

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

CRIMINAL WRIT PETITION NO. 1619 OF 2018

Sagar @ Lalu Bhoju Rathod
Residing at 1/7, 1/8,
Asha Nagar, Behind Precision Company
Solapur.
(At present Yerawada Jail)

...Petitioner
(Detenu)

V/s.

1. The Commissioner of Police
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
4. The Secretary
Advisory Board for MPDA Act
C/o. Home Department,
Mantralaya, Mumbai – 400 032.

...Respondents

Mr.Udaynath Tripathi for the Petitioner.

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

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 19th JUNE 2018

JUDGMENT : (Per Smt.Bharati H. Dangre,J)

1 The petitioner, a detenu detained under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders (Condition of Detention) Order 1981 has approached this Court praying for quashing and setting aside the detention order dated 24th January 2018 passed by the Commissioner of Police, Solapur-Respondent No.1 and praying for his release forthwith in backdrop of the fact that the said order of detention is illegal and bad in law.

 The petitioner, resident of Solapur is detained in Yerwada Central Prison, Pune, in pursuance of impugned order of detention passed on 24th January 2018, under Section 3 of the M.P.D.A. Act, 1981. The petitioner was served with the order of detention along with the grounds of detention on 24th January 2018. The grounds of detention would disclose to the petitioner that he has been detained, since the Detaining Authority was subjectively satisfied that he is a “Dangerous Person” within the meaning of Section 2(b-1) of the M.P.D.A. Act 1981. The petitioner preferred a representation to the State Government on 28th March 2018, praying for revocation of the order of detention.

2 The petitioner has assailed the said order of detention on several grounds. The petitioner submits that the order of detention has been passed mechanically in a very causal manner and it suffers from total non-application of mind on the part of the Detaining Authority. It is the case of the petitioner that the Detaining Authority has taken into consideration a single solitary incident vide CR No.563 of 2017 registered under Section 392 of Indian Penal Code read with Section 135 of Maharashtra Police Act, 1951, which is an offence of robbery simplicitor and there are no other cases registered against the petitioner. It is stated in the petition that the normal laws of land would be sufficient to take care of the solitary incident and the detention order is totally unwarranted. Another ground which is raised in point No.(d) in the grounds of the detention alleges that, even though the order of detention is passed on single C.R, the documents of seven criminal cases of the year 2014 and 2015, have been supplied to the petitioner along with the list of documents. As per the petition, index of the compilation would reveal that from page Nos.55 to 150, the documents of the CR of the year 2014 and 2015 are included and which have been taken into consideration by the Detaining Authority in arriving at the subjective satisfaction in passing the order of detention. Thus, it is the ground raised in the petition that the Detaining Authority has

considered extraneous material which reflects total non-application of mind.

3 We have heard the learned counsel Shri.Udaynath Tripathi appearing for the petitioner. He would invite the attention of the Court to the grounds of detention and would submit that in paragraph No.4 of the grounds of detention, the Detaining Authority has made reference to seven offences registered against the detenu to exhibit his previous criminal history. This includes the Crime Reports of the year 2014 and 2015 registered with the MIDC Police Station, which are pending for adjudication in the Competent Courts. Shri.Tripathi would submit that in paragraph 4.1 the Detaining Authority has referred to the detention order passed under Section 3 of the MPDA Act against the petitioner by the Commissioner of Police, Solapur on 20th May 2016 and the grounds of detention state that based on the said offences and the preventive action it is clear that the detenu do not have any respect and fear of law. He would submit that the narration in the grounds of the detention further reveal that the detention order is not based on the offences and preventive action stated in paragraph 4 and 4.1 but reference has been made to them only to highlight the previous criminal activity. Shri.Tripathi would submit that in paragraph 5 of

grounds of the detention the Detaining Authority makes a reference to C.R. No.563 of 2017 dated 04th October 2017 registered with MIDC Police Station under Section 392 of IPC read with Section 135 of the Maharashtra Police Act, 1951 and in paragraph 5.1 the details of the said CR have been narrated. According to Shri.Tripathi the Detaining Authority has also relied upon two 'in-camera' statement mentioned in paragraph 5.3 and 5.4 in the grounds of detention.

The learned counsel would submit that the Detaining Authority had categorically mentioned in the grounds of detention that the petitioner has been indulging into activities prejudicial to the maintenance of public order in the locality and by making reference to all his activities it is proved that he is a “Dangerous Person”. The learned counsel would invite attention of the Court to paragraph 7 of the grounds of the detention where the Detaining Authority, has stated that on consideration of the propensity towards criminality as indicated in paragraph 5, the Detaining Authority is subjectively satisfied that the petitioner is a “Dangerous Person” and needs to be detained. Shri.Tripathi would also invite attention of the Court to the index of materials and document which has been exhibited as Exhibit-C to the petition and he would submit that this includes the papers of the MIDC Police Station in relation to the seven crimes to which a reference has been made by the Detaining

Authority in paragraph 4 of the grounds of the detention. Shri.Tripathi would submit that the fact that the Detaining Authority had before it the papers of the MIDC Police Station in relation to seven crimes would clearly reflect that the said documents have been taken into consideration while reaching the subjective satisfaction, which is the basis of the impugned order of detention. The learned counsel would submit that the process of formation of subjective opinion cannot be considered to be an exercise in isolation and when these documents have been looked into by the Detaining Authority along with other documents in relation to C.R. No.563 of 2017, the subjective satisfaction reached by the Detaining Authority by considering the extraneous material stands vitiated. He would thus submit that the detention order cannot be sustained in light of the subjective satisfaction being vitiated and thus the order of detention itself cannot be said to be passed on the relevant material and hence it cannot be sustained.

4 In response to the petition, the Commissioner of Police, Solapur, the Detaining Authority, has filed an affidavit. In the said affidavit it is stated that on consideration of the material placed before the Detaining Authority, he was subjectively satisfied that the activities of the person were prejudicial to the maintenance of public

order and that the detenu is a “Dangerous Person” and it was necessary to detain him under the said Act with a view to prevent him from acting in similar manner in future. The Detaining Authority has further stated that the material on which reliance was placed was true and genuine and the material included the statement of the two “in-camera” witnesses. It is further stated that the order of detention, committal order, index, compilation of the documents was served on the detenu on 24th January 2018 and his signature was obtained as acknowledgement thereof. It is further stated by the Detaining Authority that the Government of Maharashtra was pleased to approve the order of detention on 29th January 2018 and the said order was further confirmed by order dated 12th March 2018.

As regards the specific ground as raised in ground No. (d) of the petition, the Detaining Authority has denied that it has taken into consideration about 100 pages documents etc., pertaining to various old criminal cases from 2014 to 2015. It is further denied that he has taken into consideration extraneous material, which would amount to non-application of mind. There is specific denial that the material documents in form of the cases of 2014-2015 and earlier order of detention is taken into consideration for the present detention. On the other hand, it is stated that the Detaining

Authority has considered only three incidents i.e. C.R. No.563 of 2017 and statements of two “in-camera” witnesses. It is further stated that reference to seven offences as mentioned in the grounds of detention in paragraph 4 and 4.1, where the past offences registered, against detenu has been mentioned, finds a mention only to show the previous criminal history of the detenu. Categorically, in the affidavit, it is further stated that the detention order is not based on the said offence and the preventive action as shown above and the order of detention is issued on the basis of the offences mentioned in paragraph 5.1 and two “in-camera” statements as mentioned in paragraph 5.3 and 5.4 of the grounds of detention. A categorical statement is made that the Detaining Authority has not considered or relied upon the offences mentioned in paragraph 4 and 4.1 while issuing impugned order of detention against the detenu.

5 Mrs.Mhatre, the learned APP would place reliance on the said affidavit of the Detaining Authority and would submit that the detenu is conversant with the area of Karnik Nagar, Vinkar vasahat MIDC, Akalkot Road, Samdhan Nagar, Sagar Chowk, Vidhi Gharkul, Akalkot Naka and its the adjacent area within the jurisdiction of MIDC Police Station and he had unleashed a reign of

terror and had become a habitual danger to the lives and properties of people residing and carrying out daily business in the aforesaid area. She would submit that the activities of the detenu including his previous criminal history as reflecting in ground No.4 of the order of detention and his recent involvement in C.R. No.563 of 2017 where an offence was registered under Section 392 of Indian Penal Code against the detenu would reflect the propensity of the detenu to indulge into such offences. She would submit that the Detaining Authority had made a clear distinction between the offences which were highlighting the passed criminal history of the detenu and the offence on the basis of which the detention order has been passed. For reflecting the Criminal history, the Detaining Authority has referred to seven crimes registered with MIDC Police Station in the year 2014-2015 wherein the petitioner has indulged into the offences of robbery, theft, attempt to murder etc. She would submit that in the year 2016 a detention order was passed against the detenu which did not deter the detenu from indulging into such criminal activities. She would submit that in the year 2017 he had participated into similar activity which resulted into registration of C.R. with MIDC Police Station. The involvement of the detenu in an activity which resulted into registration of a offence with MIDC Police Station on 04th October 2017 has resulted into

passing of the order of detention. She would submit that the details of the said crime No.563 of 2017 would reveal that the detenu had robbed the complainant at near Akkalkot Raod, Solapur by using a knife and by threatening him on the point of knife. She would submit that he ran with the money extorted from the complainant which was worth Rs.75,750/-. Mrs.Mhatre would submit that the detune was arrested on 04th October 2017 in the said crime and he was released on bail on 20th November 2017 by the Judicial Magistrate First Class, Solapur. Mr.Mhatre would submit that on release on bail, the detenu again indulged himself into the similar activities which are reflected in the statement of witness A and B.

She would submit that the witness-A has reported about a incident which took place in last week of November 2017 when the detenu had demanded money from witness at the point of knife and forcibly took out the amount from his shop. He had categorically stated that the activity of the detenu and his associates had created an atmosphere of fear in the locality and nobody dared to come forward to help the witness. Another witness-B has reported about an incident in second week of December-2017 where he reported about a similar conduct of the detenu and his associates in which he robbed the witness of an amount of Rs.2,200/- and an amount of Rs.700/- from one of the friend of the witness who was

present. Mrs.Mhatre would submit that C.R. No.563 of 2017 along with statement of two witnesses which are recorded “in-camera” reflected his propensity towards criminality and since the Detaining Authority was subjectively satisfied that the detenu is a Dangerous person within meaning of Section 2(b-1) of the MPAD Act passed the order of detention. She would submit that the detenu was informed of his right to prefer a representation to the State Government against the order of the detention and he was also informed that he would be afforded the earliest opportunity to make such a representation. In short Mrs.Mhatre would submit that all the procedural safeguards were complied with, before detaining the detenu.

6 We have carefully considered the submission of learned counsel Shri.Tripathi specifically raised in ground-D. His submission is that in the grounds of detention communicated to the detenu, the Detaining Authority has referred to certain offences registered against the detenu in the year 2014 and 2015, to reflect the previous criminal history. There is also a reference made to one detention order which was passed on 20th May 2016 by the Commissioner of Police, Solapur. What has been canvassed before us is that though the grounds of detention in paragraph 4.1 mentions that the detention order is not based on the offences

which are mentioned in paragraph 4 and 4.1, and that they are relied upon only to highlight the previous criminal history, perusal of the grounds of detention would reveal that the Detaining Authority has in fact relied on the offences mentioned in this paragraph. The specific ground in paragraph 5 makes a reference to recent crime registered with the MIDC Police Station vide C.R. No.563 of 2017. It is further stated in the ground of the detention that the recent C.R. shows his propensity towards criminality as well as tendency to revert to the similar activity prejudicial to the maintenance of the public order in future. It is pertinent to note that the Detaining Authority in paragraph 5.1 gives the details of C.R. No.563 of 2017 and ground No.5.2 states that the detenu is a Dangerous Criminal and due to his terror most of the victims are not willing to complain against him. After this reason, the grounds of detention further state that the witnesses were not willing to come forward and only two of the witnesses express their willingness to give their statements depicting the atrocities of the detenu and their statements were recorded "in-camera". Ground of the detention further states that the said statements were verified by Shri.M.V. Sakhare, ACP, Division-II on 21.12.2017 and 23.12.2017 and he was satisfied about the identity of the witnesses and truthfulness of the incident and the fear expressed by the witnesses.

A reference is then made to statement of witness-A, which we have perused carefully. Witness-A is resident of the Solapur and it is stated by him that he is running his own business in Solapur, since last 12 years. The said witness had stated that the detenu along with his associates who are residing in the adjacent area of the MIDC area, had wandered in the said area with deadly weapons and beat people and forcibly robbed them of their belonging. The witness further stated that he and his associates collect Hapta/extortion money from various shops, hotel owners, hand-loom manufacturers in the locality and at occasion used to lift the articles from the hotel/shop without paying any money. It is stated by him that the detenu and his associates openly beat the people living in the locality and due to the fear and terror created by the detenu with his associates, the daily routine of the people carrying business in the locality is disturbed. The witness then gives a narration about the incident which took place on one evening of last week of November-2017 when he was present in his shop. It is pertinent to note that this witness-A is resident of Solapur and he has stated that he is running business in Solapur for last 12 years. However, no details are given as to where this shop is located. The witness had stated that the detenu along with his named associates who were living in the adjacent area of the MIDC were wandering

with deadly weapons in the area of Karnik Nagar, Vinkar Vasahat, MIDC, Akkalkot Road, Samadhan Nagar, Sagar Chowk, Vidi Gharkul, Akkalkot Naka and its adjacent areas and beat people. However, it is not stated by the witness that his shop is located in any one of those areas. If the areas mentioned by the witness are areas where the detenu had unleashed a reign of terror along with his associates, then unless and until the witness had a shop in this area, his statement loses its significance. There is nothing in the statement of this witness to demonstrate that he was resident of the areas of operation of the detenu or that he had his shop in one of those areas, since the incident which this witness has narrated is reporting of an incident which took place when he was in his shop.

7 The Detaining Authority has placed reliance on statement of another witness-B resident of Solapur and doing his business in Solapur as a Broker of purchasing and selling of plot, house and flat in the area of Akkalkot, MIDC, Vidhi Gharkul, Gandhi Nagar, 70-foot Road Karnik Nagar, Asha Nagar, Neelam Nagar, Akashwani Kendra and its adjacent areas. This witness stated that the detenu along with his associates living in the said area wander holding deadly weapons and threaten people and traders operating their business in the said area. This witness had

referred to the detenu as habitual “Gunda” and he states that on one morning of second week of December 2017 while this witness was going on his motor cycle with his friend near Akkalkot Naka the detenu and his other associates stopped him and on the point of knife extorted money from his pocket.

It is on the basis of this material mentioned in the ground of the detention in paragraph 5, 5.1 and 5.2, the Detaining Authority has concluded that the activities of the detenu and his associates have affected the near by shop owners, people living in the locality and the activities of the detenu and his associates are prejudicial to the maintenance of the public order in the locality. It is concluded by the Detaining Authority that this reflects the consistency of his criminal activities.

8 It is specific submission of Mr.Tripathi that on reading the grounds of the detention it is very apparent that the Detaining Authority has taken into consideration the offences registered against the detenu in the year 2014 and 2015 and which has been mentioned in paragraph 4 apart from the incidents and the CR mentioned in paragraph 5 and based on the cumulative effect of these offences the Detaining Authority has concluded that there is a consistency in the criminal activity of the detenu. In paragraph 7 of

the grounds of detention the detaining Authority has mentioned that taking into consideration the propensity of the detenu towards criminality the Detaining Authority is subjectively satisfied that the petitioner is a Dangerous Person.

We have further noted that the papers of the MIDC Police Station in reference to the seven CR's which have been mentioned in paragraph 4 of the grounds of detention have also been placed before the Detaining Authority and even they have been supplied to the detenu, since they were relied upon by the Detaining Authority. The material which was placed before the Detaining Authority thus includes the papers and the CR's of the year 2014-2015, which Mrs.Mhatre would argue have only been relied upon to reflect the criminal history of the detenu.

However, we do not agree with the said submission advanced by Mrs. Mhatre, the learned APP. Article 22(5) of the Constitution of India which makes it imperative to communicate the grounds of the detention in order to enable detenu to make a representation, presupposes the communication of grounds. The detention order necessarily has to be based on certain grounds which have been formulated by the Detaining Authority and which are based on the subjective satisfaction reached by the Detaining Authority that these grounds are sufficient for detaining a person.

Article 22(5) contemplates opportunity being offered to the detenu to make a representation against the order of detention. Communication grounds of detention presupposes formulation of those grounds and formulation of grounds requires and ensures application of mind of the Detaining Authority to the facts and material placed before it, that is to say to the pertinent and proximate matter in regard to each individual case and excludes element of arbitrariness. The grounds therefore should comprise of all the constitute facts and material that went into the act of making of mind of the functionary. Though this Court in exercise of powers under Article-226 would not substitute the decision of the Detaining Authority, it can determine whether the formation of that opinion by the Detaining Authority is arbitrary, capricious and whimsical and whether it is based on the relevant material. It is always open to the Court to examine whether the reasons for formation of opinion have rational connection or relevant bearing to formation of such an opinion and that they are not extraneous for the purpose of statute, though this Court would not arrogate to itself the responsibility of judging sufficiency of the grounds.

9 Applying the aforesaid principle to the present case we have analyzed the arguments advanced by the learned counsel

Mr.Tripathi in support of the ground-D in the Writ Petition. The material on which the Detaining Authority has relied upon includes the offences registered against the detenu in the year 2014-2015 as well as one order of preventive detention passed in the year 2016. Though it is mentioned in the grounds of detention that these offences are not the basis for the impugned order of detention and they are only relied upon to highlight the previous criminal history of the detenu, reading of the entire grounds of detention communicated to the petitioner on 24th January 2018 would disclose that there is no water tight segregation of ground Nos.4 and 5. In any case when the subjective satisfaction is reached, the detaining authority had before him the material in relation to ground No.4 as well as the material in relation to ground No.5. It is not possible for a person to apply his mind by segregating the material and to assert firmly that though the papers in relation to ground No.4 were placed before the Detaining Authority, that has not gone into making the decision and arriving at the subjective satisfaction. If some grounds are not relevant to the passing of order of detention, it is not possible for this Court also to predicate as to what subjective satisfaction the authority would have reached on exclusion of this grounds. The Detaining Authority had before him the criminal activities of the detenu for the year 2014-2015 and in continuation

of the said activities the Detaining Authority has made a reference to C.R. No.563 of 2017 as well as two “in-cameras statements”. The entire exercise of examining the conduct of the detenu in the past as well as in the recent times has persuaded the Detaining Authority to pass an order of detention. The subjective satisfaction involves a mental exercise and it can only be done only on the basis of material placed before an authority. Since, the Detaining Authority had before him the CR's of the year 2014-2015 along with the latest CR No.563 of 2017, it cannot be said that the decision making process revolved only around CR No.563 of 2017 and specifically when the Detaining Authority was satisfied that the propensity of the detenu towards criminality is established by taking into consideration even his previous criminal history. In such circumstances the order of detention which is based on the said grounds of detention reflecting the subjective satisfaction, suffers from non application of mind and cannot be sustained.

10 Further it is also noted that the Detaining Authority has relied upon statement of Witness A and B which we have already made a reference in the above paragraphs. In respect of statement of witness-A, he had stated he is resident of Solapur and he is running his business in Solapur. However, there are no details given

as to where he has running his business as Solapur is a big district. The said witness categorically mentioned the adjacent area of MIDC where the detenu and associates reside and it is specific case of the “in-camera witnesses” that the detenu along with his associates holding deadly weapon is frequenting in the area of Karnik Nagar, Vinkar Vasahat MIDC, Akkalkot Road, Samdhan Nagar, Sagar Chowk, Vidhi Gharkul, Akkalkot Naka and its adjacent area. The said witness makes a reference to an incident of evening of last week of November 2017 when he was present in his shop and then he gives details of the incident where the detenu and his associates demanded money from the witness at the point of knife and robbed him of the said amount. However, the witness fails to state as to place where this incident has taken place though he has given the specifications where the incident taken place. Though the area of the operation of the detenu and his associates which has been referred to by the said witness is the area adjoining MIDC area it is not clear as to whether the said incident had taken place in the area where the detenu was found frequently and he had created a terror in the said locality. Though when confronted with the learned AGP Mrs.Mhatre with the said situation, she makes a submission that the testimony of witness-A be discarded in absence of any details being given by the witness as to the location of his shop.

11 The Detaining Authority has taken into consideration the said statement of witness-A and therefore Mrs.Mhatre would seek recourse of Section-5 of the MPDA Act and would submit that each ground is a separate ground and it can be severed and even if statement of witness-A is excluded, on the basis of the C.R. No.563 of 2017 along with the statement of “in-camera” Witness-B, the said detention order can be sustained. We are afraid that such an argument will not assist the Detaining Authority, specifically when Mr.Tripathi has raised a specific ground that there was a complete non-application of mind on the part of the Detaining Authority. Mr.Tripathi had rightly placed reliance on a judgment of this Court in Writ Petition No.5371/2017 delivered by a Division Bench to which one of us (Shri.S.C. Dharmadhikari,J.) was a party. In the said judgment the order of detention which was issued against the detenu along with the grounds of detention, mentioned that the copies of the documents were placed before the Detaining Authority and they were enclosed. The Detaining Authority had also categorically mentioned that he had gone through the material placed before him and arrived at the subjective satisfaction that the detenu was acting in a manner prejudicial to the maintenance of the public order. The Hon'ble Division Bench concluded that though the Detaining Authority claimed that the order was based on only two

CR's and two "in-cameras statements", it is not permissible to have any speculation or guess work as to which documents were referred to and relied upon and therefore it was apparent that the extraneous materials were placed before the Detaining Authority and the subjective satisfaction of the authority was apparently based on the material which was placed before the Detaining Authority and, therefore, order suffers from non application of mind. The Detention Order cannot be sustained.

In view thereof, Rule is made absolute in terms of prayer clause (b). The detenu be released forthwith, if not required in any other case.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)