

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

Criminal Writ Petition No. 171 of 2016

**Salman Khan @ Baba son of Haroon
Khan Pathan,**

aged about 23 years,
occupation : Private,
resident of Plot No. 23,
Minimata Nagar,
Nagpur. [Presently at
District Prison, Akola].

..... Petitioner.

Versus

**1. The State of Maharashtra,
through its Secretary,
Home Department,
Mantralaya,
Mumbai-32.**

**2. The Commissioner of Police,
Nagpur.**

**3. The Superintendent,
District Prison,
Akola.**

.... Respondents.

Mr. R. M. Daga, Adv., for the Petitioner.

Mr. Rode, Addl. Public Prosecutor for the respondents.

**CORAM : B. P. DHARMADHIKARI
AND
A. S. CHANDURKAR, JJ.**

Date : 22nd August, 2016

ORAL JUDGMENT [Per B. P. Dharmadhikari, J.]:

01. By this petition filed under Article 226 of the Constitution of India, petitioner, a Citizen of India, seeks quashing of Order of Detention passed by the respondent no.2 on 06th December, 2015, and confirmed after following due procedure by the respondent no.1 – State on 29th January, 2016 as per Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders & Dangerous Persons Act, 1981 [hereinafter referred to “1981 Act”].

02. Learned Adv. Mr. Daga has, after giving eleven dates, submitted that last of the two offences relied upon by the respondent no.2 is dated 16th September, 2015, while order of detention is passed by the respondent no.2 on 6th December, 2015. Thus, there is a time

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gap of about three months and hence there is no live link between the crime and the detention. He further submits that first offence – Crime No. 266/15 looked into is for offence under Section 307, Indian Penal Code, while the latter offence, i.e., Crime No. 4825/15 is under Section 4 of the Arms Act. According to him, these offences or wrongful conduct leading thereto does not have any bearing on public order and at the most it can affect law and order. These offences, therefore, cannot form the basis for initiating proceedings for detention. The other material looked into is two in-camera statements. He invites our attention specifically to ground nos. 17 to 19 raised in the writ petition, to urge that as there is no subjective satisfaction reached by the respondent no.2, the detention must fall to ground. He points out that in para 15 of the reply, the respondents have not rebutted these contentions.

03. He has drawn support from the Judgments dated 29th February, 2016 in Criminal Writ Petition No. 660 of 2015, dated 7th March, 2016 in Criminal Writ Petition No. 528 of 2015, and dated 1st February, 2016 in Criminal Writ Petition No. 768 of 2015. One of us is party to each of these judgments.

04. Learned Addl. Public Prosecutor has pointed out that

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offences looked into are of the year 2015 and in less than two-and-half-month, respondent no.2 has passed order of detention. Offences have been committed when petitioner was externed. He illegally entered the city and indulged in unlawful activities. As such, there is a live link between these acts and the objects sought to be achieved.

05. He has also invited our attention to in-camera statements to urge that those statements support the subjective satisfaction of respondent no.2 in the matter. He states that appropriate reply-affidavit is already placed on record.

06. During hearing, learned Addl. Public Prosecutor has produced a sealed envelope from original records, which contains the original in-camera statements. In-camera statements of two witnesses are recorded with a gap of about eight days. Statements are in handwriting and Senior Police Inspector has recorded them. On reverse, on the same date, there is an endorsement of Asstt. Police Commissioner. Asstt. Police Commissioner has mentioned that in order to verify the truth of statement given by witness on a particular date, he visited the spot and conducted secret enquiry. The secret statement [in-camera statement] is found to be true.

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07. There is no endorsement on these statements by the respondent no.2 to show that he has perused the same. There is also no endorsement that respondent no.2 has discussed the in-camera statements with Asstt. Commissioner of Police who has verified the same.

08. Perusal of the detailed order of detention served upon the petitioner, particularly paragraph 10 thereof, reveals that as witnesses were not coming forward to depose against the petitioner out of fear, with great efforts, two such persons could be taken into confidence and their in-camera statements were recorded. Thereafter, those statements are appreciated. In para 11 while concluding his findings as to why prevention detention is necessary, respondent no.2 has mentioned that in the light of above offences and incidents mentioned in paras 9 to 10.2.3, he is subjectively satisfied that petitioner is a dangerous person as defined under the provisions of 1981 Act. Thus, subjective satisfaction is not based either only on offences mentioned supra or then on in-camera statements. We are constrained to observe this because learned Addl. Public Prosecutor has tried hard to urge that even if in-camera statements are ignored, material on record justifies the preventive detention. Findings of respondent no.2 in para 11 do not countenance such effort. The respondent no.2 has not found

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only offences mentioned supra sufficient to order detention or then only in-camera statements sufficient to order detention. It is a cumulative consideration of offences plus in-camera statements which has led him to the subjective satisfaction mentioned supra.

09. In this situation, in writ jurisdiction, we cannot, for the first time, hold that only two offences are sufficient to support the subjective satisfaction.

10. The Judgments relied upon by learned Adv. Mr. Daga show that the detaining authority must be subjectively satisfied that witnesses are not coming forward to depose because of a terror of the persons whose prevention detention is under consideration. Asstt. Commissioner of Police has only verified correctness or truth of incident declared by in-camera witness. This Asstt. Commissioner of Police does not state that he was satisfied about the terror spread by the petitioner or then fear entertained by in-camera witness. Police Commissioner also nowhere states that witnesses were not coming forward because of terror or out of fear and he is subjectively satisfied about it.

11. The material on record does not show necessary exercise

undertaken by the respondent no.2 - Police Commissioner for this purpose.

12. In this situation, it is not necessary for us to examine other contentions of Adv. Mr. Daga. The Order of Detention dated 06th December, 2015, as confirmed by the respondent no.1 on 29th January, 2016, is **quashed and set aside**. Writ Petition is, thus, **allowed**. Rule is made absolute. No costs.

Judge

Judge

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C E R T I F I C A T E

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

Uploaded by : R.B. Hedau,
Pvt. Secretary.

Uploaded on : 23rd Aug., 2016

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