

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

CRIMINAL WRIT PETITION NO.1698 OF 2016

Tushar s/o. Rajansingh Rajput,
Age 33 years, Occ. Business,
R/o. House No.853, Pensionpura,
Chavani, Aurangabad,
Tal. & District Aurangabad.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Secretary,
Home Department [Special],
2nd Floor, Main Building,
Mantralaya, Mumbai-32.
3. The Commissioner of Police,
Aurangabad

RESPONDENTS

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Mr.S.S.Thombre, Advocate for the Petitioner
Mr.M.M.Nerlikar, APP for Respondent Nos.1 to
3 / State

...

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

Reserved on : 23.03.2017
Pronounced on : 03.04.2017

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

1. This Writ Petition is filed with following prayer:

B) By issuing writ of certiorari or any other writ, order or directions in the like nature, the order passed by the respondent no.3 – Commissioner of Police, Aurangabad dated 4.06.2016 and the order of confirmation passed by the Advisory Board dated 14.07.2016 may kindly be quashed and set aside;

2. The learned counsel appearing for the petitioner restricted his arguments confined to the ground nos. IX to XVII, which were inserted by way of amendment as per the leave granted by this Court on 14th March, 2017. The learned counsel submits that, there was no period of detention mentioned in the

order dated 4th June, 2016, passed by the Detaining Authority, and the State Government while confirming the order of detention extended the period of detention for the period of one year and while doing so has not recorded any reasons. Therefore, on this ground alone, the impugned order is required to be quashed and set aside. In support of the aforesaid contention, he pressed into service judgment of the Supreme Court in the case of ***Commissioner of Police and anr. Vs. Gurbux Anandram Bhiryani***¹ and submits that, the Supreme Court in the said Judgment has observed that, the order of detention is bad on the ground that period of detention has not been indicated by the detaining authority.

3. The learned counsel appearing for the petitioner submits that, the detaining authority, while passing the impugned order,

¹ MANU/SC/0214/1987

neither assigned any reasons nor arrived at the subjective satisfaction, and in particular disturbance to the public order due to the alleged prejudicial activities of the petitioner. He further submits that, the order of Detaining Authority shows that reliance has been placed specifically on in-camera statements of the witnesses 'A', 'B', 'C' and 'D', however, copies of the in-camera statements of the witnesses supplied to the petitioner have been annexed to the Petition which do not contain verification. He submits that in view of the law laid down by the Bombay High Court Bench at Principal Seat, in the case of **Swapnil Sanjay Tahsildar Vs. District Magistrate & Ors.**², it is necessary that there should be verification made of the in-camera statements and the copies of the verification needs to be furnished to the petitioner detenu.

2 2013 All.M.R. [Cri.] 16

It is further submitted that, the dangerous person is defined as per Section 2 (b-1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 [for short 'MPDA Act']. However, in the present case, the Detaining Authority has failed to prove that the petitioner is dangerous person within the meaning of Section 2 [b-1] of the MPDA Act. He further submits that the petitioner belongs to 'Rajput Community', and he understands Hindi language but the copy of the order along with the proposal which was supplied to the petitioner is in English and Marathi, and therefore, the petitioner could not submit his representation properly as he does not understand either Marathi or English. It is submitted that, there was no any verification of the in-camera statements recorded by the authority, and therefore, on

that ground also, the impugned order deserves to be quashed and set aside. In support of the aforesaid contention, he invites our attention to the judgment of the Division Bench of the Bombay High Court at Principal Seat in the case of **Yuvraj Ramchandra Pawar Vs. Ramaswami N.(Dr.) & Ors.**³, also the judgment of the Bombay High Court, Bench at Nagpur in the case of **Anil s/o Damodhar Paunipagar Vs. State of Maharashtra & Ors.**⁴, and the judgment of the Bombay High Court at Principal Seat in the case of **Jay Vs. The Commissioner of Police Pune and Ors.**⁵, and also the judgment of the Bombay High Court, Bench at Aurangabad in the case of **Deepak Vs. The Commissioner of Police, Pune City and ors.** in Criminal Writ Petition No.1237 of 2016, decided on 19.12.2016.

4. It is submitted that, there is no

3 2016 All M.R. [Cri.] 930

4 2000 [2] Mh.L.J. 400

5 2015 All M.R. [Cri.] 4437

live link or nexus between the crimes registered against the petitioner and definition of the dangerous person as referred in Section 2 [b-1] of the MPDA Act. It is submitted that, it is only the person, who commits offences habitually, can be called as 'dangerous person'. However, in the present case, the authority has relied upon the alleged solitary incident of registration of Crime No.189/2016 for the offence punishable under Sections 376, 354 (A) (D), 323, 504, 506, 34 of the IPC r/w. Section 67 of the Information Technology Act, 2000, dated 21st April, 2016, against the petitioner, and wrongly treated the petitioner as habitual offender. Therefore, the learned counsel appearing for the petitioner submits that, the petition deserves to be allowed.

5. On the other hand, the learned APP appearing for respondent – State relying upon

the affidavit-in-reply of respondent no.3 made following submissions:

6. That the petitioner is not entitled to challenge the order of detention on the basis of grounds on which the detention has been effected, in view of Section 5-A of 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, and therefore, the petition deserves to be dismissed at the admission stage itself, and accordingly, it may kindly be dismissed.

7. That sufficiency or insufficiency of the grounds of detention cannot be a subject matter on the basis of which the petition could be entertained under Article 226 and 227 of the Constitution of India. It is subjective satisfaction of the detaining

authority that the acts of the detenu are prejudicial to the maintenance of public order and with a view to prevent him from committing such acts, detention is necessary, are the relevant considerations. That the petitioner is a 'Dangerous Person' as defined in the said Act and he has committed serious offences i.e. assault, outraging the modesty of woman, rape, dacoity, criminal intimidation, act of threatening common people, prostitution, etc. He has created reign of terror in the locality of MIDC Waluj and adjoining areas and disturbed the peace over there. Due to his criminal and dangerous activities, the persons residing in the jurisdiction of Police Station MIDC Waluj and adjoining areas remained under constant fear and terror. Therefore, the detaining authority arrived at subjective satisfaction that the petitioner's criminal and dangerous activities are prejudicial to the maintenance

of public order in the above localities and adjoining areas. Learned APP invites our attention to the para 5 of the affidavit-in-reply and submits that, there are as many as four offences are registered against the petitioner in Jawaharnagar Police Station, Kranti Chowk Police Station, Satara Police Station and MIDC Waluj Police Station, respectively. He further submits that, the chapter case was also registered against the petitioner in Satara Police Station and preventive action was taken against him. He submits that, in spite of registration of the aforesaid offences, the petitioner has not controlled his alleged activities; on the contrary his illegal and dangerous activities are showing ascending trend. Even preventive action taken under the Code of Criminal Procedure failed to curb his prejudicial activities.

8. That, after considering the

seriousness of the above said crimes, the Police Inspector, MIDC Waluj Police Station, Aurangabad, conducted confidential enquiry. In an enquiry, it is revealed that due to petitioner's fear, nobody is willing to give statement openly against him. On an assurance to the witnesses that, their names and identity, and other particulars would be kept secretly, and they will not be called upon to give evidence against the petitioner in any court or any other forum, witnesses agreed to give their statements. The Police Inspector, MIDC Waluj Police Station accordingly recorded the statements of the witnesses 'A', 'B', 'C' and 'D', in-camera. After completion of confidential inquiry, the Police Inspector of Police Station MIDC Waluj submitted proposal to the Detaining Authority i.e. respondent no.3, for taking action under Section 3 [1] of the MPDA Act, 1981, through concerned ACP Cantonment Division and DCP

[Zone-1] at Aurangabad. The Deputy Commissioner of Police [Zone-1], Aurangabad, had verified the witnesses A, B, C and D and submitted report to respondent no.3. In the said report, the Deputy Commissioner of Police [Zone01], Aurangabad has mentioned that the facts given in the statements and apprehension expressed by the witnesses 'A', 'B', 'C' and 'D', is true and reasonable. After perusing the said report, respondent no.3 was satisfied that, the facts given in the statements and apprehension entertained by the witnesses 'A', 'B', 'C' and 'D', is true and reasonable.

9. In view of the offences registered against the petitioner and the statements of witnesses the detaining authority is convinced that the petitioner is a 'dangerous person', and the people residing within the jurisdiction of Police Station, referred herein above in para 7, and the residents

residing in adjoining locality are facing serious hardship and finding it difficult to live in the area or to pass through the area due to fear and terror created by the petitioner. Respondent no.3 was subjectively satisfied that if petitioner's criminal and dangerous activities are not prevented, the petitioner is likely to indulge on wide scale in further dangerous and criminal activities, which would be prejudicial to the maintenance of public order even in future. Therefore, after arriving at subjective satisfaction, respondent no.3 passed the detention order on 4th June, 2016, and as the petitioner was in judicial custody in Police Station MIDC Waluj, Aurangabad in Crime No.189/2016, for the offence punishable under Sections 376, 354 [A], 354 [D], 323, 504, 506, 34 of the IPC and 67 of the Information and Technology Act, 2000, after obtaining prior permission of the concerned Court, the detention order

was served on the petitioner on the same day. Thereafter, the petitioner has been detained in Central Prison, Aurangabad. The information about his detention and place of detention was given to his brother namely Atish Rajansingh Rajput on 4th June, 2016. A grounds of detention and other relevant papers along with its Marathi translation were served upon the petitioner on 7th June, 2016. The detention order has been approved by the State Government, vide its order No. MPDA-0616/CR-111/Spl-3B dated 9th June, 2016. The Advisory Board constituted under the said Act heard the petitioner on 7th July, 2016. After receipt of the opinion from the Advisory Board, the detention order has been confirmed by the State Government, vide its order No. MPDA-0616/CR-111/Spl-3B, dated 14th July, 2016. All the mandatory provisions have been completed in time as stipulated in the said Act.

10. It is further submitted that, the petitioner is a 'dangerous person' as defined in Section 2 [b-1] of the MPDA Act, 1981, as he has committed serious offences i.e. assault, outraging the modesty of woman, rape, dacoity, criminal intimidation, act of threatening common people, and indulging into encouraging prostitution. It is further submitted that, it is not correct factual position that the petitioner was released on bail in Crime NO.189/2016 under Section 376, 354 [A], 354 [D], 323, 504, 506, 34 of the IPC and Section 67 of the Information and Technology Act, 2000. As a matter of fact, at the time of passing the detention order, the petitioner was in judicial custody in Police Station MIDC Waluj, Aurangabad, in Crime No. 189/2016 under Sections 376, 354 [A], 354 [D], 323, 504, 506, 34 of the IPC and Section 67 of the Information and Technology Act, 2000, and after obtaining prior permission of

the concerned Court, the detention order was served on the petitioner on the same day. Thereafter, he has been detained in Central Prison, Aurangabad. It is not correct to say that the order passed under the MPDA Act is unjust, arbitrary and illegal and violate the fundamental rights guaranteed to the petitioner under Articles 19 and 21 of the Constitution of India. As a matter of fact, the petitioner committed offences under Chapter XVI and XVII of the IPC, and said acts have become a serious threat and source of danger to the lives of law abiding and peace loving citizens and disturbed the public order in the jurisdiction of Police Station MIDC Waluj and adjoining areas. There is strict adherence to relevant legal provisions before passing the order of detention.

11. The learned APP appearing for respondent – State also invites our attention

to the affidavit-in-reply filed by respondent no.1 and submits that, respondent no.1 has confirmed the order of detention on 14th July, 2016. He also invites our attention to the further affidavit-in-reply filed on behalf of respondent no.3 and submits that on 4th June, 2016, the detention order has been served on the petitioner in Central Prison, Aurangabad, and at that time the statement of the petitioner was recorded before the Police Inspector of Police Station MIDC Waluj, Aurangabad, and Jailor of the Central Prison, Aurangabad. The petitioner stated in his statement that, he has studied upto 10th Standard in Marathi medium at Milind School, Aurangabad, and thereafter, he studied up to 12th Standard in Arts Faculty in Deogiri College at Aurangabad. He also stated that he learnt Marathi, English and Hindi languages during his studies. Therefore, he requested that the grounds of detention and other

relevant documents should be supplied in Marathi language. Therefore, the grounds of detention and other relevant documents were served on the petitioner along with its Marathi translation on 7th June, 2016 in time. It is further submitted that, the Deputy Commissioner of Police, Zone-I, Aurangabad, has verified the truthfulness of in-camera statements of witnesses 'A', 'B', 'C' and 'D'. The mandate of verification is duly complied in the present case and the same is reflected at the bottom of statements of these witnesses.

12. The learned APP invites our attention to the original record and submits that, the Commissioner of Police after recording the subjective satisfaction and also verification of the statements of the witnesses 'A', 'B', 'C' and 'D' has passed the impugned order of detention. Therefore, the contention of the learned counsel

appearing for the petitioner that the detention order is passed without arriving at subjective satisfaction and without verification of in-camera statements deserves no consideration, and the said contention deserves to be rejected. He invites our attention to the judgment of the Supreme Court in the case of ***T. Devaki Vs. Government of Tamil Nadu***⁶ and submits that, in the facts of that case it was held that non-mentioning of period of detention is not fatal. He submits that the Supreme Court in the said judgment has made reference of number of earlier pronouncement and taken a view that non mentioning of the period of detention is not fatal. Therefore, the learned APP appearing for the respondent – State submits that the petition may be dismissed.

13. Heard the learned counsel appearing for the parties at length. With their able

6 1990 [2] SCC 456

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, affidavit-in-reply filed by respondent no.3, further affidavit-in-reply of respondent no.3, and the original record made available for perusal by respondents. So far as first ground raised by the petitioner that the period of detention is not mentioned in the order dated 4th June, 2016 passed by the Detaining Authority, and further no reasons assigned by the State Government to make order operative for one year, and therefore, the order of detention deserves to be quashed is concerned, the Hon'ble Supreme Court in the case of ***T. Devaki [cited supra]***, after placing reliance upon the earlier judgments of the Supreme Court wherein same issue was involved, has taken a view that, an order of detention is not rendered illegal merely

because it does not specify the period of detention. Para 13 of the said Judgment reads thus:

[13] This Court has consistently taken the view that an order of detention is not rendered illegal merely because it does not specify the period of detention. A Constitution Bench of this Court in Ujagar Singh v. State of Punjab (1952) 3 SCR 756 : (AIR 1952 SC 350), while considering validity of detention order made under Section 3 of the Preventive Detention Act 1950 held that non-specification of any definite period in a detention order made under Section 3 of the Act was not a material omission rendering the order invalid. In Suna Ullah Butt v. State of Jammu and Kashmir (1973) 1 SCR 870 : (AIR 1972 SC 2431), validity of detention order made under Jammu and Kashmir Preventive Detention Act 1964 was under challenge on the ground that the State Government while

confirming the detention order under Section 12 of the Act had failed to specify the period of detention. The Court held that since the State Government had power to revoke or modify the detention order at any time before the completion of the maximum period prescribed under the Act, it was not necessary for the State Government to specify the period of detention. In Suresh Bhojraj Chelani v. State of Maharashtra (1983) 1 SCC 382 : (AIR 1983 SC 181), while considering the validity of the detention order made under Section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 this Court rejected similar submission made on behalf of the detenu that order of detention was vitiated as the Government had failed to mention the period of detention while confirming the order of detention. The Court held that the COFEPOSA act did not require the detaining authority to mention the period of detention in the order of

detention. When, no period is mentioned in an order, the implication is that the detention is for the maximum period prescribed under the Act.

14. The second ground raised by the petitioner is that, the Detaining Authority did not arrive at subjective satisfaction to the effect that the petitioner is acting in a manner prejudicial to the maintenance of the public order and with a view to prevent him from acting such prejudicial manner, it was necessary to detain the petitioner by passing an order under Section 3 [1] of the MPDA Act, 1981. We have carefully perused grounds of the detention. In para 3, there is reference to the Crime No.115/2013 registered with Jawaharnagar Police Station for the offence punishable under Section 395 of the IPC. There is also reference to Crime No.117/2015, registered with Kranti Chowk Police Station, for the offence punishable under Sections

324, 323, 504, 506 r/w.34 of the IPC, and also crime No.3019/2015 registered with Satara Police Station for the offence punishable under Sections 3, 4, 5 of the Immoral Traffic [Prevention] Act, 1956. In all these three cases, the trial is pending. There is another Crime No.189/2016 registered with MIDC Waluj Police Station, for the offence punishable under Sections 376, 354 [A], 354 [D], 323, 504, 506, 34 of the IPC r/w. Section 67 of the I.T. Act, 2000, which is pending for investigation. There is also mention of the chapter case, however, it appears that, the said proceedings are already dropped. In the ground of detention, each of the afore-mentioned crimes have been mentioned. The details in respect of the allegations in the said FIR, and the subsequent orders passed by the Court of Judicial Magistrate, Aurangabad, has also been mentioned. Likewise in respect of other

crimes also, separate grounds are mentioned, with details about the said crime numbers and subsequent developments happened after registration of that crime. On careful perusal of the allegations in the FIR being Crime No.117/2015 registered with Kranti Chowk Police Station, Crime No.3019/2015 registered with Satara Police Station and Crime No.189/2016 registered with MIDC Waluj Police Station and also chapter case of which proceedings are subsequently dropped, does have nexus with passing of order of detention by the Detaining Authority. Apart from the afore-mentioned three crimes and chapter case, in-camera statements of the witnesses 'A', 'B', 'C' and 'D' are also recorded. On careful perusal of the original record, we find that, those statements are verified by the Deputy Commissioner of Police, Zone-I, Aurangabad City and it is mentioned in side margin of every in-camera statements that,

"verified the statement of witness, narrating the same as stated in statement and seems to be under threat". 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, DCP, Zone-1 has personally verified the statements of witnesses 'A', 'B', 'C' and 'D'. After going through the record, we have noticed that, the Commissioner of Police has recorded subjective satisfaction that, the facts given in the statement of the witnesses and apprehension expressed is true and reasonable. Therefore, before passing the impugned order of detention, all procedural formalities have been scrupulously followed, and after conscious application of mind, the Commissioner of Police arrived at subjective satisfaction and then the order of detention has been passed. Upon perusal of the affidavit-in-reply filed by respondent no.1,

it is clearly mentioned that the State through Department of Home has confirmed the order of detention.

15. So far as third ground agitated by the learned counsel appearing for the petitioner that the Detaining Authority has failed to prove that, the petitioner is dangerous person within the meaning of Section 2 [b-1] of the MPDA Act is concerned; the petitioner is involved in as many as four offences; which are registered by way of separate crime numbers, and also in-camera statements of four witnesses have been recorded, and on the basis of said cogent and sufficient material, the Commissioner of Police arrived at subjective satisfaction that the petitioner is dangerous person and he is acting in a manner prejudicial to the maintenance of the public order. Therefore, the petitioner's assertion that, he cannot be termed as 'dangerous person', deserves no

consideration. The material brought on record by the respondents unequivocally indicated about the involvement of the petitioner in habitually committing offences punishable under Chapter XVI and XVII of the Indian Penal Code.

16. Fourth ground taken by the petitioner is that the petitioner belongs to 'Rajput Community', and he understands Hindi language and does not understand English and Marathi languages, and the respondent authority has supplied the copies of the documents in Marathi, and therefore, the petitioner could not submit his representation effectively and properly. Upon perusal of the original record maintained by the office of the Detaining Authority, we find that the statement of the petitioner is recorded on 4th June, 2016, which is signed by him, and also by the respondent authorities wherein he has stated

that, he studied up to 10th Standard in Marathi medium at Milind School, Aurangabad, and thereafter, he has passed out 12th Standard from Arts Faculty, and he studied in Marathi, English and Hindi languages and he is conversant with all three languages. In that view of the matter, there is no substance in the aforesaid fourth ground agitated by the learned counsel appearing for the petitioner.

17. So far as fifth ground i.e. amended ground No. XIII, it is stated that there was no proper verification of the in-camera statements recorded by the authority, and there is endorsement made subsequently. As already observed, the Deputy Commissioner of Police, Mr. Vasant Pardeshi, has verified the said statements and the Commissioner of Police has also gone through the said statement and subjectively satisfied that the facts given in the statement of the witnesses

and apprehension expressed is true and reasonable.

18. In the light of the discussion in the foregoing paragraphs, we are of the considered view that, the order impugned in this Petition needs no interference, hence, the Petition is devoid of any merits, and the same stands rejected.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

DDC