

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

**CRIMINAL WRIT PETITION NO. 879 OF 2018**

Sandesh @ Shilvya Lajras Chopade  
Age 28 years, residing at  
Amardeep Colony, Jyotiba Nagar  
Kalawadi, Pune.

... Petitioner  
(Org.detenu)

*Versus*

1. The Commissioner of Police  
Pune
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 M.P.D.A. Act  
C/o. Home Department,  
Mantralaya, Mumbai-400 032.

... Respondents

.....

Mr. Udaynath Tripathi for the Petitioner.  
Ms. M.H. Mhatre, APP for the State.

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**CORAM : S. C. DHARMADHIKARI &  
PRAKASH D. NAIK, JJ.**

**DATE : 11<sup>th</sup> APRIL, 2018**

**ORAL JUDGMENT [ Per SHRI PRAKASH D. NAIK, J.]:**

1. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 29/11/2017 issued by the Commissioner of Police, Pune city in exercise of the powers conferred by sub-section (2) of section 3 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 (for short “MPDA Act”).

2. The order of detention was executed on 02/12/2017. Alongwith the order the petitioner was served with the copy of the grounds of detention formulated by the detaining authority. The petitioner was also supplied with several documents, the list of which is annexed as Exhibit-C to the petition.

3. According to the detaining authority the impugned order was issued with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of public order. In

paragraph 1 of the grounds of detention it is stated that the petitioner is being communicated the grounds as mentioned in paragraph Nos. 5.1, 5.2, 6.1 and 6.2, on the basis of which the detention order has been issued by the detaining authority under the provisions of MPDA Act. It is further stated that the copies of documents placed before the detaining authority on which she has relied upon and arrived at subjective satisfaction are enclosed, except the names and identifying particulars of witnesses/victims in connection with the grounds mentioned in paragraph Nos. 6.1 and 6.2, which are not furnished to the detenu in the public interest for which she claimed privilege.

4. Paragraph 5 of the grounds of detention refers to particulars of offences considered for passing detention order. In paragraph 5.1 reference is made to offence registered with Wakad Police Station, Pune vide CR No. 160/2017 under sections 307, 326, 324, 143, 147, 148, 149, 323, 504, 427 of the Indian Penal Code read with section 4/25 of the Arms Act read with section 37(1)/135 of the Maharashtra Police Act, 1951. It is alleged that the complainant was informed by his friend that some youths are assaulting his brother Shubam Ovhal at Tapkir Chowk. The

complainant rushed to the spot and there he saw 7 to 8 persons assaulting his brother. He intervened and pulled out his brother from the assaulting youths. While the complainant alongwith his friends were going to Kalewadi Police Chowky, they came across one Amol Chandanshive, who was one of the accomplice who had assaulted his brother. While questioning him about assault, 10 to 12 goons came there armed with weapons. The complainant was assaulted by sickle. The friend of the complainant Tofik Surve was also assaulted. One Aniket Kamble was also assaulted by the detenu and his associates by sickle. The F.I.R. was registered. Detenu was arrested. Paragraph 5.2 refers to C.R. No.3175 of 2017 registered with Wakad police station under section 4/25 of the Arms Act read with section 37(1)/135 of the Maharashtra Police Act, 1951. It is alleged that the complainant in the said case and the others were on patrolling duty in the area of Wakad police station. Information was received that the detenu was moving with the weapon in hand and threatening shopkeepers and the public. On receiving the information the police reached the spot and noticed that the detenu was present in front of Suraj mini market with sword in his hand. He was apprehended and the

sword was seized from his possession by the police. The offence was registered on 11/09/2017 with Wakad Police Station, Pune City.

5. Paragraph 6 refers to statement of witness 'A' and witness 'B' which were recorded in-camera. Witness 'A' has referred to the incident of 06/08/2017 wherein victim was threatened at the point of knife. Witness 'B' refers to the incident dated 05/07/2017, wherein the said witness was allegedly abused and damage was caused to his handcart. The witness was also threatened of dire consequences. Whereas, the subjective satisfaction is apparently recorded in paragraph 7 stating that the detaining authority is subjectively satisfied that the petitioner is a “dangerous person” as defined in Section 2(b-1) of the said Act. It is further stated that the detenu has unleashed a reign of terror and have become a perpetual danger to the society at large in the area of Wakad Police Station in Pune city. The people there are experiencing a sense of insecurity and are living under shadow of constant fear, whereby day to day businesses and activities of citizens are under threat. He is perpetually and impulsively violent man who wants to spread terror in the society by his violent

criminal activities, in connivance with his criminal associates. In paragraph 8 it is concluded that the detaining authority have gone through the material placed before her and is subjectively satisfied that the petitioner detenu is acting in a manner prejudicial to the maintenance of public order.

6. The petitioner has raised several grounds challenging the order of detention. However, one of the ground raised by petitioner would be sufficient to set aside the impugned order of detention. Shri Tripathi, the learned Counsel agitated ground 6(g) of the petition, which reads as follows:

“g. The Petitioner says and submits that with reference to C.R. No. 160 of 2017 at page 263 and 265 of the compilation, there are 2 medico legal Certificates which are not true and faithful translations in Marathi found at page 261 and 267 respectively. In Shubham Kaluram's case the case of injury and age of injury is wrongly translated. At page 265 in English word, 'muscle' is wrongly translated as “nerve”. As a result of non-furnishing true translation of the Medico Legal Certificates, which are vital and relied on documents the Petitioner's

*right to make effective representation 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 set aside.”*

Mr. Tripathi submitted that as a result of not furnishing the correct translation the petitioner's right to make an effective representation guaranteed under Article 22(5) is affected. It is submitted that with reference to the ground No.5.1 formulated by the detaining authority, the document viz medical certificate in respect to injury sustained by one of the victim Shubhan Ovhal was placed before the detaining authority. The said document alongwith its translation in Marathi, which is the language known to the detenu, has been supplied to the petitioner. The original English version has been annexed as Exhibit-“F” at page 39 of the petition. The said medical certificate refers to cause of injury as “hard and blunt object”. However, in the Marathi translated version it has been stated that the cause of injury is due to blow by rod or wooden log. Mr. Tripathi submitted that the translated version with reference to the cause of death is completely

different than what is mentioned in the original medical certificate which is in English. He submitted that as a result of non furnishing true translation of the medico legal certificate, which is vital document and relied upon by detaining authority, the petitioner's right to make effective representation guaranteed under Article 22(5) of the Constitution of India is violated and therefore, the order of detention is bad in law and liable to be quashed and set aside.

7. Learned APP Ms. M.H. Mhatre submitted that there is no substance in the ground of challenge. Assuming that the translation of the cause of injuries is incorrect, the same would not affect the right of the detenu under Article 22(5) of the Constitution of India. She relied upon the contents of affidavit-in-reply filed by the detaining authority. We have perused the said reply. In paragraph 13, the detaining authority has denied that the petitioner was furnished with wrong translation of medico legal certificates. It is also denied that as a result of non furnishing of true translation of medico legal certificates, which are vital and

relied open the petitioner's right to make effective representation guaranteed under Article 22(5) of the Constitution of India is violated. It is stated that at page 261 one injury certificate of Shubhan Ovhal was referred to who is a witness in C.R. No.160 of 2017 and the copy of the translation was placed at page 263. Surprisingly, it is stated that first of all while issuing order of detention the detaining authority has not relied upon the injury certificate of witness Shubham Ovhal in entire grounds of detention. While completing narration of facts the said document has been placed before the detaining authority and the subjective satisfaction was not based on the said documents since she has not relied upon the same. On the basis of aforesaid assertion, learned APP submitted that there is no infirmity in the order of detention.

8. We have perused the order of detention, grounds of detention, list of documents and the annexures to the petition. The explanation tendered by the detaining authority vide affidavit-in-reply is contrary to well established principles of law. It is also contradictory to the contents of grounds of

detention. In catena of decisions, it has been held repeatedly that the documents relied upon by the detaining authority are required to be supplied to the detenu. It is also laid down by the Courts repeatedly that supply of incorrect translation amounts to non supply of documents. We have noted that the translation of the medical certificate referred to above was incorrect. When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. By supplying the incorrect translation of the original document, both the facets of Article 22(5) are affected. This has resulted in non communication of grounds and not affording opportunity to the detenu to make effective representation. The explanation given in affidavit-in-reply is however contrary to the grounds of detention and to the assertion made in the grounds of detention. In paragraph 1 of the grounds of detention it has been categorically stated that the copies of the documents

placed before the detaining authority on which she has relied and formed her subjective satisfaction are enclosed. On the basis of the grounds stipulated in paragraph Nos. 5 and 6 the detaining authority has arrived at subjective satisfaction for issuing the order of detention. The document in question is a part of ground No.5.1 which refers to injuries sustained by one of the witness in C.R. No.160 of 2017. Thus, it is not open to the detaining authority now to contend that the detaining authority has not relied upon the said document and that the subjective satisfaction was not based on the said document. It is also pertinent to note that on perusal of the list of the documents which were placed before the detaining authority, it is apparent that the aforesaid medical certificate and its translation was a part of the said documents. The detaining authority has arrived at the subjective satisfaction as reflected in paragraph 7 of the order of detention on the basis of the grounds stipulated in paragraphs 5 and 6 of the grounds of detention. It is thus clear that the detaining authority has relied upon the said document and the correct translation of the same ought to have been supplied to the detenu. It would

be absurd to contend that the detaining authority has not relied upon the said document and that the subjective satisfaction of the detaining authority is not based on the said document. In the result, the order of detention is required to be set aside as the impugned detention violates the right of the detenu under Article 22(5) of the Constitution of India.

9. The Writ Petition is allowed. Rule is made absolute. The order of detention dated 29<sup>th</sup> November, 2017 impugned in the Petition is quashed and set aside. The detenu shall be released forthwith, if not required in any other case.

10. In the view that we have taken, we have not allowed Mr. Tripathi to argue the other grounds on which the order of detention is challenged.

( PRAKASH D. NAIK, J.)

( S. C. DHARMADHIKARI, J.)