

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1398 OF 2016

Harish Patil

... Petitioner

Vs.

The State of Maharashtra & Ors.

... Respondents

Mrs.Aisha M. Zubair Ansari for the Petitioner

Mrs.M.H. Mhatre, APP, for Respondent - State

CORAM: **SMT. V.K. TAHILRAMANI &**

MRS.MRIDULA BHATKAR, JJ.

RESERVED ON : **AUGUST 24, 2016**

PRONOUNCED ON: **OCTOBER 10, 2016**

JUDGMENT (PER SMT. V.K. TAHILRAMANI, J.)

1. By means of this writ petition filed by the friend of the detenu, the detention order passed by respondent No.2 District Magistrate, Jalgaon, under 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 is being challenged. Respondent No.2 by the detention order dated 16.3.2016 ordered the detention of the detenu Nilesh Dnyaneshwar Desale to prevent him from acting in any manner prejudicial to the maintainance of public order.

2. From the grounds of detention furnished to the detenu, it is apparent that the detention order is based on 4 C.Rs and two in-camera statements. The 4 CRs are C.R. Nos.166 of 2010, 134 of 2015, 135 of 2015 and 21 of 2016. All the 4 CRs are of Bhadgaon police station in Jalgaon. C.R. No.166 of 2010 is under sections 353, 379, 504, 506 r/w section 34 of the Indian Penal Code. C.R. No.134 of 2015 is under sections 395, 325, 326, 323, 143, 147, 148, 149, 448, 504 and 506 of the Indian Penal Code. C.R. No.135 of 2015 is under section 379 r/w section 34 of the Indian Penal Code and C.R. No.21 of 2016 is under sections 379, 420 and 109 of the Indian Penal Code. All 4 CRs pertain to theft of sand. The incidents relating to the two in-camera witnesses relate to threat and assault in relation to theft of sand by the detenu. Hence, the detenu has been detained as he is a Sand Smuggler and his activities are prejudicial to public order as envisaged under section 2 (a) subsection (iv-a) of the Act. Sub-section (iv-a) of section 2 (a) reads as under:

“(iv-a) in the case of a sand smuggler, when he is engaged, or is making preparations for engaging, in any of his activities as a sand smuggler, which affect adversely, or are likely to affect adversely, the maintenance of public order;”

3. The first ground raised by the learned Counsel for the petitioner is in ground 4(i). In short, in relation to this ground, it is contended that the detention order is issued on 16.3.2016 whereas on the same day, i.e., on 16.3.2016 at 1.20pm and 1.25pm, the Detaining Authority has put endorsement about the truthfulness of the in-camera statements. This means that the detention order and the grounds of detention were prepared thereafter and detention order and grounds of detention alongwith accompanying documents were served on the detenu on 16.3.2016 at about 9.10pm. Hence, it is submitted that there was not sufficient time for the Detaining Authority to properly apply its mind to the facts of this case and to issue the order of detention. It is further submitted that the time period is so short that on account of paucity of time, there could not have been proper application of mind by the Detaining Authority, hence, on the ground of non-application of mind, the detention order is vitiated.

4. In addition, on going through the affidavit filed by the Detaining Authority, Mrs. Ansari submitted that the affidavit clearly shows that the proposal is dated 15.3.2016. The set of documents which was served on the detenu consists of 11 documents running into 187 pages. Hence, in such a

short time, it was not possible for the Detaining Authority to properly apply its mind and to issue an order of detention.

5. Mrs.Ansari has relied on two decisions wherein she stated that in similar circumstances on account of paucity of time on the ground of non-application of mind the detention order was quashed. The first decision is dated 20.12.1985 of the Supreme Court in the case of **Shri Umesh Chandra Verma vs. Union of India and anr**¹. In the said case, the detenu was intercepted on the morning of 12.6.1985 and a large quantity of contraband gold was recovered from him. He was interrogated the entire day on 13.6.1985. Thereafter at 6pm, he was formally arrested. The same night, the detention order was issued against the detenu. Mrs.Ansari pointed out that in the said case the order of detention and the documents ran into about 234 pages and the documents included the arrest memo which was prepared at 6pm on 13.6.1985. This arrest memo which was prepared at 6pm, was relied upon by the Detaining Authority which indicated that the arrest memo was placed before the Detaining Authority some time after 6pm. It was submitted in the said case that if the last document was generated at 6pm, it would certainly be difficult, if not impossible, for the Detaining Authority to issue order of

1 Criminal Appeal No.878 of 1985 arising out of SLP (Cri.) No.3376/85

detention the same night. Looking to the facts of the case, the Supreme Court held that the Detaining Authority could not have possibly applied its mind to the voluminous documentary evidence which was placed before him and for that reason alone, the order of detention was quashed.

6. The second decision on the above point relied upon by Mrs.Ansari is of the Division Bench of this Court in the case of **Smt.Kirti Sujit Satam vs. State of Maharashtra and ors²**. On perusal of the said decision, it shows that on 26.12.2005, the file was placed before the Detaining Authority for the first time and the detention order was issued on the same day. In the said case, it was submitted by the learned Counsel for the detenu that it was not physically possible for the Detaining Authority to peruse almost 1712 pages comprising of 154 documents in such a short period. This was so because the Detaining Authority did not have even 12 hours to scrutinise about 1712 pages and thereafter issue the order of detention on the same day. However, in the present case, it is seen that the proposal is dated 15.3.2016. The proposal was forwarded to the Detaining Authority on 15.3.2016 alongwith all the documents.

2 2008 ALL MR (Cri.) 774

The Detaining Authority has stated in para 7 of its affidavit that on 15.3.2016, the Detaining Authority carefully perused the proposal from all angles. Thereafter, the Detaining Authority directed the Sponsoring Authority to produce the in-camera witnesses before the Detaining Authority on 16.3.2016 i.e., the next day. On 16.3.2016, the in-camera witnesses were presented before the Detaining Authority. The Detaining Authority personally enquired with the in-camera witnesses about the incidents they had stated in their statements dated 4.3.2016 and 9.3.2016 respectively. The Detaining Authority verified genuineness and truthfulness of the statements of both the in-camera witnesses recorded earlier. The Detaining Authority further verified the fear expressed by the in-camera witnesses at the hands of the detenu. The Detaining Authority has further stated as under:

“I say that on 16.3.2016, I once again carefully went through the proposal alongwith documents, I was subjectively satisfied that it was absolutely necessary to detain the detenu under the MPDA Act, and therefore, I have finalized the grounds of detention and contemporaneously issued order of detention on 16.03.2016.”

7. From the fact that the Detaining Authority has stated that the Detaining Authority on 16.3.2016 **"once again"** carefully went

through the proposal alongwith the documents shows that the Detaining Authority was going through the proposal and the documents once again on 16.3.2016. As stated earlier, the Detaining Authority has stated that on 15.3.2016, the Detaining Authority had carefully perused the proposal from all angles. This coupled with the statement that on 16.3.2016, the Detaining Authority once again carefully went through the proposal alongwith documents shows that all the documents were perused by the Detaining Authority on 15.3.2016 itself. Therefore, on 16.3.2016 to again go through 187 pages was not at all difficult. Thus, it is seen that the proposal and the documents accompanying them were perused by the Detaining Authority on 15.3.2016. The only two new documents which were generated on 16.3.2016 are verification of in-camera statements by the Detaining Authority on 16.3.2016 at 1.20 pm and 1.25 pm. The documents in the present case were only 187. They were already perused by the Detaining Authority on 15.3.2016. In such case, in the time period between 1.25pm on 16.3.2016 to 9.10pm on 16.3.2016, it cannot be said that it was not possible for the Detaining Authority to apply her mind to all the documents on 16.3.2016 and thereafter issue the order of detention. We are not in agreement with the submission made by the learned Counsel for the detenu that on

account of paucity of time, there was no time for the Detaining Authority to properly apply her mind.

8. Thereafter, it was submitted that the last document was generated on 16.3.2016 at 1.25pm. Hence, it was contended that from 1.25 pm on 16.3.2016 to 9.10pm on 16.3.2016, it was not possible for the Detaining Authority to have gone through all the documents, formulate the grounds of detention and thereafter issue the order of detention. It was submitted that the Detaining Authority as the grounds of detention must have adopted the proposal given by the sponsoring authority without applying its mind to the case. Mrs. Ansari relied on the decision of the Supreme Court in the case of **Rajesh Vashdev Adnani vs. State of Maharashtra**³. In the said case, it was found that the proposal of the Sponsoring Authority was converted into the detention order only by substituting the word 'he' by 'you'. No other change was found. It was held in such case that this showed non-application of mind by the Detaining Authority, hence the detention order was quashed.

9. In the present case, two documents were generated on 16.3.2016. They are the verification by the detaining authority itself of

3 2006 ALL MR. (Cri.) 1781 (SC)

the statements of in-camera witnesses A and B. These two documents run only into six lines each. As stated earlier, the Detaining Authority had already scrutinised the rest of the documents on 15.3.2016. Hence, on 16.3.2016, it was not at all difficult for the Detaining Authority after 1.25pm of 16.3.2016, to again go through the documents, formulate the grounds of detention and issue the order of detention. As far as the submission that on account of paucity of time the Detaining Authority adopted the proposal of the sponsoring authority which cannot be countenanced is concerned, we went through the files and found that the proposal is entirely different from the grounds of detention. Hence, it cannot be said that the Detaining Authority adopted the proposal given by the Sponsoring Authority as grounds of detention.

10. Thereafter, Mrs.Ansari submitted that the detenu was released on bail by order dated 2.3.2016. She submitted that false and fabricated in-camera statements were prepared by the Sponsoring Authority to see that the detenu is detained. These statements are dated 4.3.2016 and 9.3.2016. She submitted that the subjective satisfaction of the Detaining Authority based on such false and fabricated documents is sham and unreal. This ground has been

raised in ground 4(iii) of the petition. This ground 4(iii) is replied in para 9 of the return of the Detaining Authority. It is stated therein as under:

“.. it is denied that the in-camera statements are false and fabricated only to use for putting the detenu under MPDA Act. It is further denied that the subjective satisfaction on my part, based on such false and fabricated documents is sham and unreal and therefore order of detention is malafide, null and void.

It is submitted that, during the course of inquiry, it was learnt that even though the detenu had committed several offences, the witnesses were not willing to come forward to make any complaint openly against the detenu due to reign of terror which was created by the detenu and his associates. It was only when assurances were given to the witnesses that their names and identifying particulars would not be disclosed, two witnesses came forward to give their statements, these statements were recorded on 04.03.2016 and 09.03.2016. The witnesses have deposed about the incident of unauthorized sand stealing illegal transportation of sand by the detenu and atrocities they have suffered at the hands of the detenu. I have personally verified the truthfulness and genuineness of the incidents which they have suffered. I say that considering the incidents from various angles, I was subjectively satisfied that the activities of the detenu as a sand smuggler were prejudicial to the maintenance of public order. I issued the order of detention against the detenu in order to prevent the detenu from further indulging in such prejudicial activities in future. I say that as a detaining authority I am justified in relying upon the said in-camera statements for issuing the order of detention. Thus there is no substance in the say of the petitioner in this para.”

11. In the present case, it is seen that the in-camera statements were inquired into by the Sub-Divisional Police officer, Chalisgaon on 13.3.2016. The in-camera witnesses were produced before the

SDPO and he has recorded that after the witnesses were called and the statements were verified, it came to his notice that there was tremendous fear in the minds of the in-camera witnesses in relation to the detenu. This shows that the SDPO had verified the statements of the in-camera witnesses and found them to be genuine. In addition, in this case, it is seen that the in-camera witnesses were produced before the Detaining Authority herself. She herself made enquiries with the in-camera witnesses and found that they were truthful and genuine. Thus, we find no merit in the ground that false and fabricated in-camera statements were prepared in order to detain the detenu.

12. Ground (xii) relates to in-camera statements. Ground (xii) (a) raised by Mrs.Ansari states that the in-camera statements are false and the Detaining Authority in the grounds of detention has not recorded its satisfaction about the truthfulness of the in-camera statements, hence, the detention order is not sustainable. In the earlier paras itself, we have reproduced what the SDPO and the Detaining Authority have stated in relation to the statements of the in-camera witnesses. The verification recorded by the SDPO who is equivalent in rank to an ACP and Detaining Authority shows that they

were satisfied about the truthfulness of the in-camera statements. Thus, there is no substance in the contention that in camera statements are false.

13. Thereafter, Mrs.Ansari submitted that the Detaining Authority has to state in the grounds of detention his subjective satisfaction about the truthfulness and genuineness of the in-camera statements. If the subjective satisfaction is not stated in the grounds of detention, the detention order would not be sustainable. Mrs.Ansari, to lend force to the submission pleaded by her in ground (xii)(a), placed reliance on the decision rendered by the Division Bench of this Court in the case of **Smt.Vijaya Raju Gupta vs. R.H. Mendonca & Ors**⁴. She specifically drew our attention to para 6, which is as under:

“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 utilised 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 touch stone, 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 in-camera

4 2001 ALL MR Cri.48

statements. In the present case the petitioner has set up specific case that in-camera statements were false and fabricated after the detenu was released on bail. The Detaining Authority in his first affidavit filed on 13.4.2000 has only denied that false and fabricated statements were recorded after the detenu was released on 3.7.1999. While denying that the documents were fabricated, the Detaining Authority in his aforesaid affidavit has further stated that the in camera statements were verified by the higher grade Police Officer of the rank of A.C.P. As a matter of fact, in two subsequent affidavits, this stand has been reiterated and further statement has been made that he was subjectively satisfied that the contents of the in-camera statements were true and genuine since it was verified by the Assistant Commissioner of Police. The English translation of the verification made by the Assistant Commissioner of Police below the in-camera statements, reads, "my statement was translated to me in Hindi which is in accordance with what I stated. "This means that the Assistant Commissioner of Police has only verified that the statement made by the witness was recorded as actually made by him. Therefore on the basis of mere verification, **without there being something more by way of contemporaneous document or material more over when no such statement is made in the grounds of detention that the statements made in the in-camera statement were believed to be true, it is very difficult to hold that the Detaining Authority was in fact subjectively satisfied that the assertions made in in-camera statements were true.** The Detaining Authority has to apply his mind about the truthfulness of the assertions made in in-camera statements which in the facts of the present case seems to have not been done which in our opinion vitiates the detention order."

(Emphasis supplied)

14. Before we deal with the decision in the case of **Smt.Vijaya Raju Gupta (supra)**, we would like to refer to para 16 of the decision

of the Supreme Court in the case of **Smt.Phulwari Jagdambaprasad Phatak vs. R.H. Mendonca**⁵ which was relied upon in Vijaya Gupta. Para 16 of the said decision in **Smt.Phulwari Phatak** reads as under:

“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 persons 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 type 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

5 2000 ALL MR (Cri.) 1503 (SC)

Detaining Authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose with which the order is passed."

15. There remains no doubt in the light of the law laid down by the Apex Court in **Phulwari Pathak (supra)** that the in-camera statement of person/witness can be utilised 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. However, it is nowhere stated in **Phulwari Pathak (supra)** that the Detaining Authority in the grounds of detention has to mention that he is satisfied that the in-camera statements are true. What has been laid down in **Phulwari Pathak (supra)** is that the material relied upon by the Detaining Authority should be true and have a reasonable nexus with the purpose for which the order is passed.

16. On careful perusal of para 6 of **Vijaya Gupta (supra)** reproduced above, we find that in that case the verification of the in-

camera statement by the ACP only read “my statement was translated to me in Hindi which is in accordance with what I stated”. From this verification, this Court in **Vijaya Raju Gupta's case**, came to the conclusion that the ACP only verified that the statement made by the witness was recorded as actually made by the witness and there was no verification regarding the truthfulness of the in-camera statement. Based on this verification, this Court in **Vijaya Gupta's case** observed that on the basis of such verification without there being any contemporaneous document or material, moreover when there is no statement made in the grounds of detention that the in-camera statements were true it is difficult to hold that the Detaining Authority was subjectively satisfied about truthfulness of the in-camera statements. However such is not the situation in the present case. In the present case, the SDPO (ACP) has verified about truthfulness of the in-camera statements and this verification has been furnished to the detenu. The verification clearly shows that the in-camera witnesses were called by the ACP and it came to his notice that there was tremendous fear in the minds of in-camera witnesses in relation to the detenu. Thus, there are contemporaneous documents in the present case which shows that the truthfulness of the statements was verified.

17. In the case of **Vijaya Gupta (supra)**, there were no contemporaneous documents showing that truthfulness of the in-camera statements was verified therefore, it was observed that in such case the Detaining Authority at least in the grounds of detention should have recorded his subjective satisfaction about truthfulness of the in-camera statements. Had there been contemporaneous documents in the case of Vijaya Gupta (supra) to show that the truthfulness of the in-camera statements was verified, the detention order would not have been quashed. The ratio of Vijaya Gupta (supra) is not that if in the grounds of detention no subjective satisfaction is recorded about truthfulness of the in-camera statements, the detention order is liable to be quashed. But the ratio is that there should be some material to show the truthfulness of the in-camera statements was verified. The material may be subjective satisfaction of the Detaining Authority in the grounds of detention or it could be by way of any contemporaneous document. However, if both are missing then the detention order may be liable to be quashed.

18. In relation to the absence of subjective satisfaction being recorded in the grounds of detention about the truthfulness and

genuineness of the statements of in-camera witness, we may state that it is settled law that the Detaining Authority in the grounds of detention need not record his reaction to each and every document or material. The Supreme Court has so observed in the case of **State of Gujarat vs. Sunil Fulchand Shah** reported in **AIR 1988 SC 723**.

19. We have examined the averments made in ground (xii)(a), the reply to the said ground furnished in para 5 of the return of the Detaining Authority and the decision cited by Mrs.Ansari. We make no bones in observing that the Supreme Court has laid down that the Detaining Authority is under an obligation to verify the truthfulness of the incidents as narrated in the in-camera statement and to record his satisfaction to that effect is not the ratio, which has been laid down by the Apex Court in Phulwari Pathak's case (supra). What has been laid down by the Apex Court therein is that the material relied upon the detaining authority should be true and should have a reasonable nexus with the purpose for which the order is passed. In the instant case, paragraph 5 of the return of the Detaining Authority wherein ground (xii)(a) has been replied to reads as under:

“5. With reference to para no.(xii) (a) of the grounds of detention, it is denied that the in-camera statements of

two witnesses are untrue and are falsely recorded just to issue the present detention order.

It is stated that during the confidential inquiries made into the illegal activities of the detenu, it was learnt that though the detenu had committed several offences, the witnesses were not willing to come forward to make any complaint openly against detenu due to reign of terror created by the detenu and his associates. It was only after the assurances given to the witnesses that their names and identifying particulars would not be disclosed and they would not be called to depose against the detenu before any forum, two witnesses shown willingness to give their statements and same were recorded in-camera on 4.3.2016 and 9.3.2016 respectively. The said in-camera witnesses were further inquired by the Sub Divisional Police Officer, Chalisgaon on 13.2.2016. They were again produced before me on 16.3.2016. I being a Detaining Authority had personally verified the truthfulness of the incident narrated by the in-camera witnesses in their statements dated 4.3.2016 and 9.3.2016. I have personally verified the atrocities and fear expressed by the in-camera witnesses against the detenu and after verifying the truthfulness and genuineness of the in-camera witnesses, I have recorded my subjective satisfaction and I have issued the order of detention against the detenu. Thus there is no substance in the say of the Petitioner in this para.”

20. Although, as a general rule, repetition should be avoided, but sometimes it becomes necessary, as is the case here. In paragraph 5, the Detaining Authority has not only emphatically denied that the in-camera statements are not true or falsely recorded but has categorically asserted about the truthfulness and genuineness of the in-camera statements. In our view, the averments made in paragraph 5 of the return of the Detaining Authority make it crystal clear that she

was satisfied that the averments in the in-camera statement were true and genuine.

21. We now come to the Division Bench decision of this Court cited by Mrs. Ansari rendered in **Vijaya Gupta's case** (supra). We have earlier extracted paragraph 6 of the said decision wherein, explaining Phulwari Pathak's case, the Division Bench had held that in-camera statements can be utilised for passing a detention order, provided the caution given by Supreme Court in that case in terms "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" is borne in mind. After extracting the said passage from Phulwari Pathak's case, the Division Bench has held that the necessary corollary which flows therefrom is that the Detaining Authority must be satisfied about the truthfulness of the statement made in the in-camera statement. This corollary, in our view, is the ratio laid down in the said decision of the Division Bench. The said corollary, in our judgment, does not suggest as has been pleaded in ground (xii)(a) that the Detaining Authority has to record its satisfaction in the grounds of detention to the effect that the said statements are true and genuine.

22. What is necessary is that the Detaining Authority should be subjectively satisfied that the in-camera statements are true and genuine. It is not necessary that the subjective satisfaction to the said effect has to be reflected in the grounds of detention itself. Even if there is a contemporaneous document which shows that the Detaining Authority was subjectively satisfied that the in-camera statements were true and genuine, that will be sufficient. The term “subjective satisfaction” relates to “thinking”. In the present case, we are concerned with the subjective satisfaction of the Detaining Authority. The term 'subjective satisfaction' has a reference to the mental element of the subject i.e., the desires, feelings or perception of the Detaining Authority. The subjective satisfaction should be a reasonable one and not illusory or fanciful. On going through the grounds of detention and the documents relied upon by the Detaining Authority, it cannot be said that the subjective satisfaction is illusory or fanciful. In fact, we find that the subjective satisfaction is real and rational. In the present case, as stated earlier, there is material and contemporaneous documents before the Detaining Authority to show that the in-camera statements were true and genuine and copies of these documents have been furnished to the detenu. Thus, this ground too fails.

23. In ground (xii)(b) it is contended that the ACP has verified the satisfaction about the identity of the in-camera witnesses and fear expressed by them, however, the ACP has not recorded any satisfaction about the truthfulness of the incidents as narrated by the in-camera witnesses. The SDPO (ACP) has clearly stated in his verification that he made enquiry about the incident with the in-camera witnesses and on enquiry with the in-camera witnesses, it came to his notice that there was tremendous fear in the minds of the in-camera witnesses in relation to the detenu. This shows that ACP was satisfied about the truthfulness of the statements of the in-camera witnesses. This verification which is a contemporaneous document has been furnished to the detenu. Thus it is wrong to say that verification recorded is bad in law and the order of detention based on these in-camera statements is liable to be quashed and set aside.

24. Thereafter, the learned Counsel for the petitioner raised ground xii(c). In the said ground, it is stated from the statements of in-camera witnesses it is seen that there is a second verification after the verification done by the ACP and as far as the second verification

is concerned, there is no stamp to show the authority, who has verified the in-camera statements again, hence, the detenu was deprived of his right to make an effective representation. The law only requires that the statements of the in-camera witnesses have to be verified by an officer of the rank of ACP or above, which has been done in the present case. Verification of in-camera statements by SDPO who is equivalent in rank to ACP has been furnished to the detenu and he is aware of the same. Hence, the absence of stamp of the authority, who has again verified the in-camera statements, would not deprive the detenu of the right to make an effective representation.

25. The next contention raised by Mrs. Ansari is found in ground xi. It is stated therein that copies of detention order, grounds of detention and committal order were forwarded to the Advisory Board in English, however, the detenu was not supplied the documents in English as such he was deprived of his right to make an effective representation as he was not aware about the contents of the English documents, hence the detention order was vitiated. In support of her contention, Mrs. Ansari relied on the decision of this Court in the case of **Moosa Velliat v. Asstt. Secretary, Government of**

Maharashtra⁶. She pointed out that in the said case, only the translation of the documents was given to the detenu and the original documents which were placed before the Detaining Authority were not furnished to the detenu. In the said case, it was held that the copy of original documents and the translation in the language known to the detenu has to be furnished to the detenu and non-furnishing of the original documents which were placed before the Detaining Authority would vitiate the order of detention. Thereafter, Mrs. Ansari relied on the decision of the Supreme Court in the case of **Union of India & anr. vs. Shantaram Gajanan Kanekar & anr.**⁷ In the said case, the detenu was conversant only with Marathi language and the Marathi version of the declaration which was supplied to the detenu did not tally with its counterpart in English, hence, it was held that the detention order is vitiated.

26. In the return, the Detaining Authority has categorically averred that the original documents were in Marathi and as the detenu stated in his statement that he has taken education in Marathi medium and he can write and read Marathi language fluently, the original detention order, grounds of detention, committal order were

6 1983 CRI. L.J. 1246

7 1994 SCC (cri.) 1496

supplied to the detenu. The original documents were in Marathi, which was a language known to the detenu, hence these documents were furnished to him. The learned APP submitted that in the present case, as the original documents were in Marathi, the original documents were furnished to the detenu as he was conversant with the said language and no translation of the original documents was furnished to the detenu. Hence, the decision in the case of **Shantaram Kanekar (supra)** would not apply because there was no question in the present case of the original documents not tallying with the translation. As far as the decision in the case of **Moosa Velliat v. Asstt. Secretary, Government of Maharashtra (supra)**, is concerned, the ratio is that the original documents which are placed before the Detaining Authority and which have been relied upon by the Detaining Authority, have to be furnished to the detenu. Only furnishing translation of the original documents is not enough. In the present case, it is seen that the original documents were in Marathi and these original documents were relied upon by the Detaining Authority and copies thereof have been furnished to the detenu. Hence, the ratio in this decision has in fact been complied with i.e., the original documents have been furnished to the detenu.

27. In the present case, as the original documents were in Marathi and were furnished to the detenu in Marathi for the sake of convenience of the Advisory Board, the detention order, grounds of detention and committal order were translated in English. Mrs. Ansari submitted that this translation in English of the Marathi documents which was furnished to the Advisory Board ought to have been furnished to the detenu and non-furnishing affects the right of the detenu to make an effective representation against the order of detention, hence, the detention order is vitiated. As far as this contention is concerned, it is a settled law that to make an effective representation, the detenu should be furnished the detention order, grounds of detention and the documents which were placed before the Detaining Authority and relied upon by the Detaining Authority to issue the order of detention. In addition, these documents have to be furnished in the language known to the detenu. In the present case, all the documents which were relied upon by the Detaining Authority to issue the order of detention have been furnished to the detenu. Any detenu would obviously make his representation based on the documents which were relied upon by the Detaining Authority. The Supreme Court in the case of **Abdul Sattar Ibrahim Manik & Ors. vs. Union of India & Ors.**, reported in **AIR 1991 SC 2261** has

observed that it is not necessary to supply the documents which are not referred to or relied upon by the Detaining Authority to issue the order of detention.

28. The translation of the documents in English which were furnished to the Advisory Board for the sake of convenience were not documents placed before Detaining Authority or documents on which the detention order was issued. Hence, the detenu cannot claim a right to be furnished the same nor can the detenu be heard to contend that non-supply of such documents would affect his right to make an effective representation against the order of detention.

29. The last ground which is raised by Mrs.Ansari is contained in ground (vi) of the petition. It is contended therein that none of the incidents relied upon by the Detaining Authority affect the maintainance of public order and the incidents center only around individuals. Mrs.Ansari submitted that grounds in the present case are not of such magnitude as to amount to apprehending disturbance of public order nor was there any evidence that by the conduct of the detenu, public order was endangered or there could be reasonable apprehension about it. Hence, the detention order would be

vitiated. In order to appreciate this ground, it would be necessary to look at the grounds of detention which we shall advert to a little later.

30. Mrs. Ansari relied upon para 15 of the decision of the Supreme Court in the case of **Ajay Dixit vs. State of U.P. & ors.**⁸ to contend that as the incidents relied upon by the Detaining Authority do not affect public order, the detention order would be vitiated. In the para 15, it is observed thus:

“... The act by itself is not determinate (sic determinant) of its gravity. In its quality it may not differ from another but its potentiality maybe very different. Therefore the question whether a man has only committed a breach of law and order or acted in a manner likely to the disturbance of public order is a question of degree of the reach of the act upon society.”

In the said decision, reliance is placed on the decision of the Supreme Court in the case of **Arun Ghosh vs. State of West Bengal** reported in **(1970) 1 SCC 98** wherein it is observed as under:

“... that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society.

....A large number of acts directed against persons or individuals may total up into a breach of public order.

⁸ (1984) 4 SCC 400

....It is always a question of degree of the harm and its effect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.

16. It is, therefore, necessary in each case to examine the facts to determine, not the sufficiency of the grounds nor the truth of the grounds, but nature of the grounds alleged and see whether these are relevant or not for considering whether the detention of the detenu is necessary for maintenance of public order.”

31. Ground (vi) is replied by the Detaining Authority in para 11 of its return, which reads as under:

11. With reference to ground 6 of the petition, it is denied that, all incidents considered by me as a detaining authority do not attract maintenance of public order as all the incidents center round only against the individuals. It is further denied that all the incidents referred in grounds of detention, the public at large were not involved which could have effected the maintenance of public order. I further deny that two in-camera statements relied by me as a detaining authority center round law and order problem and not the public order.

It is submitted that the incidents narrated in grounds of detention from para 5.1. to 5.4 are the cases of illegal transportation, removal, picking up or disposal of sand and its transportation, storing of sand, for personal gain of the detenu. The said offences were registered against the detenu and his associates by the Government Officers i.e., Talathi and Mandal Officers, who are the representatives of public at large. In all these cases the detenu was released on bail by the orders of

Ld. Competent Courts. It is further submitted that all the offences referred in paragraphs 5.1 to 5.4 of the detention including statements of two in-camera witnesses, demonstrates the prejudicial activities of the detenu whereby due to illegal and unauthorized act of the detenu, the water level of River Girna was adversely affected resulting into scarcity of drinking and agricultural water reserved in the River Girna for the general public in the vicinity. Due to the such activities of the detenu, even tempo of life of the people was adversely affected.

Considering the overall material placed before me by the Sponsoring Authority, I was subjectively satisfied that the activities of the detenu were prejudicial to the maintenance of public order and in order to prevent the detenu in further indulging in such prejudicial activities in future, I issued the order of detention against the detenu. Thus I am justified in issuing the order of detention against the detenu, hence there is no substance in the say of the petitioner in this para.”

32. In the present case, it is seen that the petitioner is a sand smuggler. He used to commit theft of sand from river Girna and if anyone stopped him in any of his activities related to smuggling of sand, or removing, transporting and storing of sand, he used to threaten not only the members of public but also government officials and on occasions, used to assault them. On account of threats given by the detenu to the villagers in the area, people were not coming forward to make complaints against the detenu even though his act of stealing sand from the banks of river Girna tended to lower the water table thereby causing conditions of drought. Witness A has

stated that earlier, he helped revenue authority to catch the truck of sand. The detenu then accosted the in-camera witness A and asked him why did he help the people of Tehsil to catch his sand vehicles. By saying so, the detenu beat witness A and threatened him that if he is seen on the road again, he will be killed, hence, the witness did not lodge any complaint against the detenu on account of fear in his mind. 15 days thereafter, the detenu again accosted the witness A and told him that he had already warned him earlier not to inform the people of the Tehsil about stealing of sand by his truck and tractor. The detenu told the witness that he was not obeying the warning of the detenu and as a result of which the vehicles of the detenu were being caught. The detenu then beat the witness. The detenu abused the public who had gathered to see the quarrel. Thereafter, the detenu took out an iron rod from his vehicle and tried to beat witness A. The detenu was shouting loudly and using vulgar language at that time. However, on account of fear, none from the crowd came forward to help the witness. Thus, it is seen that the public had gathered at the spot and they saw that the detenu tried to beat witness A with an iron rod, yet, on account of fear of the detenu, none from the crowd came forward. This shows that the act did not only affect the witness A but it also created a fear

in the minds of the people, who were witnessing the incident. As such, public order was definitely affected.

33. As far as witness B is concerned, he has stated that his village is situated 7 kms from Girad village. His village is situated on the banks of river Girna. The sand from the river is illegally stolen by the detenu by using trucks and tractors. This witness has stated that the residents not only from his village but from surrounding villages like Girad, Mandki, Bambrud and Bhadgoan are having fear and terror in their minds in relation to the detenu. The detenu always threatens farmers, who go to their farms at night to water the crop. The detenu tells these farmers that are you stopping at the farms to inform about the theft of sand being done by the vehicles of the detenu. At times, the detenu even assaults the farmers. Witness B has clearly stated that due to apprehension of the detenu, he and other farmers have fear in their minds to go to their fields during night time and this has caused heavy loss to them. The statement of witness B clearly shows that many people of Bhadgaon Taluka know that the detenu is indulging in committing theft of sand and the villagers are living in a state of fear and terror on account of activities of the detenu. This clearly shows that the activities of the detenu have not affected just

an individual but have affected villagers of many villages. This definitely amounts to disturbance of public order.

34. In the decision in the case of **Ajay Dixit (supra)**, it is observed that the act by itself may not differ from another but its potentiality may be different. In the present case, it is seen that on account of farmers living in a state of fear and terror due to the activities of the detenu and due to the threats given by the detenu, they were not attending to their fields and watering the plants at night due to which there was great loss to the farmers. Thus, the potentiality of the act of the detenu is such that it did not affect an individual farmer but many farmers and hence, is such that it affects public order.

35. In the case of **Arun Ghosh (supra)**, which was relied on in the case of **Ajay Dixit (supra)**, it is observed that a large number of acts directed against the persons or individuals may total up into a breach of public order. In the present case, it is seen that the detenu has indulged into a large number of acts. Some of them affect public order. Two of them clearly affect public order and as far as the other acts are concerned, though they may be against individuals, they are against government officials. In one of the cases, a public official has been attacked by the detenu in the presence of other witnesses. This

act of attacking a public official in the presence of other witnesses would be such as to cause a feeling of fear and terror in the minds of witnesses, who were present at the spot and hence, it affects public order. The people in the locality who knew about the activities of theft of sand of the detenu would see that the detenu was even threatening government officials, hence, there would be fear and terror in their mind that if the government officials are being threatened, they would stand no chance against the detenu. Thus, though some of the acts may affect individuals, the fact that they are large number of such acts, totals up into a breach of public order. In **Ajay Ghosh (supra)**, it is observed that it is always a question of degree of the harm and its effect upon the community. The farmer community in Girad and the surrounding villages was definitely affected in such a way that it amounted to disturbance of public order.

36. Public Order is synonymous with peace, safety and tranquility. It means there is absence of order involving breaches of local significance. Sand is a mineral which is openly available on the river banks or in the river, which is required to be preserved in the interest of local public. It is noticed that there are grave repercussions of

excavation and rampant theft of sand from the river banks which affects the locals as the water table and water level goes down. This affects the public in general and more particularly farmers. It is noticed that sand smugglers on the basis of muscle and money power create terror in the vicinity and they are a menace to the public order. Thus, such new trend of offence has emerged leading to direct threat to the public order. The detenu is a sand smuggler. The 4 CRs in which the detenu is involved pertain to theft of sand. On account of sand smuggling, the water available is reduced. The ecological balance is disturbed. On account of reduction in water, there is great scarcity of water for drinking purposes and for irrigation. There is monetary loss to farmers and other citizens in the area. People in the area know about the activities of the detenu and are living in a state of fear. All this amounts to disturbance of public order. Hence to protect the interest of the public in such cases, the legislation has amended the definition and incorporated 'Sand Smugglers' in section 2 of the Act. The Detaining Authority has rightly considered the situation, the nature of offences and the nature of its effect on public order and has passed the order.

37. In view of the above, we find no merit in the petition. Rule is discharged.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)