

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 55 OF 2017

Shri Dattatraya Chandrakant Kakade
Age 41 years, occupation -
Residing at Pokharapur, Taluka – Mohol
District – Solapur .. Petitioner/Detenu

Vs.

1. The District Magistrate, Solapur
2. The State of Maharashtra
(Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department
Mantralaya, Mumbai)
3. The Superintendent
Yerwada Central Prison
Pune .. Respondents

Ms.Jayshree Tripathi i/b Mr.Udaynath Tripathi, for the Petitioner.
Ms.M.H. Mhatre, APP for State.

**CORAM : SMT. V.K.TAHILRAMANI &
M.S.KARNIK, JJ.**

28th APRIL, 2017

ORAL JUDGMENT (PER SMT. V.K.TAHILRAMANI) :

1. Heard both sides.

2. The petitioner/detenu – Dattatray Chandrakant Kakade has preferred this Petition questioning the preventive detention order passed against him on 01/12/2016 by the respondent No.1 i.e. District Magistrate, Solapur. The said detention order has been passed in exercise of powers under section 3 (1) 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 (hereinafter referred to as 'M.P.D.A. Act'). The detention order has been issued as detenu is a sand smuggler whose activities are prejudicial to the maintenance of public order.

3. Though number of grounds have been raised in the present Petition whereby detention order has been assailed, however, learned Counsel appearing for the petitioner/detenu has pressed only one ground before us i.e. ground 5(c). Briefly stated ground 5(c) is that in the opening paragraph of the grounds of detention, the detaining authority has stated that the

detention order has been issued on the grounds as mentioned in paragraphs 2 to 7 of the grounds of detention. However, in paragraph 3 (1) of the grounds of detention, 8 registered cases are stated from the year 2012 till the year 2016 and no details of cases at serial Nos. 2 to 8 are mentioned in the grounds of detention. Hence, right of detenu to make an effective representation at the earliest was violated due to which the detention order would be vitiated.

4. Learned Counsel appearing for the detenu invited our attention to paragraph 1 of the grounds of detention served upon the detenu wherein it is stated as under :

“I hereby communicate to you the grounds as mentioned in paragraphs 2 to 7 on which detention order has been made by me on this day against the detenu under sub section (1) of section 3 of the said act.”

5. Mr.Tripathi submitted that this shows that the order of detention is based on paragraphs 2 to 7 of the grounds of detention which includes paragraph 3 (1). Mr.Tripathi pointed out in paragraph 3(1) of the grounds of detention, the detaining authority has set out 8 first information reports, the sections

under which the first information reports have been registered, the names of police station where the first information reports are registered and the status of the case. Mr.Tripathi submitted that from paragraph 1 of the grounds of detention, it is clear that paragraph 3(1) is one of the grounds of detention. Therefore, subjective satisfaction of the detaining authority was influenced by offences which have been set out in paragraph 3(1) of the grounds of detention. Mr.Tripathi submitted that the detaining authority has not set out in the grounds of detention the basic facts constituting offences set out in paragraph 3 (1) of the grounds of detention which have been taken into consideration by the detaining authority for passing the impugned order of detention. Mr.Tripathi urged that it cannot be denied that the order of detention is based on 8 first information reports set out in paragraph 3 (1). However, no relevant facts or even basic facts in relation to cases mentioned at serial Nos. 2 to 8 have been set out in the grounds of detention. He urged that as a result of failure to set out basic facts and material in relation to first information reports

mentioned at serial Nos. 2 to 8 in paragraph 3(1), the detenu was prevented from making an effective representation in accordance with clause 5 of Article 22 of the Constitution of India.

6. Learned APP in reply placed reliance on the affidavit of the detaining authority wherein ground 5(c) has been replied. It is stated that the detenu has been supplied with the grounds of detention and the compilation of the documents which includes the first information reports and copies of charge-sheets in the respective offences. However upon perusal of the compilation of the documents, it is seen that entire charge-sheets in the cases relating to first information reports at serial Nos. 2 to 8 have not been furnished to the detenu. Many material documents relating to these cases are not supplied to the detenu.

7. We have given careful consideration to the submissions of the learned Counsel for the petitioner and learned APP for the State. We have perused the grounds of

detention served on the petitioner/detenu. The first paragraph of the grounds of detention clearly recites that grounds mentioned in paragraphs 2 to 7 were being communicated to the detenu on the basis of which the detention order has been issued by the detaining authority under section 3 of the M.P.D.A. Act. The grounds of detention have been set out in paragraphs 1 to 12. It will be necessary to make a reference to paragraphs 3 (1) which is as under :

Sr.No.	Name of Police Station	C.R.No.	Section	Case Status
1	Mohol	596/2016	379, 34 IPC along with section 9 and 15 of the Environment Protection Act.	On investigation
2	Solapur Taluka	185/2015	143, 353, 323, 504, 506 of IPC	Court Pending
3	Mohol	208/2015	143, 147, 149, 327, 323, 504, 506 of IPC along with 135 of Mumbai Police Act	Court Pending
4	Mohol	22/2015	379 of IPC	Court Pending
5	Mohol	88/2014	373, 34 of IPC along with section 9 and 15 of Environment Protection Act	Court Pending
6	Tembhurni	146/2013	379, 34 of IPC along with section 21(4) of Mine and Mineral Act 1957.	Court Pending
7	Mandrup	126/2013	379, 34 of IPC along with section 9 and 15 of Environment Protection Act	Court Pending

8	Mohol	233/2012	379, 34 of IPC along with section 9 and 15 of Environment Protection Act	Court Pending
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8. It is seen that paragraph 3(1) contains the list of 8 first information reports registered against the detenu, the sections under which the offences are allegedly punishable, the names of the police stations and the status of the cases have been incorporated therein in tabular form. However, there is no narration in the grounds of detention of the incidents at serial No.2 to 8 which led to the registration of the said offences. Even the gist of the facts set out in the first information reports has not been incorporated therein. Only details relating to the first C.R. i.e. C.R. No. 596 of 2016 of Mohol police station are found in paragraph 3 (3) of the grounds of detention. No details at all are given of the first information reports at serial Nos. 2 to 8. At this stage, we make a reference to the well known decision of the Apex Court in the case of **Khudiram Das Vs. The State of West Bengal and others reported in (1975) 2 Supreme Court Cases 81**. In paragraph 6 of the said decision, the Apex Court held thus :

“....If this be the true reason for providing that the grounds of which the

order of detention is made should be communicated to the detenu, it is obvious that the 'grounds' mean all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention and on which, therefore, the order of detention is based”

9. After reference to its earlier decision, in the case of **Golam alias Golam Mallick V/s. State of West Bengal** as well as in the case of **Ram Krishna Bhardwaj V/s. State of Delhi**, the Apex Court held thus :

“ It is therefore, clear that nothing *less than all* the basic facts and materials which influenced the detaining authority in making the order of detention must be communicated to the detenu. That is the plain requirement of the first safeguard in Article 22(5). The second safeguard in Article 22(5) requires that the detenu shall be afforded the earliest opportunity of making a representation against the order of detention. No avoidable delay, no shortfall in the materials communicated shall stand in the way of the detenu in making an early, yet comprehensive and effective, representation in regard to all basic facts and materials which may have influenced the detaining authority in making the order of detention depriving him of his freedom. These are the legal bulwarks enacted by the Constitution – makers against arbitrary or improper exercise of the vast powers of preventive detention which may be vested in the executive by a law of preventive detention such as the Maintenance of Internal Security Act, 1971”

10. As noted earlier by us in the first paragraph itself paragraph 3(1) is described as a ground of detention by the detaining authority. As held by the Apex Court a 'ground' means all the basic facts and material which has been taken into account by the detaining authority while issuing the order of detention and on which the order of detention is based. The

ground is not merely a fact that particular offence has been registered against the detenu but basic facts relating to the said offence has to be stated in the grounds of detention.

11. In view of the clear recital in paragraph 1 of the grounds of detention, the detaining authority cannot now deny that paragraph 3(1) is a ground of detention. From the grounds of detention it is obvious that the subjective satisfaction of the detaining authority is based on what is incorporated in paragraph 3(1).

12. The Apex Court in the case of **Khudiram Das** (*supra*) has held that “grounds” means all the basic facts and materials which have been taken into account by the detaining authority in making an order of detention. Therefore, merely stating the first information report numbers, penal sections of statute and names of police stations and status of the cases is not sufficient compliance with the constitutional safeguard of communicating grounds of detention to the detenu. Going by

paragraph 1 of the grounds of detention, it is clear that detaining authority was influenced by the offences set out in paragraph 3(1) of the grounds of detention which includes first information reports mentioned at serial Nos. 2 to 8 of the said para. However, no details of the first information reports at serial Nos. 2 to 7 have been incorporated in the grounds of detention. Thus, in the present case, there is clear violation of the safeguard provided under Article 22(5) of the Constitution of India of communicating grounds of detention to the detenu.

13. As basic facts and materials in relation to the said offences which have influenced the subjective satisfaction of the detaining authority have not been incorporated in the grounds of detention served upon the detenu, other constitutional requirement of affording earliest opportunity to the detenu of making an effective representation against an order of detention has also been violated.

14. In the above circumstances, the impugned order of detention is vitiated and deserves to be quashed and set aside. Accordingly, it is quashed and set aside. Rule is made absolute in the above terms.

(M.S.KARNIK, J.)

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