

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3163 OF 2018

Sunil Laxmikant Akole	.. Petitioner
Versus	
The Commissioner of Police, Solapur and others	.. Respondents

...

Mr. Udaynath Tripathi with Jayshree Tripathi for the petitioner.
Mr. J.P. Yagnik, APP for the State.

CORAM: RANJIT V. MORE AND
SMT. BHARATI H.DANGRE, JJ.

RESERVED ON : 25th OCTOBER 2018
PRONOUNCED ON: 2nd NOVEMBER 2018

JUDGMENT (Per BHARATI H. DANGRE, J)

1 The detenu has approached this Court seeking his release by quashing and setting aside the detention order dated 16th January 2018 issued under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981 (for short “MPDA Act”) by Commissioner of Police, Solapur. In pursuance to the order of detention, the detenu is detained at Yerawada Central Prison at Pune.

2 The order of detention has been assailed by the petitioner/detenué on the ground that the detaining authority has passed the said order in a mechanical and a casual manner and has not applied his judicious mind to the facts and law in this case. The grounds for setting aside the order of detention are set out in the petition in form of grounds (a) to (e).

2 The learned counsel for the petitioner Shri Udaynath Tripathi would submit that each of the above grounds is distinct and he has pressed into service ground no. (d) as a foremost ground and he would submit that if the Court is not convinced on the said ground, he would press into service the other grounds set out in the petition.

Ground (d) raised in the petition reads thus :

(d) The petitioner says and submits that the detaining authority in paragraph 1 of the grounds of detention states that he is communicating the grounds to the petitioner as mentioned in paragraph 5 on which an order of detention has been made by him whereas copies of the documents of 10 criminal cases of the year 2013, 2014, 2015 and 2016, whose FIRs and final report are placed before the detaining authority and considered by him which are

extraneous material which has influenced the mind of the detaining authority. The satisfaction of the detaining authority vitiates for taking into consideration extraneous material which clearly shows total non-application of mind of the detaining authority. The order of detention is illegal and bad in law, liable to be quashed and set aside.

3 Learned counsel for the petitioner has invited our attention to the grounds of detention communicated to the petitioner on 16th January 2018. Perusal of the said grounds reveal that the detaining authority has made a statement to the following effect :

“In pursuance of section 8 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 (No.LV of 1981) (Amendment-1996, 2009 and 2015) r/w Article 22(5) of the Constitution of India, I hereby communicate to you the grounds as mentioned in paragraph 5, below on which a detention order has been made by me on this day against you, under sub-section (2) of section 3 of the said Act. Copies of the documents placed before me are enclosed except the names and identifying particulars of the witnesses/victims in connection with the grounds mentioned in paragraph No.5-3 and 5-4 below, which

cannot be furnished to you in the public interest and for which I claim privilege”

The grounds of detention thus reveal that the detention order has been passed on the grounds mentioned in paragraph no.5. Paragraph 5 makes a reference to one offence registered with Jail Road Police Station vide C.R. No.455 of 2017 under Section 394 of the Indian Penal Code. Para 5.1 gives the gist of the offence and the role attributed to the detainee in the said crime. Further, para 5.2 makes a reference to the in-camera statement of witness “A” and “B” which were recorded to reflect the tendency of the detainee to create a reign of terror in the area of his operation, resultantly, no witness was ready to come forward to depose against him. The said statements have been recorded in-camera by assuring the witnesses that they would not be called upon to depose against the detainee in any Court or in any other open forum. Thus, the order of detention is passed on the basis of one C.R and two in-camera statements. The list of documents which have been supplied to the petitioner in form of an Index, which the petitioner has placed on record at page 23, however, contains

the papers relating to C.Rs other than C.R. No.455 of 2017. This includes the papers of the MIDC police station in relation to 10 CRs of the year 2013, 2014 and 2015 in which the detenu is arraigned as an accused. This also includes the papers of the Chapter Case No.6 of 2016 and also papers of the MIDC police station in relation to C.R.No.530 of 2016 under Section 122 of the Maharashtra Police Act.

4 The specific submission of Shri Tripathi is that the material placed before the detaining authority thus included the offences which are registered against him in the past and the detention order is not passed on the basis of the said offences but the details of the said offences have been placed before the detaining authority which led to his formation of subjective satisfaction. Shri Tripathi would submit that thus the detaining authority has taken into consideration extraneous material and thus the subjective satisfaction reached by the detaining authority stands vitiated, resultantly, the order of detention cannot be sustained. He would place reliance on the Division Bench Judgment of this Court in Criminal WP 1811 of 2018

dated 29th June 2018 where the following observations are to be found in paragraph nos.10 and 11.

10 In light of the aforesaid pronouncement, we are of the considered view that in the present case, the subjective satisfaction reached by the detaining authority is based on the material which cannot be segregated and since the detaining authority in the affidavit has categorically admitted that the entire documents contained in the index have been supplied to the detenu, since it was relied upon by the detaining authority himself while forming the subjective satisfaction. The detaining authority has admitted in the affidavit placed before this court that the narration in the grounds of detention that there are six offences shown in the chart at para 3.1 are mentioned to show that the detenu's continuous activities and copies of FIRs, charge-sheet, arrest forms and relevant documents of preventive action are enclosed and supplied to the detenu so as to make effective representation, admits the contention of the petitioner. The detaining authority has admitted that it referred to and relied on certain documents and considered it as the material on which the detaining authority has passed the order of detention. The detaining authority

is conscious of the fact and states to the following effect in the affidavit.

“It is further submitted that the grounds of detention means all the basic facts and material which have taken into consideration by the detaining authority in making the order of detention and purpose of considering the basic facts and material specifically communicated in Para 3.3(b) and 4 of the grounds of detention thus the detaining authority have subjectively satisfied herself and application of mind on part of detaining authority while making the order of detention”.

11 In view of the aforesaid admission, that the detaining authority has looked into the entire material as contained in the index of documents, but has specifically mentioned that the order of detention is based only on the two C.Rs of the recent past i.e. C.R. no.367/17 and C.R. No.476/17 and the two in-camera statements would reflect total non-application of mind on the part of the detaining authority and thus vitiates the subjective satisfaction reached by it.

The detention order which is based on the grounds of detention which cannot be segregated and having been based on the entire material placed before the detaining authority, stands vitiated on account of non-application of mind. In the result, detention order is quashed and set aside.

5 In light of the aforesaid settled position of law, we are of the opinion that the subjective satisfaction reached by the detaining authority in passing the impugned order of detention dated 16th January 2018, as can be reflected from the grounds of detention is vitiated by taking into consideration the extraneous material in form of the details of the past crimes registered against the detenu. In such circumstances, the impugned order of detention dated 16th January 2018 is liable to be quashed and set aside passed by the Commissioner of Police, Solapur. The detenu is directed to be set at liberty forthwith, unless required to be detained in relation to any other crime.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT V. MORE, J.)