

Sharayu

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

WRIT PETITION NO. 2520 OF 2017

Milind Balaso Dale		...Petitioner
<i>Versus</i>		
1.	The State of Maharashtra, (Through the Secretary to the Govt. of Maharashtra (Preventive Detention, Home Department (Special))	
2.	The District Magistrate	
3.	The Superintendent of Jain	...Respondents

Mr. Rajesh Naik, i/b Mr. Umesh R. Mankapure, for the
Petitioner.

Ms. V.S. Maispurkar, APP for the Respondent-State.

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

DATE : 4 September 2017

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

1. The Petitioner has filed this Writ Petition under Article 226 of the Constitution of India, challenging the order of preventive detention dated 27th March 2017 passed by Respondent No. 2 in exercise of powers under Sub-Section 1 of Section 3 of the Maharashtra Prevention 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 has drawn our attention to paragraph No. 5 of the grounds of detention served upon the Petitioner-Detenu. He has pointed out that seven cases against the Petitioner have been referred to and has claimed that these cases are from 2012. He has pointed out that the cases at Sr.No. i and iii in the paragraph No. 5, all cases where the Petitioner has been acquitted by the concerned Court. He has submitted that there is non-application of mind

on the part of the Detaining Authority whilst passing the order of detention. He has submitted that the Detaining Authority ought to have considered that in the cases mentioned in the said paragraph, the Petitioner has either being acquitted or proceedings are pending and in none of the proceedings, the Petitioner has been convicted. He has also contended that the detention order is vague and that the Detaining Authority has not assigned any reason as to how the Petitioner-Detenu was causing disturbance to public orders. He has also contended that the order of detention has been issued belatedly and much after the offences mentioned in paragraph No. 5 were registered against the Petitioner. In support of this contention, the learned Counsel appearing for the Petitioner has relied upon the Division Bench judgment of this Court in *Kamala Harishchandra Dhawade Vs. O.P. Bali, Commissioner of Police, Nagpur*¹. He has contended that in that case the in-camera statement of the witness in relation to the instances had been recorded in 1994 and was relied upon. The detention

¹ 2001(1) Mh.L.J.

order was of 20 December 1999 and this Court held that the in-camera statements suffer from the vice that there is no proximity or live link of these instances with the order of detention. He has submitted that in the present case also the detention order was of 27 March 2017 and the offences relied upon were from 2012 and hence, there was no proximity of the offences to the detention order. He has also drawn the attention of this Court to paragraph No. 7 of the detention order, which reads thus :-

“I am further satisfied that you are likely to revert to the similar activities prejudicial to the maintenance of public order in future and in view of your tendencies and inclinations reflected through the offences committed by you as stated above and the previous actions taken against you under various prevailing acts are not sufficient to control your criminal activities, it is necessary 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 (Amendment 1996, 2009 and 2015) to prevent you from acting in such a prejudicial manner in future.”

3. He has contended that as the instances recorded have no proximity to the detention order, the grounds recorded by the Detaining Authority are insufficient. He has submitted that the Petitioner-Detenu has been prevented from making effective representation in accordance with Clause 5 of Article 22 of the Constitution of India.

4. The learned APP has supported the impugned order and has relied upon the Affidavit of Shekhar Narayan Gaikwad, the District Magistrate, Sangli, who is the Detaining Authority and has relied upon paragraph No. 10 of the said Affidavit. The learned APP has submitted that in the said paragraph, the

Detaining Authority has stated that he had considered one cognizable offence registered at Palus Police Station vide C.R. No. 9 of 2017 and statements of two in-camera witnesses. The learned APP has therefore, submitted that the offences in paragraph No. 5 were not relied upon by the Detaining Authority and it is clear from the opening paragraph of the grounds of detention, wherein it is stated that the grounds in paragraph No. 4 were communicated to the Detenu on which the detention order has been issued by the Detaining Authority. The copies of the documents have also been enclosed. The learned APP therefore, contended that there is no merit in the contention of the learned Counsel appearing for the Petitioner that the offences in paragraph No. 5 were relied upon and formed the bases of the detention order.

5. We have given careful consideration to the submissions. We have perused the grounds of detention served on the Petitioner-Detenu. It is stated by the Detaining Authority that he has communicated the grounds in paragraph No. 4 to

the Detenu on which the detention order has been issued under Sub-Section 1 of Section 3 of the said Act. The offences referred to in paragraph No. 5 are not the grounds of detention and only one cognizable offence registered at Palus Police Station vide C.R.No. 9 of 2017 and statements of two in-camera witnesses in paragraph No. 4 have been relied upon, as the grounds on which the detention order has been passed. We are therefore, of the view that there is no merit in the submissions of the learned Counsel appearing for the Petitioner. The offences mentioned in paragraph No. 5 cannot be relied upon and it is irrelevant that the Petitioner had been acquitted in respect of some of these offences where cases were registered and/or that the offences were much prior to that of detention order. We are of the view that the only offence relied upon by the Detaining Authority is of 17 January 2017 and in-camera statements were recorded on 27 January 2017 and hence, there was proximity of the instance recorded to the detention order and can form the grounds of detention. The decision of this Court in ***Kamala Harishchandra Dhawade*** (supra) relied upon by the learned Counsel appearing

for the Petitioner is not applicable to the present case and can be distinguished, as in that case, the instances relied upon informing the grounds of detention was of 1994 and the detention order was dated 20 December 1999 and hence this Court came to the conclusion that the in-camera statements of 1994 had no proximity or live link with the order of detention.

6. We find that the Detaining Authority has recorded his satisfaction in paragraph No. 7 of the grounds of detention. We are also of the view that the Detaining Authority has recorded all the basic facts and materials which have been taken into account in making of the order of detention. We make reference to the well known decision of the Apex Court in case of *Khudiram Das Vs. The State Of West Bengal & Ors.*². Paragraph No. 6 reads 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

² (1975)2 SCC 81

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.”

7. In the present case, the basic facts and materials influencing the subjective satisfaction of the Detaining Authority have been incorporated in the grounds served upon the Petitioner. We are of the view that in the present case, the Detaining Authority has sufficiently complied with the constitutional safeguard of communicating the grounds of detention.

8. In the circumstances, the order of detention dated 27th March 2017 is upheld.

9. Writ petition is rejected. Rule is discharged with no order as to costs.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]