

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 561 OF 2017

Shaikh Hafiz Shaikh Yusuf
Age : 31 years,
R/o Near Bilal Masjid,
Vishnunagar, Javahar Colony,
Aurangabad, Dist. Aurangabad.

..PETITIONER

VERSUS

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

..RESPONDENTS

...

Mr.U.N. Tripathi with Mr. R.D. Sanap,
Advocates for the petitioner.
Mr. M.M. Nerlikar, APP for Respondent/State

**CORAM: S.S.SHINDE &
A.M. DHAVALA, JJ.**

Reserved on : 14.09.2017
Pronounced on : 09.10.2017

JUDGMENT: (Per S.S.Shinde, J.):

Rule. Rule made returnable forthwith

and heard finally with the consent of learned counsel appearing for the parties.

2. This Writ Petition is filed with the following prayers :-

"B. 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 01/03/2017 passed by the respondent no.1, bearing No. 2017/MPDA/DET-1/CB-02 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.

B-1. The confirmation order dated 10th April, 2017 issued by the State Government, confirming the order of detention issued by respondent no.1 be quashed and set aside."

3. At the outset learned counsel appearing for the petitioner informs this

Court that, he is restricting his arguments to ground No.(e), the ground Nos.(i) and (j) (inserted by way of amendment) in the Writ Petition.

4. Learned counsel appearing for the petitioner submits that, the copies of three in-camera statements of witnesses "A", "B" and "C" do not bear any endorsement or signature of the Commissioner, so also the same were not seen by the Commissioner. What is found on the copies of in-camera statements of the witnesses supplied to the detenu is, there are only initials of Deputy Commissioner of Police (Zone-II), Aurangabad (City) and the Police Inspector (Crime). However, there is no endorsement of the Commissioner. As such, the Commissioner of Police has not even seen the in-camera statements, which amounts to non-verification of three in-camera statements, which are

relied upon by the detaining authority for arriving at his subjective satisfaction and passing the impugned order of detention. Learned counsel submits that, even assuming that, the verification is done by the Commissioner of Police, Aurangabad (City), the copies of such verified statements of witnesses were not furnished to the detenu. Therefore, it amounts to non-communication of verification of the detaining authority and also non-supplying the documents to the detenu. As such, the right of the petitioner to make effective representation guaranteed under Article 22(5) of the Constitution of India is violated.

5. Learned counsel submits that, the detaining authority has taken into consideration three in-camera statements of witnesses "A", "B" and "C", and relied upon the same for arriving at his subjective

satisfaction and passed the impugned order of detention. If the three incidents narrated in three in-camera statements are minutely examined in its proper perspective, by no stretch of imagination, a prudent man can come to the conclusion that as a result of the alleged prejudicial activities of the detenu, as narrated in those statements, public order is disturbed. Learned counsel submits that, in all the three statements, the act is attributed towards individual demanding money, and hence the same is necessarily between the witnesses and the detenu. As incidents have not taken place in a crowded areas in presence of public i.e. in public view, due to which the public got scared and ran away out of fear. Neither the tempo of life of society nor a segment of society is disturbed. Moreover, there is no immediate effect and impact of the incidents on the public at large. Learned counsel

further submits that, the law is well settled that, the incidents may be grievous and potential but 'public order' cannot be held to be affected unless the effect and impact of incidents have reached the society at large. Learned counsel submits that, if the public order is not disturbed as a result of three incidents, such statements cannot be considered and relied upon for arriving at a satisfaction and for passing the order of detention. Therefore, learned counsel submits that, the order of detention is illegal, bad in law, and hence is liable to be quashed and set aside. Learned counsel appearing for the petitioner placed reliance on the judgments of Supreme Court as well as High Courts in the cases of **Cherukuri Mani W/o Narendra Chowdari V. Chief Secretary, Government of Andhra Pradesh and Ors.¹, Lahu Shrirang Gatkal V/s State of Maharashtra, through the**

1 AIR 2014 SC 2090

Secretary and Ors in Criminal Appeal No. 1185/2017, Vijaya Raju Gupta (Smt.) V/s R.H. Mendonca, Commissioner of Police & others², Rushikesh Tanaji Bhoite V/s State of Maharashtra & Ors.³, Hemlata Kantilal Shah (Smt.) V/s State of Maharashtra & another⁴, Tushar S/o. Rajansingh Rajput V/s The State of Maharashtra and others in Criminal Writ Petition No. 1698 of 2016 decided on 3rd April, 2017, Mrs. Mrunali Virendra Lonare V/s Commissioner of Police and Others in Criminal Writ Petition No.245 of 2014 decided on 18th March, 2014, Deepak S/o Dattu Suryawanshi V/s The Commissioner of Police, Pune City & Ors⁵, Ravindra S/o. Shankar Kamble V/s The State of maharashtra & Anr.⁶, Thahira Haris etc. Vs. Government of Karnataka & Ors.⁷, Jay @ Nunya Rajesh Bhosale V/s The Commissioner of

2 2001 (Supp.1) Bom.C.R. 24

3 2012 AIR (SC) 890

4 1982 (2) Bom.C.R. (S.C.) 218

5 2017 All MR(Cri) 416

6 2017 All MR (Cri.) 422

7 2009 All MR (Cri) 3451 (S.C.)

Police, Pune & Ors.⁸, and Shri Sandeep @ Shankar Vasant Khalase V/s The Commissioner of Police and others in Criminal Writ Petition No. 193 of 2017 decided on 29th March, 2017. Learned counsel appearing for the petitioner, therefore, relying upon the averments in the Petition, grounds taken therein and annexures thereto, submits that, the Petition may be allowed.

6. On the other hand, learned A.P.P. appearing for the respondent-State, relying upon the additional affidavit in reply filed on behalf of respondent no.1, submits that, considering the seriousness of the offences registered against the petitioner, the Police Inspector of Police Station, Jawaharnagar, Aurangabad conducted confidential inquiry. In the said inquiry, it was revealed that, due to fear of the petitioner, nobody is coming

8 2015 All MR (Cri) 4437

forward to give the statements openly against him. On the assurance that, names of the witnesses and also their identity would be kept secret, and they would not be called upon to give evidence openly against the petitioner in any court or any before other forum, the witnesses namely "A", "B" and "C" have disclosed the acts of the petitioner in their statements. The Police Inspector of Police Station, Jawaharnagar at Aurangabad, recorded the in-camera statements of the witnesses. After completion of confidential inquiry, the Police Inspector of Police Station, Jawaharnagar submitted the proposal to the detaining authority for taking action under section 3(1) of the Act through concerned ACP, Osmanpura Division and DCP (Zone-II), Aurangabad.

7. Learned A.P.P. submits that, the Deputy Commissioner of Police (Zone-II),

Aurangabad, had verified the statements of witnesses and submitted the report to the respondent no.1. In the said report, the Deputy Commissioner of Police (Zone-II), Aurangabad, has mentioned that the facts given in the statements and apprehension disclosed by the witnesses is true and reasonable. After perusing the said report, the detaining authority satisfied that, the facts given in the statements and apprehension expressed by the witnesses "A", "B" and "C" is true and reasonable. Learned A.P.P. submits that, the contention of the petitioner that the copies of the documents are not furnished is incorrect. All the copies of documents relied upon by the detaining authority were supplied to the detenu. Learned A.P.P. submits that, whatever is written in the noting has already been stated in the grounds of detention. Learned A.P.P. further submits that the identical

issue was raised in Criminal Writ Petition No. 1698/2016 (Tushar S/o Rajansingh Rajput V/s The State of Maharashtra and others), and the said issue has been settled by the High Court by its judgment and order dated 3rd April, 2017.

8. We have heard learned counsel appearing for the parties at length. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, grounds of detention, the impugned order, affidavit in reply of respondent no.1 and additional affidavit in reply, and the original record made available for perusal by the learned A.P.P.

9. We have carefully perused the original record in relation to the detention of the petitioner maintained by the office of the Commissioner of Police, Aurangabad. Upon

careful perusal of the original copies of the in-camera statements of the witnesses recorded by the Police Inspector, Police Station, Jawaharnagar, Aurangabad (city), it is seen that, the statements of three witnesses have been recorded on 1st February, 2017 and 2nd February, 2017. The said statements have been duly signed by the Police Inspector, Police Station Jawaharnagar, Aurangabad (city). The said statements are also verified by the Deputy Commissioner of Police (Zone-II), Aurangabad (city). The said Deputy Commissioner of Police (Zone-II), Aurangabad (city) has noted on the statements of the witnesses that, he has examined those witnesses and apprehension expressed by those witnesses is true and reasonable. It is not in dispute that, the copies of the statements of the witnesses duly signed by the concerned Police Inspector and the Deputy Commissioner of Police, served

upon the petitioner - detenu. Upon careful perusal of the original record, we find that, there is detail note written by the Commissioner of Police, wherein it is written that, the Deputy Commissioner of Police (Zone-II) has personally verified the statements of the witnesses "A", "B" and "C". After going through the record, we have noticed that, the Commissioner of Police has recorded the subjective satisfaction that, the facts given in the in-camera statements of the witnesses and apprehension expressed is true and reasonable. It is not in dispute that, the Assistant Commissioners of Police and the Deputy Commissioners of Police are authorized by the Home Department, Government of Maharashtra by issuing circular dated 19th September, 2002, to verify the in-camera statements of the witnesses recorded in the proceedings under the Maharashtra Protection of Interest of Depositors (in Financial

Establishments) Act, 1999 and the National Security Act, 1980.

10. Even in compilation of the Petition, at Exhibit-B Page No.14 in ground no.11, it is stated thus:-

"11..... The normal laws are just not sufficient to curb your criminal and dangerous activities as the witnesses are unwilling to come forward and depose against you. From the above mentioned instances, I am satisfied that you have created a terror in the mind and psyche of the members of the above mentioned localities thereby disturbing their routine life adversely affecting the public order in the said localities; for which the normal penal laws have failed to curb your unlawful

activities and therefore, there is no other alternative before me but to detain you 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".

Further in ground no.12, it is stated thus:-

"12..... Deputy Commissioner of Police (Zone-II), Aurangabad has verified the witnesses "A", "B" and "C" and submitted a report to me. In the said report Deputy Commissioner of Police (Zone-II), Aurangabad has mentioned that the facts given in the statements and apprehension entertained

by the witnesses "A", "B" and "C" are true and reasonable. After perusing the said report I am satisfied that the facts given in the statements and apprehension entertained by the witnesses "A", "B" and "C" is true and reasonable."(Underlines added)

11. Therefore, upon careful perusal of the original record and also the grounds of detention, we are satisfied that, all the procedural formalities have been complied with and all the necessary steps have been taken by the Respondent Authorities. The Supreme Court in the case of **Khudiram Das V/s The State of West Bengal and others**⁹ held that, it must in the circumstances be held that, the subjective satisfaction of the detaining authority as regards these matters constitutes the foundation for the exercise

9 (1975) 2 SCC 81

of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. The Court cannot, on a review of the grounds, substitute its own opinion for that of the authority. The power of detention is not a quasi-judicial power.

12. Therefore, it is not for this Court to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based, when we have recorded our satisfaction that, in-camera statements of the witnesses are duly verified by the Deputy Commissioner of Police and the Commissioner of Police, Aurangabad has subjectively satisfied that, the facts given in the in-camera statements of the witnesses and apprehension expressed is true and reasonable.

13. The facts of the cases cited by learned counsel appearing for the petitioner are in different facts scenario, in as much as, neither there was satisfaction recorded by the detaining authority nor his satisfaction was reflected through any ground of detention or in detention order. As already observed in the present case, the Commissioner of Police arrived at a subjective satisfaction that the facts given in the statements of the witnesses and apprehension expressed is true and reasonable. In addition to the said statements, the detaining authority has also relied upon the offences pending against the petitioner. There is reference of one criminal case vide C.R. No. 88 of 2015 under Sections 353, 332, 147, 149, 323, 188, 504, 506 of the Indian Penal Code read with section 135 of the Bombay Police Act lodged

against the petitioner.

14. In the light of the discussion in the foregoing paragraphs, viewed from any angle, in our opinion, in the peculiar facts and circumstances of this case, there is no need to interfere in the impugned order passed by the Respondent No.1. Hence the Petition is devoid of any merits, and same stands rejected. Rule stands discharged accordingly.

[A.M.DHAHALE]
JUDGE

[S.S.SHINDE]
JUDGE

SGA