

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION No. 4645 of 2017.

Avinash Gorakh Shinde.

..Petitioner.

Vs.

District Magistrate, Sangli
and others.

.. Respondents.

Mr. U. N. Tripathi a/with Ms
Jayshree Tripathi, Advocates for
the Petitioner.

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

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.
22/12/2017.

P.C. (PER: Smt. BHARATI, H. DANGRE,J)

1 The present petition is filed by a detenu who is detained at Sangli Central Prison, Sangli in view of an order of detention passed on 11/9/2017 by the District Magistrate, Sangli, thereby detaining him in exercise of powers conferred by sub-Section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates,

Sand Smugglers and persons engaged in Black-marketing of Essential Commodities Act, 1981 (for short “MPDA Act,1981”). The said order of detention is passed with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of public order.

2 The petitioner has raised several grounds in the writ petition to advance his submission that the detention order reflects total non-application of mind on the part of detaining authority and is therefore liable to be quashed and set aside. It is contended in the petition that the Detaining Authority was unaware about the fact as to whether the petitioner was in custody or a free person when the order of detention is passed. According to the petitioner, nothing is disclosed about his date of arrest, remand and whether any application for bail is preferred by the petitioner and whether the bail application is pending or disposed of or accepted or rejected. Further ground raised in the petition is that the detaining authority has taken into consideration two in-camera statements of witness “A” and “B” recorded on 17/7/2017 and 18/7/2017 respectively. It is alleged that

the statements have been verified by the SDPO, Miraj, but the said verification does not disclose ascertainment of truthfulness of the incident which is mandatory requirement of law. Another ground raised in the petition is that the detenu was not informed about his rights before the Advisory Board, which necessarily deprived him of effective opportunity of being represented before the Advisory board namely to produce witnesses and examine them and according to the petitioner this amounts to infringement of right guaranteed under Article 22 (5) of the Constitution of India.

3 We have heard the learned Advocate Shri Tripathi representing the detenu and Mrs. Mhatre, appearing on behalf of the State. Advocate Shri Tripathi relies specifically on ground (c) and (d) of the petition. We reproduce the said grounds as contained in the writ petition filed by the petitioner.

(c) “The petitioner says and submits that
the detaining authority has referred to one
criminal case registered against him vide

C.R.No.72 of 2017, under section 324, 323, 504, 506 of IPC. The detaining authority is totally unaware about bail position of the petitioner whether the petitioner was a free person having been granted bail by any Court of law or whether the petitioner was in custody when the order of detention was passed. It is further to be noted that nothing is disclosed about his date of arrest, remand and whether any application for bail is preferred by petitioner, whether the bail application is pending or disposed of or bail order passed or rejected. The petitioner further submits that neither bail application nor the bail order in C.R.No.72 of 2017 is placed before detaining authority or copies furnished to the petitioner. The petitioner submits that bail application and bail order are vital and relied on documents

which are necessarily to be placed before the detaining authority and further their copies should be furnished to the petitioner to enable him to make effective representation. In this case, since it is not done, the satisfaction of the detaining authority vitiates as well as the petitioner is deprived of making any effective representation, thereby petitioner's right guaranteed under Article 22(5) of the Constitution of India is violated. The order of detention is illegal and bad in law, liable to be quashed and set aside.

d. The petitioner says and submits that the detaining authority has taken into consideration two in-camera statements of witnesses "A" and "B" recorded in-camera on 17/7/2017 and 18/7/2017 respectively. Both the statements

are verified by S.D.P.O. Miraj, which are not according to the requirement of law. The petitioner submits that the so called verification does not disclose the verification of the truthfulness of incidents which is a mandatory requirement of law. Such camera statements which do not reflect the truthfulness of incidents are not genuine and proper. Hence, cannot be considered and relied on as material in passing order of detention. The order of detention is illegal and bad in law, liable to be quashed and set aside.”

4 According to the learned Advocate Shri Tripathi, there is complete non-application of mind by the detaining authority so much so that the factual aspect that whether the applicant was released on bail or not and whether he is in custody was not placed before the Detaining Authority so as to arrive at a subjective satisfaction whether

the detention of the detenu is necessary. Shri Tripathi argued that the bail application and bail order are vital documents and the factum as to whether the bail is granted or not ought to have been placed before the Detaining Authority and the copies of the same ought to have been furnished to the petitioner so as to enable him to make a representation. To canvass his submissions, he relies upon a judgment of the Hon'ble Apex Court in case of Rushikesh Tanaji Bhoite Vs. State of Maharashtra & Ors 2012 (2) SCC 72. Paragraphs 8 and 9 of the judgment read as under:-

8. “It would be, thus, seen that the order releasing the detenu on bail in the crime registered on 14-8-2010 and the order relaxing the bail condition were passed by the judicial Magistrate, First Class, Dharangaon much before the issuance of the detention order dated 10-1-2011. However, the detention order or the grounds supplied to the detenu do not show that the detaining authority was aware of the bail order granted in favour of the detenu on 15-8-2010.

9. In a case where the detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.”

5 To make good the ground (d) raised in the petition, Advocate Shri Tripathi invited our attention to two in-camera statements and the verification of such statements. According to the learned counsel, the in-camera statements have been verified by the S.D.P.O. Miraj but the verification in no case reflects the truthfulness of the incident narrated by the in-camera witness and moreover verification disclose the name of the in-camera witness. According to the learned counsel, the detention order proceeds on a premise that the detenu had indulged into criminal activities which had affected the public peace and had created a reign of terror in the mind of law abiding persons residing in the jurisdiction of Sangli Rural Police Station and Jath, Sangola and Tasgaon Police Station. The Detaining Authority has also placed reliance on one C.R. No.72/2017 registered on 6/7/2017 in Sangli Rural Police Station to demonstrate the criminal tendency of the detenu. Shri Tripathi, invited our attention to that portion of the order of detention where the detaining authority has recorded that two aggrieved victim persons have narrated

atrocities committed by the detenu on them, they came forward to record their statement on a condition of not disclosing their name and identity and therefore their statements were recorded and they were referred to as witness “A” and “B”. In this backdrop, Shri Tripathi argues that the subjective satisfaction reached by the Detaining Authority about no person in the locality being ready to depose against the detenu since he had unleashed a reign of terror in the locality is unfounded.

6 Per contra, learned APP relies on the affidavit filed by the District Magistrate, Sangli in support of the order of detention. In the said affidavit, the deponent had stated that he had carefully gone through the material placed before him and after being subjectively satisfied that the petitioner / detenu is acting in the manner prejudicial to maintenance of public order, he has issued the impugned order of detention. Mrs. Mhatre, learned APP, invited our attention to the affidavit dealing with ground No. (c) and (d). For the sake of convenience, we reproduce the reply affidavit dealing with ground (c)

and (d) as below :-

With reference to Para 6(c) :- Contents of this para are incorrect, false and also mis-interpreted. This is the fact that, criminal case was registered against the petitioner vide CR No. 72 of 2017, u/s. 324, 323, 504 & 506 of I.P.C. Remaining contents of this para are not correct and hereby denied. Even though in one C.R. the bail was granted to the petitioner. It will not hamper in any manner. I state that grounds of detention para no 5 to 7 I recorded my subject to satisfaction which shows there are numbers of offences registered against the petitioner and they are of serious nature. While passing order of detention, the detaining authority minutely observed and considered the evidence on record. The documents which are referred i.e bail application is own documents of the petitioner. I state that the bail application and the order are not the vital document and therefore same is referred document and I state that not furnishing such document will not be prejudiced the right of the petitioner guaranteed in the Article 22(5) of the Constitution of the India and the order of the detention is legal and tenable as per law.

With reference to Para 6(d) :- Contents of this para are incorrect, false and mis-interpreted. Two in camera statements of witnesses "A" and "B" are recorded as per law. I state that two in camera statements were supported by verification. Both the statements are true and correct. Two in camera statements are very much material in the present case therefore considering those two in camera statements orders were passed. After I am personally satisfied and seen the statement and same at duly verified by the S. D. P. O. Division Miraj, Miraj

who is equivalent rank of ACP and copy of the said in camera statement are duly serve to the petitioner except the names and identified particular of the witness/victims in connection with the ground of the detention in para no. 4(b) (I) and 4(b) (II) is cannot be furnished to the petitioner in the public interest and for which I have already claim privilege in para no 1 of the grounds of the detention.

7 It is not in dispute that the law of Preventive Detention is based on suspicion and reasonability and it is distinct from an ordinary penal offence where a person is charged, afforded an opportunity to defend himself and then fastened with conviction or set at liberty by acquitting him. The purpose of preventive detention being to prevent a person from indulging in any illegal activity which is prejudicial to the interest of the State or prejudicial to public order, has to be approached with slightly different angle, namely, that the detaining authority must exercise the said power of detaining a person by strictly observing the procedure and by recording a satisfaction based on material or grounds before him that it was necessary to detain the detenu with a view to prevent him from acting in any prejudicial manner as contemplated by the statute. The detaining authority has to

weigh the two rights very carefully, namely, the right guaranteed under Article 21 of the Constitution of India and the right conferred under Article 22 of the Constitution of India and the constitutional safeguards engrafted in Article 22, which would justify the curtailment of right under Article 21 of the Constitution of India.

To put it succinctly in the words of the Hon'ble Apex Court in case of *Rekha v. State of Tamil Nadu & Anr*, (2011) 5 SCC 244 the observation made in para 29 of the judgment reads thus :

“29. Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention

law will be illegal.”

8 The order passed by the detaining authority detaining a person by invoking the provisions of the laws like MPDA Act, 1981 is based on subjective satisfaction of the detaining authority, whether a person has to be detained for the particular period of time or not. Since it is a settled position in the light of our Constitutional framework that the power of preventively detaining a person given to the competent authority must be exercised in exceptional cases as contemplated by various provisions of different statutes dealing with the preventive detention and it is expected that the said power should be exercised with a great deal of circumspection. There must be awareness of facts necessitating preventive detention of a person for maintenance of social order and equally important is the subjective satisfaction reached by the detaining authority which must be based on relevant and cogent material that has been placed before the authority.

9 The MPDA Act of 1981 is one such preventive enactment which provides for preventive detention of various categories of

persons for preventing their dangerous activities, which are prejudicial to the maintenance of public order. The said Act defines the term “acting in any manner prejudicial to the maintenance of public order” and so as it refers to “a dangerous person” it means when he is engaged or is making preparation for engaging in any of the activities as a dangerous person, which affect adversely or likely to affect adversely the maintenance of public order. The term dangerous person is defined in subsection (b-1) of section 1 of the MPDA Act, which reads as under:-

“[(b-1) “dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959]”

Section 3 of the said enactment confers power on the State Government to pass an order, directing the person to be

detained on a satisfaction being reached with respect to any person with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. Sub-section (2) of section 3 confers a similar power upon the District Magistrate or Commissioner of Police within the local limits of his jurisdiction, if he is satisfied having regard to the circumstances prevailing or likely to prevail in his area that it is necessary to exercise powers conferred upon him to detain a person. The said power of preventively detaining a person is exceptional in nature. It is safeguarded in terms of Article 22 of the Constitution of India. An important safeguard available to a detenu is in the form of Article 22 sub-clause (5) which provides that any person who is detained in pursuance to the order made under any law of preventive detention, the authority, making the order, shall communicate to such person the grounds on which the order of detention has been made and shall offer an earliest opportunity of making a representation against the order. Equally important, is the right of the detaining authority enumerated in sub-section (6) of Article 22, where the detaining authority may chose

not to disclose some facts to the detenu, which the authority considers to be against the public interest to disclose.

10 Coming to the provisions of the MPDA Act, 1981, the Act makes it mandatory through Section 8 to communicate to the person detained in pursuance of the detention order, the grounds of detention on which the order has been made as soon as may be not later than five days from the date of detention and to afford him the earliest opportunity of making a representation against the order to the State Government. Though the statute does not restrict the grounds on which the detention order can be made but necessarily the grounds must disclose the material on the basis of which the detaining authority has formed a subjective satisfaction that a person needs to be preventively detained since his activities are prejudicial to the maintenance of public order and to form an opinion that such a person is engaged or making a preparation for engaging in any of the activities, which affect adversely or which is likely to affect adversely the maintenance of public order.

The detaining authority before issuing the order of detention has to form a subjective satisfaction, which should be based on the material placed before him. What is that material, on the basis of which the subjective opinion can be formed, is not enumerated in the enactment and it is for the detaining authority to rely upon the past conduct of the detenu, his inclination towards indulging in any criminal activities of the one falling under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act. The material may also be in the form of in-camera statements depicting secrecy and confidentiality in the form of members/ representative of the locality, who are not ready to depose against the detenu but on promise of certain protection to them, if granted, are ready and willing to disclose the activities of the detenu, affecting even the tempo of public life in the locality and this is the material on the basis of which the detaining authority has to arrive at a subjective satisfaction. Though it is open to the Detaining Authority to rely on material which he deems to be appropriate to lead to a conclusion that the detenu is a

“dangerous Person”. The only requirement in law is that the material which is placed before the detaining authority enabling him to form a subjective satisfaction must also be supplied to the detenu. The detenu being entitled to know as to on what material the detaining authority has formed the subjective opinion and to ascertain the existence of such material used against him by affording an opportunity of making a representation before the Advisory Board, who is authorized to reach the conclusion whether there is a sufficient cause for detention of the person concerned.

11 The petitioner/ detenu was communicated the grounds of detention on 11.09.2017 in pursuance of section 8 of the MPDA Act, 1981. Said grounds of detention were accompanied with the copies of the documents which were placed before the detaining authority and it was mentioned that the said documents are supplied alongwith the grounds of detention, except the names and identity of the witnesses/victims in connection with the grounds. The reading of the grounds of detention which have been placed on record along with

the petition at Exh. "B", reflects the material on the basis of which the detaining authority has arrived at a conclusion that the activities of the detenu are prejudicial to the maintenance of the public order. The detaining authority also records subjective satisfaction that the detenu is likely to revert to similar activities in future, in view of his tendency and inclination to commit on the nature which have been referred to in the grounds of detention and the fact that earlier actions taken against him for preventing such acts, are not sufficient to control his criminal activities. The grounds of detention makes a reference to the criminal activities of the detenu and he is clamped as a 'dangerous person' and it is alleged that he had created a deterrent atmosphere in the jurisdiction of the Sangli District. It is also alleged that the detenu, in company of other members, gives threats to the members of public and attack them by using deadly weapon such as sticks, chain of motorcycle and swords. It is also alleged that the detenu had created terror by making injuries to public, committing robbery and attacks on government servants and his activities have created feeling of insecurity in the minds of public

of the locality. In order to reflect the criminal tendency of the detenu and his inclination to continue the activities prejudicial to the maintenance of public order, reliance is placed by the detaining authority on crime vide one CR No. 72 of 2017, registered on 07.06.2017 in Sangli Rural Police Station, Sangli, on a complaint made by one Shri Vilas Suresh Bajbalkar, complaining that the detenu and the members accompanying him, had threatened the complainant to kill him and he was assaulted by motor cycle chain, kick and fist-blows. Based on the said complaint, the provisions of sections 324, 323, 504, 506 read with section 34 of the Indian Penal Code were invoked and applied. It is mentioned in the grounds of detention order that the said crime / C.R. is still pending for investigation.

The grounds of detention makes a interesting reading when it states that during the course of investigation, four witnesses have been examined and their statements were recorded and the names and the details of the witnesses have been mentioned in the grounds of detention. Based on this CR and the statement of witnesses

recorded during the course of investigation of this crime, the detaining authority arrived at a conclusion that the detenu is a habitual offender.

Ground No.(c) raised in the petition, which we have quoted above, is based on the subjective satisfaction reached by the detaining authority in connection with this very C.R.. The detaining authority, however, conspicuously fails to mention as to whether the detenu was arrested in connection to the said crime or not, whether the detenu was in custody or the detenu was arrested and then released on bail. The said aspect is relevant and material from the view point that before arriving at a subjective satisfaction that detention of the detenu is essentially to prevent him from indulging in the prejudicial activities, it is necessary to ascertain as to whether the detenu is already in custody in relation to the crime which he has indulged himself into or whether he is in custody and/or is a free person so that he has an opportunity to indulge / involve in prejudicial activities once again. Since the purpose of preventive detention is to prevent a person from indulging into criminal

activities, which he is habitually indulging in and to protect the society from such a dangerous person, who has unleashed a reign of terror in the mind of the public residing in the area. The detaining authority, however, fails to take into consideration this vital and important aspect. Mr. Tripathi, learned counsel for the petitioner, is, therefore, justified in arguing that there is total non-application of mind on the part of the detaining authority as the detaining authority is incognizant of the fact as to whether in C.R. No. 72/2017, the petitioner/detenu has sought to be released on bail by moving an application or whether he is in custody and, if it is so, whether the circumstances warrant passing of a detention order against him.

12 We have perused the affidavit of the detaining authority. The affidavit contains the stand of the detaining authority in response to ground no.6 (c). It appears that the detaining authority has completely mis-understood the ground which the petitioner is trying to make. The affidavit refers to CR No. 72 / 2017 and it states

that the bail was granted to the petitioner. The observations in paragraph 8 of the said affidavit reflects total non-application of mind of the detaining authority and since it is the affidavit of the concerned detaining authority, who has passed the detention order, from the said affidavit we can read the mind of the detaining authority. When the detaining authority boasts of the fact that while passing the order of detention, he had minutely observed and considered the evidence on record, we fail to understand that apart from the registration of Crime No. 72 of 2017, what other factors/facts, the detaining authority has minutely observed. He has rather missed a very vital and important issue as to pursuant to the registration of the crime which was committed on 06.06.2017, whether the detenu was arrested and confined to a prison or whether he was still a free person, which would afford him an opportunity to continue with his illegal activities. The detaining authority mis-reads itself on the grounds of detention and proceeds to state that the bail application is the document of the petitioner himself and it is not a vital document and non-furnishing of such documents will not prejudice the right of

the petitioner guaranteed under Article 22 (5) of the Constitution. We are surprised by the stand taken by the detaining authority in the affidavit. The detaining authority in the affidavit revealed the information that the bail was granted to the petitioner in CR No. 72 of 2017. However, according to the detaining authority it will not in any manner hamper the order of detention. He may be right in saying so, since for passing the detention order the gravity of the offence in CR is not a relevant consideration. But undisputedly the factum as to whether detenu is in custody or not is a relevant consideration and it ought to have been taken into account by the detaining authority while passing the order of detention. The said material being not mentioned in the grounds of detention, which is reflected in the affidavit filed by the detaining authority, makes the order of the detaining authority more vulnerable. Supplying a bail application or non-supply of a bail application and its effect is not a ground which materially affects the subjective satisfaction of the detaining authority since at the most it would prejudice the detenu in effectively making a representation in absence of the material being

supplied to him. The issue is if at all this material was placed before the detaining authority before he could arrive at a subjective satisfaction. But here is a case where the detaining authority himself was not aware whether the detenu was on bail or whether there was an application for bail. That is the ground which we feel would vitiate the subjective satisfaction reached by the detaining authority by not taking into consideration the material and relevant aspect whether the applicant was in custody or was on bail at the time of passing of the order of detention.

13 The order of detention further relies upon the material in the form of two in-camera statements of witnesses “A” and “B”. Ground No. (4-b) of the detention order again makes an interesting reading. It is mentioned in the order that during the course of confidential enquiries, the two aggrieved victims/persons have stated regarding atrocities committed by the detenu against them on a condition of non-disclosure of the names and identity and to keep their name confidential and they would be referred to as witnesses “A” and “B”.

The detaining authority then relies on the statement of witnesses “A” and “B” . Witness “A” is resident of Budhgon, Tal.Miraj, Dist. Sangli and his statement was recorded on 17.07.2017. In the statement he state that he knew the detenu and his criminal activities of sand theft, assault with deadly weapon etc. He also goes to the extent of saying that the detenu has created a terror in the area of Budhgaon, Tasgaon, Jath and surrounding areas and he refers to one incident of first week of February, 2017, that while he was going to his agricultural work on his motorcycle the detenu stopped him and slapped him and intimidated him. He further stated that he tried to nabbed an amount of Rs.2000/- from his pocket and when he sought help nobody came to his rescue because of the terror of the detenu. The witness further states that he did not file a complaint since if he would have done so, it would have endangered his life. The witness further states that when he was assured that his identity and his business name would not be disclosed and he would not be required to state this fact before any authority, he has given the statement.

The statement of witness “A” is recorded on 17.07.2017

and he refers to the incident in the first week of February, 2017 without mentioning the exact date in the first week of February, 2017. Further there is no explanation as to why the incident of February, 2017 is reported by the witness on 17.07.2017 and why his statement was not recorded for a period of approximately five months when the witness was very much available being resident of Budhgaon. We have perused the statement, which was supplied to the detenu alongwith the grounds of detention and has been placed on record.

The said statement is verified by the Sub-Divisional Police Officer, Miraj on 24.07.2017. The S.D.P.O., makes an endorsement to the following effect:

“Today in the presence of the witness Shri Manohar Jagannath Karande, the statement has been read over to him and he admitted that it is written as per his say. On the basis of the statement it is revealed that the said witness has developed a feeling of terror in his mind in respect of the detenu. Statement is verified”.

Similarly, we have carefully perused the statement of witness

“B”. The statement is recorded on 18/7/2017 and refers to an incident in the last week of April, 2017 when this witness is alleged to have been assaulted by the detenu and according to this witness the incident had taken place at a public place and the atmosphere that was created by the said incident deterred the persons in the locality and they ran away without coming to his rescue. The said statement is verified by the SDPO, Miraj on 24/7/2017 and the verification is identical to the one which we have reproduced above.

14 We failed to understand as to what prompted the detaining authority to rely upon these two statements. We also failed to understand whether these statements can be called as “In-camera” statements. They no longer remain “In-camera”, once the person verifying the said statement reveals the identity of maker of the statement and therefore the element of secrecy and confidentiality is vanished. The first statement which is recorded on 17/7/2017 speaks of a incident dated 1st week of February, 2017. Witness did not mention the exact day on which this incident had taken place. The

statement given by witness “B” is recorded on 18/7/2017 in respect of incident in the last week of April,2017. In this statement also specifically date on which the incident had taken place is conspicuously absent. The detention order is based on one C.R. No.72 of 2017 and the incident in relation to CR No.72/2017 four witnesses have come forward and narrated the incident which took place on 6/6/2017 based on which an offence under Section 323, 324, 504, 506 read with section 34 of IPC was registered. These witnesses were examined and they have narrated the entire incident is one of the ground in Annexure “B” of the writ petition and detaining authority has based his subjective satisfaction that the detenu is the “habitual offender”. Strikingly in the next paragraph, the detaining authority observes that during confidential enquiries two aggrieved victims have stated regarding the atrocities they had suffered at the hands of the detenu but they were ready to record their statements only on the assurance that the identity will not be disclosed and their names will be kept confidential. If these incidents referred to by witness A and B are of first week of February, 2017 and last week of April, 2017 and it

is one of the ground for detention that no witness is ready to come forward to narrate the detenue's conduct which had disturbed even the tempo of life in the locality, it is surprising after 7/6/2017, during the course of investigation of C.R.No.72/2017, four witnesses have come forward and recorded their statements. Therefore, the satisfaction reached by the detaining authority that the detenu had indulged into criminal activities which has resulted into registration of crime and he is a habitual offender is based on the C.R. and two other in in-camera statements. The detaining authority have also relied on statement of witness A and B and also on verification of the statement by the said witness by the S.D.P.O and this forms part of the ground of detention. In our view, the subjective satisfaction reached by the detaining authority based on the past conduct of the detenu and the assertion that the detenue committed offence repeatedly and frequently without any fear of law and no witness is ready to coming forth for recording statement is completely vitiated by total non application of mind. The subjective satisfaction being based on material which do not justify the conclusion of the detaining authority that the detenu is indulging into

criminal activities and no person in the locality is ready to come forward and depose against the detenu is not based on any material. In our view, though we may not like to interfere in the subjective satisfaction of the authority, the so called “subjective satisfaction” stares us in our face. The subjective satisfaction reached by the detaining authority as reflected in the grounds of detention stands vitiated. The Authority, verifying the statements of the witnesses did not record any satisfaction about the truthfulness of the incident which has been reported. The said statement if at all is to form the basis of subjective satisfaction of the detaining authority, is to be verified by officer of a particular rank, who is verifying its truthfulness, since the very basis of in-camera statement is secrecy and confidentiality. However, in the present case, we have noted that since the names of the witnesses have been disclosed by the verifying officer i.e. S.D.P.O., Miraj, the said statement has lost its sanctity as in-camera statement.

15 The learned APP has invited our attention to section 5-A of

the MPDA Act, 1981 to contend that if the order of detention can be sustained on one or more grounds, the detention order cannot be deemed to be invalid or inoperative merely because of some of the grounds are not relevant. We have carefully perused section 5-A, which reads as under :

“[5A. Where a person has been detained in pursuance of an order of detention under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly –

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are –

- (i) vague,
- (ii) non-existent,
- (iii) not relevant,
- (iv) not connected or not proximately connected with such person, or
- (v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the State Government or an officer mentioned in sub-section (2) of

section 3 making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention ;

(b) the State Government or such officer making the order of detention shall be deemed to have made the order of detention under the said section 3 after being satisfied as provided in that section with reference to the remaining ground or grounds.]”

The purport of section 5-A is an attempt to sustain the order of detention on any of the grounds on which it could be sustained even though on some of the grounds are found to be vague, non-existent, not relevant, not connected or not proximately connected with such person, or in-valid for any other reason. By taking recourse to section 5-A, the detention order, which would have been otherwise liable to have declared as invalid or inoperative on some of the grounds which were found to be not sustainable, can be saved. If the detention order can be sustained on some other grounds, by virtue of sub-section (b) of Section 5-A, the detaining authority shall be deemed to have made order of detention under section -3, after being satisfied as provided in

that section with reference to the remaining ground or grounds. The invocation of the defence of section 5-A in the present case, is totally unwarranted. We have dealt-with the ground nos. (c) and (d) raised in the writ petition. We have noted that in ground no. (c), the petitioner has raised the ground in regard to the non-application of mind on the part of the detaining authority in relation to C.R.No.72 of 2017, since the detaining authority has not formed any satisfaction as to, pursuant to registration of this offence, whether the petitioner/detenu, who was accused in the said CR, has caused release on bail or is in custody. This ground specifically is raised to demonstrate that subjective satisfaction of the detenu is vitiated due to non-application of mind.

So far as ground no. (d) in the petition which relates to the subjective satisfaction being reached on the basis of in-camera statements, which are not put-forth in accordance with the requirement of law namely the verification being not disclosing truthfulness of the incident which is the mandatory requirement of law.

We are unable to agree with the submissions of the learned APP and unable to take recourse to section 5- A of the Act, 1981. The invocation of provisions of section 5-A, by applying the principles contained therein, is to be, at the time of passing of the detention order and it is not permissible to dissect the order of detention at this stage when the matter is being argued and the detention order is being sought to be sustained by taking recourse to section 5-A. As we have noted above, on ground (c) and so also ground (d) the detention order is not sustainable and the detention order suffers from legal infirmity on both the grounds, as raised in the petition and canvassed by the learned counsel for the petitioner. We are unable to sustain the order of detention on either of these grounds by taking recourse to section 5-A.

16 In the light of aforesaid reasons recorded by us the order of detention passed by the detaining authority on 11/9/2017 under Section 3 (1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and

Video Pirates, Sand Smugglers and persons engaged in Black-marketing of Essential Commodities Act, 1981 is quashed and set aside since the subjective satisfaction reached by the detaining authority stands vitiated and suffers from total non-application of mind as recorded by us in our order. In the result, we pass the following order;

- (a) Writ Petition is allowed in terms of prayer clause (b).
- (b) The order of detention passed against the detenu Avinash Gorakh Shinde r/at Budhgaon, taluka Miraj, District Sangli dated 11/9/2017 is quashed and set aside since the subjective satisfaction reached by the Detaining Authority stands vitiated and suffers from total non application of mind.
- (c) Detenu Avinash Gorakh Shinde r/at Budhgaon, taluka Miraj, District Sangli be set at liberty forthwith, if he is not required in any other case/ offence.
- (d) Writ petition is disposed of in the above terms.

[SMT.BHARATI H. DANGRE,J.]

[S.C. DHARMADHIKARI, J.]