC 2002)”, are not satisfied. In paragraph (9) of this decision, the Hon'ble Supreme Court has culled out the principles. That is after referring to all the prior judgments on the point. In the present case if the subjective satisfaction as recorded is looked at, it is apparent that the detaining Authority is referring to Serial Nos.1 to 4 and in which the detenu was already released on conditional bail, the further line and words that the detaining Authority is satisfied that 'after availing bail facility and becoming a free person' exhibits complete lacks of awareness. Once the detenu was said to be released on conditional bail in this offences, and in fifth one the petitioner was in custody, then, whether the detaining Authority is referring to prior offences at Sr.Nos.1 to 4 or the offence at Sr.no.5 namely C.R.no.134 of 2014 registered at Bundgarden Police Station, Pune, has not been clarified at all. That must be clearly spelt out in the detention order and the subjective satisfaction recorded thereunder. In such circumstances, the order of detention is completely vitiated and deserves to be quashed and set aside. Apart from the judgment of the Hon'ble Supreme Court in the case “*Huidrom Konungjao Singh*” (*supra*), reliance is also placed on an unreported judgment delivered by this Bench in Writ Petition

No.1391 of 2015 decided on 25.6.2015 in the case “*Shri.Rahul Ambadas Jadhav Vs. 1.The Commissioner of Police, Solapur & Ors.*”.

Reliance is also placed on the judgment of the Division Bench of this Court in Criminal Writ Petition No.3941 of 2012 decided on 6.2.2013 in the case “*Shri Baba @ Ramjan Rukmoddin Shaikh Vs. The Commissioner of Police and Ors.*”

3. There is one more ground and which is pressed into service which is that the detention order refers to and relies on two in-camera statements. However, these in-camera statements have not been verified by a Senior Police Official and higher in rank than the one recording it. There is no verification of these statements. Our attention is invited to pages 24, 25 and 26 of the paper book. A reliance is also placed on the Division Bench Judgment of this court in Criminal Writ Petition No.395 of 2015 decided on 17.4.2015 in “*Rohidas @ Pintya Laxman Gupte Vs. 1.The Commissioner of Police, Pune*”.

4. On the other hand on behalf of the detaining Authority, Mr.Yagnik, learned Additional Public Prosecutor submits that in the

affidavit it is explained as to how both the grounds have no merit. The petitioner does not deserve any relief as prayed or any equitable relief, nor his case of constitutional guarantee being violated deserves to be accepted. He has suppressed from the Court the fact that he had applied for bail in C.R.No.134 of 2014. That bail application was decided and the detenu was released on bail on 8.10.2014. Therefore, a false statement is made that the petitioner never sought bail in this C.R.

5. As far as the verification of in-camera statements are concerned, in paragraph (6) of affidavit in reply , it is pointed out how there is complete compliance with the requirements of law. The copies of in-camera statements and verification have been handed over to the detenu on 3.10.2014 at Yerawada Central Jail in the presence of the Jail Officer. The detenu has accepted and acknowledged the receipt of these statements by signing on the office copy Therefore, the complaint that two in-camera statements are not verified should not be accepted. The petition, therefore, deserves to be dismissed.

6. With the assistance of the learned Counsel appearing for both sides, we have perused the petition, the grounds on which the detention order is challenged and the detention order itself. We have also perused the reasons / grounds in support of the detention order carefully and minutely. We are of the firm opinion that the petition deserves to succeed on the first ground itself.

7. It is undisputed that the detention order is dated 1.10.2014. The detaining Authority in the order refers to the criminal activities and the reign of terror created in the minds of the people by the petitioner - detenu. That he is a perpetual danger to the life and properties of the people has been set out and that his area of operation is the jurisdiction of Bundgarden Police Station, Pune. Thereafter, in paragraph (3) it has been set out that at the Bundgarden Police station itself there are five C.Rs registered and the offences in C.R.no.134 of 2014 punishable under Sections 307, 323, 504, 34 of Indian Penal Code are alleged to have been committed by the petitioner-detenu. It is not necessary to refer to any preventive action. But what is narrated thereafter is that the petitioner's involvement in the recent past is noticed in the following

offences and the incidents which are of serious nature. The words “noticed in the following offences and incidents” refer to Bundgarden Police Station C.R.No.51 of 2014 and Bundgarden Police Station C.R.no.134 of 2014. They are already referred to in paragraph (3) namely in the foregoing paragraphs or para prior to paragraph (4). We do not know why the words “following offences and incidents” are therefore appearing in paragraph (4). Be that as it may, the detaining Authority is referring to the activities and involvement of the petitioner in such criminal activities which are of serious nature and his tendency to commit the same frequently. The least, therefore, that was expected from the detaining Authority is an awareness with regard to the latest position namely investigations and the status of the same and whether any chargesheet has been filed and whether the criminal case is pending. If an application for bail has been made whether it is rejected or if no application for bail is made. The detention order must reflect that the petitioner – detenu and the persons like him though in custody are likely to be released in near future, there is still a necessity to proceed against them under the preventive detention law in order to prevent them from indulging in further acts and contemplated thereby. Thus,

satisfaction can be recorded only on total awareness of some basic facts and developments after registration of the crime. As far as C.R.no.51 of 2014 is concerned and the prior CRs, the detenu – petitioner is already released on conditional bail. As far as C.R.no.134 of 2014 is concerned, it is irrelevant whether the petitioner applied for bail and that a bail application was pending or decided later to passing of the detention order. We are not as much on the conduct of the detenu or his not disclosing to this Court the details with regard to the investigation and if any arrest has been effected. We are determining here the validity and legality of the detention order and testing the same on the grounds raised in the Writ Petition. The ground raised is that as on the date of the detention order, the detenu was in Magisterial custody. If he was in Magisterial custody, then, it was incumbent upon the detaining Authority to have clarified and clearly that the detenu may apply for bail and if any bail application was filed, the same is pending and likely to be granted. Despite the detenu not being released on bail, there is necessity of passing detention order and going by his past conduct. If the detenu was granted conditional bail in the offences at Serial Nos.1 to 4 registered at the same police station, then, his

conduct thereafter was such as would enable the detaining Authority to arrive at the required subjective satisfaction ought therefore, to be set out properly and cogently. It should not be left to the guess work of anybody. Mr.Yagnik would submit that in the affidavit in reply it is clarified that the detaining Authority was aware of the petitioner – detenu being in custody else there would have been no reference made in paragraph (5) of the detention order to the same.

8. We are unimpressed by this submission for paragraph (5) is merely referring to and narrating the cases and their status. The subjective satisfaction is recorded in paragraphs (6) and (7). In paragraph (7), the detaining Authority observed and held as under:-

“7. I have carefully gone through the material placed before me and I am subjectively satisfied that you are acting in a manner prejudicial to the maintenance of public order. However, in the offences registered against you the Hon'ble Court has released you on conditional bail from time to time in Sr.No.1 to 4 offences and despite of the conditions of Hon'ble Court you repeatedly indulged into violent and criminal activities to terrorize people in the area of Bundgarden Police Station, Pune

City. In view of your tendencies and inclinations reflected in the offences committed by you as stated above, I am further satisfied that after availing bail facility and becoming a free person, you are likely to revert to the similar activities prejudicial to the maintenance of public order in future and that it is necessary to detain you under the said Act to prevent you from acting in such prejudicial manner in future.”

From the above reproduced paragraph, it is apparent that the detaining Authority was unaware of the detenu – petitioner being in judicial custody. Further, whether the tendency as reflected in the offences committed by the detenu as stated above, is with reference to all the five offences, or the offences at Sr.Nos.1 to 4 only should not be a matter of guess work. None should be left to guess and decide for himself as to what the subjective satisfaction is based on. Eventually, in matters of preventive detention constitutional safeguards cannot be ignored. We have found that there is complete non application of mind on the part of the detaining Authority because the very next line is referring to “after availing bail facility and becoming a free person”. That there was a conditional bail order in favour of the petitioner – detenu in the cases at Sr.Nos.1 to

4, as has been set out earlier. Then, which case is being referred to and in which the detenu is likely to avail of bail facility has not been clarified in the detention order. Later explanations on affidavit have no meaning inasmuch as the attempt now is not only to support the order of detention but faulting the detenu for having not disclosed the details of the bail application filed by him in C.R.no.134 of 2014. On the own showing of the detaining Authority and in terms of the affidavit, the order of bail is dated 8.10.2014 which is later in point of time and the detention order is dated 1.10.2014. We are of the clear opinion that the detention order suffers from total non application of mind and has failed to satisfy the tests laid down by the Hon'ble Supreme Court in paragraph (9) of the decision reported at "AIR 2012 SC 2002" (supra).

9. Having found substance in the contention of Mr.Tripathi that the order of detention deserves to be quashed and set aside on the first ground itself, that we are not required to refer to the other grounds on which the detention order is challenged. The materials in that behalf, therefore, have not been referred by us in further details.

10. For the reasons recorded above, the following order is passed:-

1. This Writ Petition succeeds. Rule is made absolute in terms of prayer clause (b).
2. The detenu shall be released forthwith, if not required in any other case.

(G.S.KULKARNI, J.)

(S.C. DHARMADHIKARI, J.)