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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5052 OF 2015

Vijaya Ganesh Gajre

Age 23 Years, Occupation : Housewife,
 Residing at Sadesatara Nali Road,
 Kamathe Vasti Malwadi, Hadapsar,
 Pune.

Petitioner
 .. (Wife of Detenu)

Versus

1. The Commissioner of Police.
 Pune.

2. The State of Maharashtra
 (Through Addl. Chief Secretary
 to Government of Maharashtra,
 Home Department, Mantralaya,
 Mumbai.

3. The Superintendent
 Amravati Central Prison,
 Amravati.

.. Respondents

.....

Appearances

Mr. Udaynath Tripathi	<i>Advocate for the Petitioner</i>
Mrs. M.H. Mhatre	<i>APP for the State</i>

.....

**CORAM : SMT. V.K. TAHILRAMANI &
 SMT. ANUJA PRABHUDESSAI, JJ.**

Reserved on : APRIL 28, 2016.

Pronounced on : MAY 06, 2016

JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.] :

1. Heard the learned counsel for the parties.

2. The petitioner who is the wife of the detenu - Ganesh @ Pramod Rohidas Gajre has, by way of this petition, raised the challenge to the order of detention dated 8.12.2015 passed by respondent No. 1 under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (for short, 'the said Act'). The said detention order has been passed on the basis of two C.Rs. i.e C.R. No. 358 of 2015 and C.R. No. 3086 of 2015 of Hadapsar Police Station and two in-camera statements of witnesses A and B.

3. Mr. Tripathi has raised only one ground of challenge i.e Ground 6J. The said ground reads as under:-

"6J. The Petitioner says and submits that the order of detention is founded on the basis of two registered criminal cases vide C.R. No. 358 of 2015 and C.R. No. 3086 of 2015 and two in-camera statements of witnesses 'A' and 'B' recorded in-camera. The detaining authority has recorded his subjective satisfaction in para 7 of the grounds of detention alleging that the detenu has unleashed a reign of terror and has become a

perpetual danger to the society at large in the areas of Kondhawa, Wanawadi and Hadapsar Police Station of Pune city whereas it is pertinent to note that all the incidents occurred as referred to in above said criminal cases and in-camera statements within the jurisdiction of Hadapsar Police Station of Pune City only. Such allegations are also made in para No. 2 of the grounds of detention. Thus, the satisfaction recorded in para 7 of the grounds of detention is erroneous and shows clear non-application of mind of the detaining authority. The said satisfaction is vitiated. The order of detention is illegal and bad in law, liable to be quashed and set aside."

4. Paragraph 7 of the grounds of detention in which subjective satisfaction is recorded reads as under:-

" 7. From the above facts, I am subjectively satisfied that you are a "dangerous person" as defined in Section 2 (b-1) of the said Act. You have unleashed a reign of terror and have become a perpetual danger to the society at large in the area of Kondhawa, Wanawadi and Hadapsar Police Stations. The people are experiencing a sense of insecurity and are living under shadow of constant fear, whereby even day-to-day business and activities of citizens are under threat. You show no

respect to law of the land and to the citizens of the society where you live. You are perpetually an impulsively violent man who wants to spread terror in the society by your violent criminal activities, in connivance with your other criminal associates."

5. Mr. Tripathi stated that two C.Rs. and two incamera incidents relate to Hadapsar Police Station. In such case the detaining authority could not have reached the subjective satisfaction that the detenu has unleashed a reign of terror & had become a perpetual danger to the society at large in the areas which fall within the jurisdiction of Kondhawa Police Station or Wanawadi Police Station.

6. The affidavit in reply filed on behalf of the detaining Authority states that there is reference to the areas falling within the jurisdiction of Kondhawa and Wanawadi Police Station on the basis of the past criminal record of the detenu as mentioned in paragraph 3 of the grounds of detention. However, in the very same affidavit, the detaining Authority has stated that no reliance was placed upon the past criminal record mentioned in paragraph 3 of the grounds of

detention. If according to the detaining Authority, no reliance was placed upon the past criminal record which is mentioned in paragraph 3 of the grounds of detention, then the detaining Authority could not have arrived at subjective satisfaction on the basis of material on which he has not placed any reliance. In any event, paragraph 3 refers to only one C.R. of Kondhawa Police Station which is of the year 2009 and reference is made to two C.Rs. of Wanawadi Police Station both of which are of the year 2011. The detention order has been issued on 8.12.2015. In the year 2015, no reliance could have been placed on the C.Rs. of the year 2009 or 2011 because that would amount to placing reliance on stale incidents which cannot be countenanced.

7. Mr. Tripathi placed reliance on a decision of the Supreme Court in the case of **Mustakmiya Jabbarmiya Shaikh Vs M.M. Mehta, Commissioner of Police**¹. In the said decision, it is observed in paragraph 10 as under:-

¹ (1995) 3 SCC 237

" 10....This apart the incident had occurred on 24-4-1993 while the detention order was passed on 19-8-1994 after the lapse of more than 16 months. This long lapse of time between the alleged prejudicial activity and the detention order loses its significance because the said prejudicial conduct was not approximate in point of time and had no rational connection with the conclusion that the detention was necessary for maintenance of public order. Such a stale incident cannot be construed as justifiable ground for passing an order of detention....."

8. In a decision in the case of **Kamlakar Prasad Chaturvedi Vs State of M.P. & Anr.**², the Supreme Court in paragraph 12 has observed as under:-

"12. The first two incidents which are of 1978 and 1980 are mentioned as grounds of detention in the order dated May 6, 1983. There can be no doubt these grounds especially ground No. 1 relating to an incident of 1978 are too remote and not proximate to the order of detention. It is not open to the Detaining Authority to pick up an old and stale incident and hold it as the basis of an Order of detention Under Section 3(2) of the Act."

9. In view of the above decisions of the Supreme Court, no

2 (1983) 4 SCC 443

reliance can be placed by the detaining Authority on C.R. No. 96/2009 of Kondhawa Police Station and C.R. Nos. 218/2011 and 3156/2011 of Wanawadi Police Station. Learned APP pointed out that even otherwise it is not the case of detaining Authority that any reliance was placed on any of these three C.Rs. which pertain to Kondhawa Police Station and Wanawadi Police Station. In such case, we fail to understand how in the grounds of detention, the detaining Authority could have stated that the detenu has unleashed a reign of terror and had become perpetual danger to the society at large in the area of Kondhawa and Wanawadi Police Stations. This appears to be a simple case where the detaining Authority has not applied its mind at all. The subjective satisfaction of the detaining Authority appears to have been arrived at on a wrong set of facts. The subjective satisfaction can be arrived at by the detaining Authority only on the basis of the material which he has relied upon to pass the detention order. The detaining Authority has not relied upon any case of Kondhawa Police Station or Wanawadi

Police Station. In such case, the detaining Authority could not in paragraph 7 have stated that it was subjectively satisfied that the detenu has unleashed a reign of terror and had become a perpetual danger to the society at large within the limits of Kondhawa and Wanawadi Police Stations.

10. The grounds on which the subjective satisfaction is passed must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject matter of the inquiry. When the detaining Authority has clearly stated that the detaining Authority has not relied upon the C.Rs. which are mentioned in paragraph 3 of the grounds of detention which relate to Khondawa and Wanawadi Police Stations, the detaining Authority could not have recorded its subjective satisfaction based on the cases stated in paragraph 3 of the grounds of detention. From all these facts, a legitimate inference can fairly be drawn that the Authority has not applied its mind to the relevant facts.

11. Where the liberty of a subject is involved and he has been detained without trial, and a law made pursuant to Article 22 which provides certain safeguards, it is the duty of this Court as the custodian and sentinel on the ever vigilant guard of the freedom of an individual to scrutinize with due care and anxiety that this precious right which he has under the Constitution is not in any way taken away capriciously, arbitrarily or without any legal justification. From the grounds of detention as well as the affidavit of the detaining Authority, it is clear that there was no material before the detaining Authority other than two C.Rs i.e C.R. Nos. 358 of 2015 and 3086 of 2015 and two in-camera statements of Hadapsar Police Station which went into formation of subjective satisfaction of the detaining Authority. In such case, when these four cases pertain to Hadapsar Police Station, the detaining Authority reaching its subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order in the areas of Kondhawa

and Wanawadi Police Stations show total non-application of mind of detaining Authority. On this ground alone, the detention order is vitiated, hence, rule is made absolute in terms of prayer clause 10(b) of the petition.

[SMT. ANUJA PRABHUDESSAI, J] [SMT. V.K. TAHILRAMANI, J.]

Kandarkar