

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1720 OF 2017

Shri Shrinivas Kishor Sanga	Petitioner
V/s.	
The Commissioner of Police	
& Ors.	Respondents

Mr. Udaynath Tripathi , Advocate for Petitioner.
Mrs. M.H.Mhatre , APP for Respondent-State.

**CORAM : SMT. V.K. TAHILRAMANI, &
SANDEEP K. SHINDE, JJ.**

DATE : July 25, 2017.

ORAL JUDGMENT : [Per Smt. V.K.Tahilramani, J.]

Heard both sides.

2 The petitioner/detenuue Shrinivas Kishor Sanga has preferred this petition questioning preventive detention order passed against him on 21.10.2016 by the respondent no.1, i.e., Commissioner of Police, Solapur. The said detention order has been passed in exercise of powers under Section 3(2) 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 '**MPDA Act**') as the detenue is dangerous person whose activities are prejudicial to the maintenance of public order. Perusal of the grounds of detention shows that detention order is based on one C.R., i.e., C.R.No.372 of 2016 of Jail Road Police Station, Solapur and two in-camera statements. The detention order along with grounds of detention and accompanying documents were served on detenue on 22.6.2016.

3 Though number of grounds have been raised in the petition by the learned counsel for the petitioner whereby the detention order has been assailed, as in our opinion, this petition can be allowed on the basis of ground (d), we need not advert to other grounds. In ground (d), it is stated that in paragraph 7 of the grounds of detention, the detaining authority has expressed its subjective satisfaction as under:

“d.”due to your double/triple recovery of monies some people were thinking about suicide and due to your act one person is dead”.

4 It is contended that no material is disclosed in the grounds of detention for the Detaining Authority to reach said subjective satisfaction. On going through the grounds of detention, we find that there is no material disclosed therein that 'some people were thinking about committing suicide due to the act of detainee'. In the reply filed by detaining authority, it is stated that there was sufficient material before the Detaining Authority to reach the said subjective satisfaction. It is further stated that an application was submitted by one Hiralal Devreddy which is at Page 219 in the compilation furnished to the detainee and application of said Hiralal supports the averments that 'due to acts of the detainee, people were thinking about committing suicide'.

5 It is to be noted that this averment that 'due to acts of the detainee, people were thinking of committing suicide is made in the paragraph relating to the subjective satisfaction of the Detaining Authority. On going through the grounds of detention, it is seen that the Detaining Authority was subjectively satisfied that due to the acts of

detenue, people were thinking of committing suicide. In such case, the basis on which such subjective satisfaction is reached has to be disclosed in the grounds of detention. If an averment is made in any other paragraph of the grounds of detention than the paragraph in which subjective satisfaction is expressed, it can be termed as a passing reference and even if there is no material disclosed to support the passing reference a detention order can be sustained.

6 First of all, there is no reference to this application in the grounds of detention. Thereafter, it is seen that this application is dated 12.10.2015. Thus, it is seen that this application related to a stale incident. It is well settled that stale incidents cannot be taken into consideration by the Detaining Authority to reach its subjective satisfaction that it is necessary to detain the detenue. Thus, it is seen that there was no proximate material before the Detaining Authority to reach the said subjective satisfaction. In addition, as stated earlier, there is no reference at all to this application in the grounds of

detention. However, subjective satisfaction has been reached by the Detaining Authority on the basis of this application to which there is no reference in the grounds of detention. This application is old and stale and hence, could not have been taken into consideration by the Detaining Authority. In view of the above fact, subjective satisfaction reached by the Detaining Authority is vitiated on this ground alone. The petition must succeed. Hence, detention order is quashed. Rule is made absolute in the above terms.

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