

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

**CRIMINAL WRIT PETITION NO. 1316 OF 2018**

|                            |   |                                    |
|----------------------------|---|------------------------------------|
| Kiran Dhanraj Kharat,      | ] |                                    |
| Age 22 years, residing at  | ] |                                    |
| Galli No. 21, House No.22, | ] |                                    |
| Private Road, Pune.        | ] | <b>... Petitioner<br/>(Detenu)</b> |

**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.   | ] | <b>..Respondents</b> |

.....

Mr. Udaynath Tripathi for Petitioner.  
Mrs. M.H. Mhatre - APP for State

.....

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

**DATE : MAY 03, 2018.**

**JUDGMENT – (Per : Prakash D. Naik, J.) :-**

1. This Petition under Article 226 of the Constitution of India has been preferred by the Petitioner challenging the order of detention issued by the Respondent No. 1 on 13<sup>th</sup> December 2017 under 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 (hereinafter referred to as M.P.D.A. Act for short). The said order was executed on 14<sup>th</sup> December, 2017.

2. The Petitioner was also served with the grounds of detention dated 13.12.2017 formulated by the detaining authority on the basis of which the impugned order of detention has been issued. The grounds proceed with the allegations that the Petitioner/detenu is a weapon-wielding dangerous desperado of violent character indulging in terrorizing activities. He has created a reign of terror in the locality. He moves around with his associates with deadly weapons and does not hesitate to use the same while committing the offences. He is a dangerous person as defined in the Section 2(b-1) of the M.P.D.A. Act and his activities are prejudicial to the maintenance of public order. Paragraph 3 refers to the

details of the previous offences and preventive actions initiated against the Petitioner. Reference is made to C.R. No. 67 of 2014 registered with Bandgarden Police Station, C.R. No. 270 of 2014, C.R. No. 113 of 2015 and C.R. No. 342 of 2016 registered with the same Police Station as well as C.R. No. 100 of 2016 registered with Samarth Police Station. Paragraph 4 of the grounds of detention states that the Petitioner is a habitual and dangerous criminal involved in serious crimes. Paragraph 5 of the grounds of detention refers to the offences registered with Bandgarden Police Station, Pune vide C.R. No. 236 of 2017 under Section 323, 504, 506, 141, 143, 147 of IPC read with Section 7, 8 of the POCSO Act read with Section 67(b) of IT Act. The said case is pending in the Court. The grounds further refers to C.R. No. 291 of 2017 registered with Bandgarden Police Station, Pune for offences under Section 384, 323, 504, 506, 34 of IPC. The charge sheet is filed in relation to the said case and the proceedings are pending in the Court. Paragraph 6 of the grounds of detention refers to statements of witness 'A' and witness 'B' which were recorded in-camera to protect the identity of the said witnesses. Witness 'A' has referred to incident dated 23.10.2017 and witness 'B' has referred to incidents dated 25.10.2017. Both the witnesses have attributed overt act to the Petitioner/detenu.

3. Mr. Tripathi the learned Advocate appearing for the Petitioner submitted that one of the ground on which the Petitioner has challenged the order of detention is referred to in ground 5(b) of ground of challenge raised in the Petition. The said ground reads as follows.

*“b. The Petitioner says and submits that in paragraph No. 1 of grounds of detention it is clearly mentioned by the detaining authority that the copies of documents placed before him on which he has relied on and formed his subjective satisfaction are enclosed which thereby means that total 93 documents running into 436 pages as per index of the compilation are placed before the detaining authority, which are relied on for formulating the grounds and considered for arriving at his subjective satisfaction. It is pertinent to note that in the same paragraph the detaining authority categorically states that he communicates the grounds as mentioned in paragraph No. 5.1, 5.2, 6.1 and 6.2 on the basis of which the order of detention is passed by him. It is thereby the material documents of the year 2014, 2015 and 2016 and preventive actions taken and their documents are extraneous which have influenced the mind of the detaining authority to pass the order of detention. This shows total non-application of mind of the detaining authority. The Petitioner further submits that the detaining authority while recording his subjective satisfaction also states in paragraph 8 of the grounds of detention that he has carefully gone through the material placed before him and he is subjectively satisfied that the detenu is acting in a manner prejudicial to the maintenance of public order. The order of detention is illegal and bad in law for considering extraneous material, liable to be quashed and set aside.”*

Mr. Tripathi submitted that about 93 documents running into 436 pages were placed before the detaining authority, which is evident from the compilation of documents relied upon by detaining authority for formulating the grounds and considered for arriving at subjective

satisfaction. He further pointed out that in the grounds of detention it is stated that the order is based on grounds stipulated in paragraph 5.1, 5.2, 6.1 and 6.2. However, while recording the subjective satisfaction the detaining authority has stated that she has gone through the material placed before her and is subjectively satisfied that the detenu is acting in a manner prejudicial to the maintenance of public order. Mr. Tripathi thus, submitted that the documents of the year 2014, 2015 and 2016 and preventive actions taken against the Petitioner which were part of the documents relied by detaining authority were extraneous documents. However, the subjective satisfaction indicates that the detaining authority is influenced by the said documents while passing the order of detention. This shows total non-application of mind on the part of the detaining authority.

4. Mr. Tripathi relied upon two decisions of this Court viz decision dated 31 January, 2018 delivered in Criminal Writ Petition No. 4646 of 2017 *Hanuman Rajaram Mhatre Vs. Commissioner of Police, Thane and Ors.* and the judgment dated 1<sup>st</sup> March, 2018 delivered in Writ Petition No. 5371 of 2017 in the case of *Kuldeep Balasaheb Ghodke Vs. Commissioner of Police, Mumbai and ors.*

5. Learned Additional Public Prosecutor Mrs. Mhatre submitted

that there is no infirmity in the order of detention. The detaining authority has not relied upon the documents relating to the offences of 2014, 2015 and 2016 and the preventive actions referred to in the grounds of detention while passing the order of detention. The said documents and incidents are but a passing reference about the activities of the Petitioner and order of detention is clearly based on the grounds reflected in Paragraph 5.1, 5.2, 6.1 and 6.2 of the grounds of detention. It is submitted that the subjective satisfaction of the detaining authority is based on the relied upon documents which are in relation to the incidents reflected in the aforesaid paragraphs of the grounds of detention. Thus, it cannot be said that there is non-application of mind on the part of the detaining authority while issuing the order of detention. Learned Additional Public Prosecutor relied upon the affidavit in reply filed by the detaining authority in support of the submissions.

6. We have gone through the grounds of detention, documents on record and an index of compilation of documents. On perusal of the grounds of detention, it can be seen that in paragraph 1 of the said grounds the detaining authority has stated that the Petitioner is being communicated the grounds as mentioned in paragraph No. 5.1, 5.2, 6.1 and 6.2 below on the basis of which the detention order has been passed

by the detaining authority under Section 3(2) of the said Act. It is further stated that the copies of documents placed before the detaining authority on which she has relied and formed her subjective satisfaction are enclosed. The list of documents annexed to the Petitioner's Exhibit-C refers to several documents relating to the offences registered against the Petitioner. These documents includes the list of documents which were supplied to the Petitioner and that some of them refers to the previous offences i.e. C.R. No. 67 of 2014, C.R. No. 270 of 2014, C.R. No. 113 of 2015, C.R. No. 342 of 2016 or registered with Bandgarden Police Station and C.R. No. 100 of 2016 registered with Samarth Police Station. The documents also includes the preventive actions initiated against the Petitioner vide Chapter case No. 34 of 2016 and Externment Order No. 27 of 2017. The reference to this case and preventive action is made in paragraph 3 of the grounds of detention. It is also pertinent to note that in Paragraph 4 it is stated that on going through the criminal record, it is evident that the Petitioner is a habitual and dangerous criminal involved in serious and violent crimes and that preventive action was initiated against him. The introductory paragraph of grounds of detention categorically states that the grounds on the basis of which the detention order has been issued are reflected in paragraph referred to therein. However, paragraph 8 of the grounds of detention mentioned that the detaining authority has

carefully gone through the material placed before her and is subjectively satisfied that the Petitioner is acting in a manner prejudicial to the maintenance of public order. Thus, the subjective satisfaction of the detaining authority is based on the entire material placed before her. The entire material in the form of documents placed before the detaining authority includes the cases registered against the Petitioner in the year 2014, 2015, 2016 and the preventive action initiated against him which are reflected in paragraph 3 of the grounds of detention. Thus, while recording this subjective satisfaction, it is apparent that the detaining authority has relied upon the extraneous material. The approach shows total non-application of mind on the part of the detaining authority.

7. In the affidavit in reply, it is stated that while issuing the order of detention, the detaining authority has considered two incidents which are subject matter of C.R. No. 236 of 2017 and C.R. No. 291 of 2017, both registered with Bandgarden Police Station, and the incidents referred to by the witnesses whose statements were recorded In-camera. These incidents are covered by paragraph 5.1, 5.2, 6.1 and 6.2 of grounds of detention. In the reply, it is further stated that the detaining authority has specifically mentioned in paragraph No. 1 of the grounds of detention, which is the preamble/introduction about the material relied upon by the detaining

authority to issue the order of detention is in context to the paragraphs nos. 5.1, 5.2, 6.1 and 6.2 of grounds of detention. The documents pertaining to the 4 incidents were only considered while formulating this subjective satisfaction. The documents pertaining to the incidents for the year 2014, 2015 and 2016 and preventive actions were placed before the detaining authority only to show continuous criminal activities and the said material is not relied upon by her while issuing the order of detention against the detenu. The said fact has been specifically mentioned by her in paragraph no. 3 of the grounds of detention. It is further stated that after going through the material pertaining to the said incidents, the detaining authority was subjectively satisfied that the detenu is acting in a manner prejudicial to the maintenance of public order. The said subjective satisfaction is reflected in paragraph 8 of the grounds of detention.

8. The affidavit in reply is contrary to subjective satisfaction recorded by the detaining authority in paragraph 8 of the grounds of detention. The explanation in the affidavit in reply that the detaining authority has only considered the material pertaining to the incidents which are subject matter of paragraph no. 5.1, 5.2, 6.1 and 6.2 is after thought and cannot be accepted. The material placed before the detaining authority includes several documents which also relates to the incidents

reflected in paragraph 3 of the grounds of detention. It is not possible now for the detaining authority to come out with an explanation as stated in the affidavit in reply and to segregate the said documents. The detaining authority cannot improvise the subjective satisfaction reflected in paragraph 8 of the grounds of detention by filing affidavit in reply. In these circumstances, the order of detention suffers from non-application of mind and deserves to be quashed and set aside. The decisions relied upon by the learned Advocate for the Petitioner also takes a similar view and it is not necessary to elaborate the ratio laid down in the said decision.

9. In view of the finding and conclusion reached by us on Ground No. 5(b) (pages 5 and 6 of the paper book), rule is made absolute in terms of prayer clause (b). The order of detention is quashed and set aside. The detenu is directed to be released forthwith, if not required in any other case.

In the light of our conclusion on Ground No. 5(b) of this Petition, we have not allowed Mr. Tripathi to canvass submissions on other grounds on which the detention order is challenged. The Petition stands disposed off.

**(PRAKASH D. NAIK, J.)**

**(S.C.DHARMADHIKARI, J.)**