

Sharayu

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 677 OF 2017

Atul Avinash Pawar

...Petitioner

Versus

1. The Commissioner of Police Pune

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

**3. The Superintendent
Kolhapur Central Prison
Kolhapur.**

...Respondents

Mr. Udaynath Tripathi, for the Petitioner.

Ms. M.H. Mhatre, APP, for the Respondent-State.

**CORAM : ABHAY S. OKA & AND
RIYAZ I. CHAGLA, JJ.**

DATE : 23 August 2017

ORAL JUDGMENT : [Per Riyaz I. Chagla J.]

1 . The Petitioner by this Writ Petition is challenging the order of preventive detention passed in exercise of powers conferred by Section 3(2) of the Maharashtra Preventive of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Person Video Pirates, Sand Smugglers and persons engaged in Black-marketing of Essential Commodities Act, 1981 (for short “*the said Act*”).

2 . The learned Counsel appearing for the Petitioner-Detenu has drawn this Court's attention to ground (b) of the Petition, which appears to be the main ground of challenge to the detention order. He has pointed out that in the first paragraph of the grounds of detention mention is made of the grounds on which the detention order has been passed by the Detaining Authority and which would include paragraphs No. 2 to 6 as the grounds considered and relied upon by the Detaining Authority in order to pass the order of detention. In paragraph No. 3(2) of the ground of detention, a list of offences is set out

and which comprise of seven offences committed by the Petitioner from the year 2011 to 2016 shown in tabulated format and the preventive action taken against the Petitioner which includes externment proceedings. He has stated that the Detaining Authority in paragraph No. 4 has only narrated two of the seven offences viz. C.R.No. 450 of 2016 and C.R.No. 311 of 2016. There are no particulars of the remaining five offenses in respect of which cases have been registered and communicated to the Petitioner except by giving the C.R. Numbers, Sections of law, police stations and the status of the cases. He has accordingly, submitted that the absence of a narration of incidents which lead to the registration of the offences in respect the five existing cases amounts to non-communication of the grounds. He has relied upon a judgment of the Hon'ble Supreme Court in *Khudiram Das Vs. The State Of West Bengal & Ors.*¹ He has also pointed out paragraph 7 of the ground of detention which reads thus:-

“From the above facts, I am subjectively satisfied

¹ (1975)2 SCC 81

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 Pimpri Police Station in Pune City. The people there 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.”

3. The learned Counsel appearing for the Petitioner has accordingly submitted that failure to set out basic facts and materials prevents the Petitioner-Detenu from making representation in accordance with Clause 5 of Article 22 of the Constitution of India. He has also pointed out paragraphs 9 and

11 of the Affidavit in Reply dated 23 March 2017 filed by the Detaining Authority. In the said paragraphs, seven criminal cases have been referred to and in paragraph 11 the Detaining Authority has mainly relied upon two offences committed in the year 2016 and two statements of in-camera witnesses. The Detaining Authority has not denied the fact that the remaining five offences/criminal cases were also relied upon in the ground of detention of which narration has not been given in the grounds of detention.

4. The learned APP appearing for the Respondents has supported the detention order and the grounds of detention.

5. We have given careful consideration to the submissions. We are of the view that the grounds of detention have clearly been stated in paragraph 1 viz. that all the grounds mentioned in paragraphs 2 to 6 were being communicated to the Petitioner-Detenu and forms the grounds on which detention order had been passed by the Detaining Authority under Sub-

section (2) of Section 3 of the said act. In paragraph 3, a list of offences and preventive actions have been set out. There are total seven offences and out of which in two offences, preventive actions have been taken. There is also an externment order No. 06/2014 passed in connection with the offences registered with the Pimpri Police Station. However, there is no narration in respect of five of the instances. Even a gist of the facts set out in the F.I.R. in respect of five offences has not been incorporated. At this stage, we make reference to the well known decision of the Hon'ble Supreme Court in the case of **Khudiram** (supra), the Supreme Court in paragraph 6 held thus:-

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

After referring to its earlier decisions in the case of Golam alias Golam Mallick V/s. State of West Bengal² as well as in the case of Ram Krishan Bhardwaj V/s. State of Delhi³, 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 that 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

² 1975(2) SCC 4

³ AIR 1953 SC 318

the detenu in making any 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.”

6. The Supreme Court has held in the above decision 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. The “grounds” does not constitute merely a fact that particular offence has been registered against the Detenu. The grounds are factual constituents on which the subjective satisfaction of the Detaining Authority is based. The

judgment of the Supreme Court in **Gautam Jain Vs. Union of India**⁴ follows, *inter alias*, **Khudiram** (supra) and Paragraph 22 of the decision reads thus:-

“From the above noted judgments, some guidance as to what constitutes 'grounds', forming the basis of detention order, can be easily discerned. In the first instance, it is to be mentioned that these grounds are the 'basic facts' on which conclusions are founded and these are different from subsidiary facts or further particulars of these basic facts. From the aforesaid, it is clear that each 'basic fact' would constitute a ground and particulars in support thereof or the details would be subsidiary facts or further particulars of the said basic facts which will be integral part of the 'grounds'.

7. It is thus clear that the grounds of detention has not set out the particulars of the five offences which constituents

⁴ (2017)3 SCC 133

grounds on which the detention order has been passed and/or forms the basis of the detention order. The basic facts as mentioned in the decision of the Supreme Court would include the particulars in support thereof or the details supporting the basic facts which are an integral part of the grounds.

8. We have also perused the Affidavit in Reply of the Detaining Authority dated 23 March 2017. In paragraph 9, the Detaining Authority has stated that the list of seven criminal cases have been relied upon to show that the Petitioner-Detenu has been habitually committing offences under Chapter XVI and XVII of the Indian Penal Code, 1860 as well as Chapter V of the Arms Act, 1959 and that he is the dangerous person as defined under Section 2(b)(i) of the said Act. It is also stated in paragraph 11 that the detention order dated 15 September 2016 has mainly relied upon two offences committed in the year 2016 and two statements of in-camera witnesses. Thus, the Detaining Authority has admitted that the five offences were also a part of the grounds submitted and which formed the basis of the

detention order. We have noticed that the Supreme Court in the case of *Khudiram* (supra) has held that the the “grounds” mean all the basic facts and materials taken into account by the Detaining Authority in making an order of detention. Therefore, merely stating the C.R. numbers, the names of the police station as well as status of the case as pending is not sufficient compliance with the constitutional safeguard of communicating the grounds of detention. We are of the view that in the present case, there is a clear violation of safeguards provided under Article 22(5) of the Constitution of India, which provides for the communication of the grounds of detention. It can be seen from paragraph 7 of the grounds of detention that the subjective satisfaction has been arrived at by the Detaining Authority on the basis of seven offences. As the basic facts and materials in relation to the five offenses which influenced the subjective satisfaction of the Detaining Authority not being incorporated in the grounds of detention served upon the Petitioners, the constitutional requirement of making an opportunity available to the Detenu of making effective representation against the

order of detention has been violated.

9. In the circumstances, the impugned order of detention is vitiated and deserves to be quashed and set aside.

10. Accordingly, we pass the following order.

- (i) Rule is made absolute in terms of prayer clause
- (b) which reads thus :-

“(b) That the order of detention bearing No. PCB/DET/3313/2016 dated 15.09.2016 under Section 3(2) of M.P.D.A. Act 1981 by the Respondent No. 1 against the Petitioner, be quashed and set aside and on quashing the said order of detention, the Petitioner be released forthwith.”

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]