

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1237 OF 2016

Deepak s/o Dattu Suryawanshi,
Age-35 years, Residing at S. No.75,
Vikasnagar, Ghorpadi, Pune,
presently detained at Central Prison,
Aurangabad.

...PETITIONER

VERSUS

- 1) The Commissioner of Police,
Pune City, Dist-Pune,
- 2) The State of Maharashtra,
Through Addl. Chief Secretary,
Home Department (Special),
Mantralaya, Mumbai-32,
- 3) The Superintendent,
Aurangabad Central Prison,
Aurangabad.

...RESPONDENTS

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Mr.U.N. Tripathi Advocate with Mr. R.D. Sanap
Advocate for Petitioner.

Mr.S.Y. Mahajan, Additional Public Prosecutor
for Respondent Nos. 1 to 3.

...

**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE OF RESERVING JUDGMENT : 2ND DECEMBER, 2016.

DATE OF PRONOUNCING JUDGMENT: 19TH DECEMBER, 2016.

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. By way of filing present Petition, the Petitioner challenges the detention order dated 11th July 2016 passed by Respondent No.1, bearing No. PCB/DET/2663/2016 under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons (And Video Pirates) Act, 1981 (for short "M.P.D.A. Act, 1981").

3. The learned counsel appearing for the Petitioner submits that though the number of

grounds are taken in the Petition, he is restricting his arguments to three grounds. Firstly, it is submitted that though the Petitioner is acquitted from the offence (Crime No.63 of 2003) punishable under Section 399 of the Indian Penal Code (for short "I.P.C.") by the Court of Sessions Judge, Pune in Criminal Appeal No.71 of 2004 decided on 15th February 2011, the said Judgment and order in the aforesaid appeal was not placed on record before the detaining authority. The detaining authority proceeded to pass an order of detention even relying upon the said offence without taking into consideration a fact that the Petitioner stands acquitted from the said offence. In support of his submission that inspite of acquittal of the Petitioner i.e. detenu, in Criminal Appeal No.71 of 2004, the order of said acquittal was not placed on record before the detaining authority, which vitiated the subjective satisfaction of the detaining authority, rendering the detention order invalid,

pressed into service exposition of law in the case of **Dharamdas Shamlal Agarwal vs. The Police Commissioner and another, A.I.R. 1989 S.C. 1282.**

4. Secondly, the learned counsel appearing for the Petitioner submits that the detaining authority has not recorded his satisfaction to the effect that he has considered the in-camera statements, more particularly their truthfulness of the incidents which is a mandatory requirement of law and the satisfaction being a condition precedent to exercise power under Section 3 of M.P.D.A. Act, 1981. Therefore, the order of detention is illegal, bad in law and liable to quashed and set aside. In support of the aforesaid contentions, the learned counsel appearing for the Petitioner placed reliance on the unreported Judgment of the Division Bench of the Bombay High Court at Principal Seat, in the case of **Mrs. Mrunali Virendra Lonare vs. Commissioner of Police and others**, in Criminal Writ Petition No.245 of

2014, delivered on 18th March 2014. In support of his submissions, the learned counsel for the Petitioner also placed reliance on the reported Judgment in the case of **Smt. Vijaya Raju Gupta vs. Shri R.H. Mendonca and others, 2001 ALL M.R. (Cri) 48.**

5. Thirdly, the learned counsel for the Petitioner submits that in Para 9 of the grounds of the detention the detaining authority observed that "the copies of documents i.e. 618 pages of the compilation all are pertaining to 15 old cases are placed before the detaining authority and considered by him for arriving at his subjective satisfaction". Thus, it is clear that the detaining authority has considered extraneous material apart from the material shown in para 4 and 5 of the grounds of detention and his satisfaction was influenced. The subjective satisfaction vitiates on the count of considering extraneous material. In support of his

submissions, the learned counsel appearing for the Petitioner placed reliance on the reported Judgment in the case of **Mohd. Dhana Ali Khan vs. State of W.B., A.I.R. 1976 S.C. 734.**

6. On the other hand, the learned A.P.P. appearing for the State, relying upon the grounds mentioned in the order of the detaining authority and also the original record and averments in the affidavit in reply filed by the Commissioner of Police, Pune City, Pune, submits that the Petitioner is involved in number of offences since the year 2000 as it is evident from the offences mentioned in the grounds of detention order passed by the detaining authority. Therefore, the learned A.P.P. submits that the Writ Petition deserves to be rejected.

7. We have carefully considered the submissions advanced by the learned counsel appearing for the Petitioner and learned A.P.P.

appearing for the State. With their able assistance, we have perused the grounds agitated by the learned counsel appearing for the Petitioner during the course of hearing and also the submissions made by the learned A.P.P. and also perused the Petition, annexures thereto and the reply filed by the Commissioner of Police, Pune City, Pune.

8. The learned counsel appearing for the Petitioner, during the course of hearing, has tendered across the Bar the copy of Judgment and order passed by the Additional Sessions Judge, Pune in Criminal Appeal No.71 of 2004 (Mr. Deepak Dattu Suryawanshi vs. The State of Maharashtra) decided on 15th February 2011. Upon perusal of the said Judgment and order, it clearly emerges that the Petitioner stands acquitted for the offence (Crime No.63 of 2003) punishable under Section 399 of the I.P.C. Vide the said Judgment, the order passed by the Assistant Sessions Judge, Pune dated

7th January 2014 in Sessions Case No.222 of 2003 convicting the present Petitioner for the offence punishable under Section 399 of I.P.C. and sentencing to suffer rigorous imprisonment for three years and to pay fine of Rs.200/- each, and in default to suffer rigorous imprisonment for one month, has been quashed and set aside by the Appellate Court. The said Judgment and Order is passed on 15th February 2011 i.e. five years prior to the passing of the order of detention.

9. Upon careful perusal of the discussion/ grounds in the detention order passed by the detaining authority, in Ground No.3, it is stated thus:-

" The above mentioned offences have been registered against you from time to time for your criminal acts but the same have had no effect on you. In the past, on 07/01/2004, you have been convicted in CR. No. 63/2003 u/s 399 of IPC registered at Hadapsar Police Station. In the said offence, the Hon'ble 15th Ad-Hoc

Addl. District and Asstt. Sessions Judge, Pune sentenced you to suffer R.I. for three years and to pay fine of Rs.200/- and in default of payment of fine, to undergo R.I. for one month."

10. Therefore, it is abundantly clear that the detaining authority was not made aware and conscious of the Judgment and order passed by the Court of Sessions Judge, Pune in Criminal Appeal No.71 of 2004 dated 15th February 2011 acquitting the Petitioner i.e. detenu from the offence (Crime No.63 of 2003) punishable under Section 399 of the I.P.C. The Supreme Court in the case of **Dharamdas Shamlal Agarwal vs. The Police Commissioner and another**, supra, while considering the contention of the detenu therein that the acquittal of the detenu in two of the cases shown in the table appended to grounds, had not been brought to the notice of detaining authority and on the other hand they were withheld and the detaining authority was given to understand that the trial

of those cases was pending, has taken a view that, the non-placing of the material fact - namely the acquittal of detenu in the two cases resulting in non-application of mind of the detaining authority to the said fact vitiated the requisite subjective satisfaction, rendering the detention order invalid. It will be gainful to reproduce Para 12 of the said Judgment of the Supreme Court, which reads thus:

"12. From the above decisions it emerges that the requisite subjective satisfaction the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. It is clear to our mind that in the case on hand, at the time when the detaining authority passed the

detention order this vital fact, namely, the acquittals of the detenu in case Nos. mentioned at Serial Nos. 2 and 3 have not been brought to his notice and on the other hand they were withheld and the detaining authority was given to understand that the trial of those cases were pending. The explanation given by the learned counsel for the respondents, as we have already pointed out, cannot be accepted for a moment. The result is that the non-placing of the material fact - namely the acquittal of detenu in the above-said two cases resulting in non-application of minds of the detaining authority to the said fact has vitiated the requisite subjective satisfaction, rendering the impugned detention order invalid."

11. Coming to the second ground urged by the learned counsel for the Petitioner that the detaining authority has not recorded his satisfaction to the effect that he has considered the in-camera statements, more particularly their truthfulness of the incidents which is a mandatory requirement of law is concerned, we have perused

the original record made available for our perusal and we find that the detaining authority has relied upon the report submitted by the Assistant Commissioner of Police and the detaining authority himself has not verified the truthfulness of the incidents stated by the witnesses in their in-camera statements. The Division Bench of the Bombay High Court at Principal Seat, in the case of **Mrs. Mrunali Virendra Lonare vs. Commissioner of Police and others**, supra, while considering similar arguments/ grounds agitated by the detenu therein, in Para 6 and 7 held thus:

"6. We have perused in-camera statements of witnesses A and B. We find on careful perusal of the grounds of detention that the detaining authority has not at all recorded a subjective satisfaction that the incidents narrated in the in-camera statements were truthful. In Paragraph 6 of the decision in the case of Smt. Vijaya Raju Gupta (supra), the Division Bench of this Court held thus:-

"6. There remains no doubt in the light of the law laid down by the Apex Court that in camera statement of person/witness can be utilized by the detaining authority for the purpose of arriving at subjective satisfaction for passing the order of detention. However, the Apex Court made it clear that the facts stated in the materials relied upon should be true and have a reasonable nexus with the purpose for which the order is passed. Necessary corollary, therefore is that the detaining authority must be satisfied about the truthfulness of the statements made in the in camera statements. Testing it from this touchstone, we find that neither in the detention order nor in the grounds of detention, the detaining authority has stated anything that he was satisfied about the truthfulness of the statements made in the camera statements."

(Underline added)

7. In the further part of the Paragraph 6 of the said decision, the Division Bench held that the detaining authority has to apply his mind to the truthfulness of the assertions made in the in-camera statements. In absence of a

subjective satisfaction recorded in that behalf, the Division Bench held that the order of detention stood vitiated. In the present case, admittedly no such subjective satisfaction has been recorded by the Detaining Authority."

12. The third ground agitated by the learned counsel appearing for the Petitioner is that before passing the impugned order of detention, the detaining authority perused all the material which was placed before him, in other grounds than the material shown in para 4 and 5, which according to the counsel appearing for the Petitioner, is extraneous material, which vitiated the subjective satisfaction of the detaining authority. On careful perusal of the reply filed on behalf of Respondent No.1 and in particular Para 5 of the same, a statement made is that:-

"That the Detaining Authority perused all the material which was placed before him and after subjectively satisfied that

activities of the Detenu were prejudicial to the maintenance of public order. The Detaining Authority further satisfied that the Detenu is a dangerous person as defined in section 2(b-1) of the MPDA Act. The Detaining Authority further satisfied that the Detenu was acting in a manner prejudicial to the maintenance of public order in the area of Hadapsar, Wanawadi and Mundhawa Pune as well as within the jurisdiction of Hadapsar, Wanawadi and Mundhawa Police Stations."

. In Para 6 of the reply, it is further stated that:-

"Apart from the material which are placed before the Authority runs into total pages 1 to 618 and total number of documents are 126 and the Detaining Authority perused all the material and subjectively satisfied and found that the prejudicial activities committed by the Detenu, the detention order is must and therefore, the Detaining Authority drafted the said grounds and finalized and all the material along with grounds of detention are duly supplied to the Detenu which are relied by the

Detaining Authority and signature of Detenu was obtained as acknowledgement on the office copy."

13. Therefore, it is abundantly clear that the detaining authority not only considered the relevant material but apart from said material/documents, the extraneous material is also considered by the detaining authority. The Supreme Court in the case of **Mohd. Dhana Ali Khan vs. State of W.B.**, supra, while considering the detention of detenu therein under Section 3 of the Maintenance of Internal Security Act (26 of 1971), in the facts of that case, held that:-

"In the circumstances, therefore, we are satisfied that the District Magistrate before passing the order of detention had other materials also before him. It cannot be said to what extent the District Magistrate was influenced by the other materials and not by the material which is mentioned in the ground of detention. Thus the order of detention suffers from a very serious infirmity which

goes to the root of the matter. The liberty of the subject being an extremely precious right, where any infraction of such a right is involved the court must act as a watch-dog and a sentinel on the qui vive to see that every benefit of the lacunae goes to the detenu."

. The Supreme Court in the said Judgment, has placed reliance on the reasons of the decision of the Supreme Court in **Khudiram Das vs. State of West Bengal, A.I.R. 1975 S.C. 550**, wherein the Supreme Court has observed thus:-

"It is therefore, not only the right of the court, but also its duty as well, to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other basic facts and materials were before it,

it has not allowed them to influence its satisfaction. The Court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts of materials, apart from those admitted by it, which could have reasonably influenced the decision of the detaining authority and for that purpose, the Court can certainly require the detaining authority to produce and make available to the Court the entire record of the case which was before it. That is the least the Court can do to ensure observance of the requirements of law by the detaining authority."

14. In the light of discussion in foregoing paragraphs and as held by the Supreme Court in the case of **Dharamdas Shamlal Agarwal vs. The Police Commissioner and another**, supra, that once the requisite subjective satisfaction of the detaining authority is vitiated due to non-placing the acquittal order of detenu before the detaining

authority, the detention order renders invalid. In our considered opinion, in the present case for more than one reason including non-placing of the order of acquittal of detenu i.e. Petitioner in Criminal Appeal No.71 of 2004 (Mr. Deepak Dattu Suryawanshi vs. The State of Maharashtra) decided on 15th February 2011, and also on other two grounds, the requisite subjective satisfaction of the detaining authority stands vitiated, rendering the detention order invalid. Accordingly the Petition must succeed and we pass the following order:-

O R D E R

(I) The Writ Petition is allowed.

(II) Rule is made absolute in terms of prayer clause (B), which reads thus:-

"By issuing Writ of mandamus or Writ of habeas corpus, order or directions in the like nature, kindly quash and set aside the

order dated 11.07.2016 [EXH-A]; passed by the respondent No.1, bearing No. PCB/DET/2663/2016 under Section 3(2) of the M.P.D.A. Act 1981. And for that purpose issue necessary order and kindly be release the Petitioner forthwith."

(III) The Writ Petition stands disposed of, accordingly.

(IV) Parties to act upon authenticated copy of this order.

[K.K. SONAWANE, J.]

asb/DEC16

[S.S. SHINDE, J.]