

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1811 of 2018

Pawan Tukaram Kudale

.. Petitioner

Versus

The Commissioner of Police, Pune
and others

.. Respondents

...

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

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

DATED : 29th JUNE 2018

JUDGMENT:- (Per SMT.BHARATI H. DANGRE,J)

1 The detention order dated 29th January 2018 passed by the Commissioner of Police, Pune City, in exercise of powers conferred by sub-section (2) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981 (for short “MPDA Act”) is the subject matter of the present writ petition. By the said order, the petitioner was detained with a view to prevent him from acting, in any manner, prejudicial to the

maintenance of public order, and is detained at Yerawada Central Prison, Pune from the date of the said order.

2 The order of detention is attacked on several grounds and it is sought to be quashed and set aside on the ground that it suffers from non-application of mind by the detaining authority and on failure of the detaining authority to take due care and caution in following the requirement of law while passing the order of detention and specifically, the parameters laid down by Article 22 of the Constitution of India. The grounds raised in the petition is to the effect that the subjective satisfaction recorded by the detaining authority and as reflected in the grounds of detention stands vitiated on account of the detaining authority taking into consideration the extraneous material and basing the subjective satisfaction on the same. The ground (c) raised in the petition reads thus :

“(c) The Petitioner says and submits that in para 1 of the grounds of detention that, the detaining authority communicate to the Petitioner the grounds mentioned in para nos.5 and 6 of the grounds of detentions it is further stated that copies of documents placed before him on which the detaining authority has relied on and formed his subjective satisfaction are enclosed. The petition

says and submits that all the documents of the compilation running into 376 pages as per index of the compilation are placed before the detaining authority, considered by him to formulate the grounds of detention, arrive at his subjective satisfaction and ultimately to pass the order of detention, whereas in para 1 of the grounds it is clearly spelt out that he has taken into consideration para 5 and 6 of the grounds of detention to pass the order, thereby the detaining authority has taken into consideration extraneous material pertaining to other C.Rs of year 2015, 2016 and 2017, this shows non application of mind of the detaining authority, it is further to be noted that it is clearly stated in para 8 of the grounds of detention "I have carefully gone through the material placed before me and I am subjectively satisfied that you are acting in a manner prejudicial to the maintenance of public order". The order of detention is illegal for the non-application of mind of the detaining authority, liable to be quashed and set aside.

Though there are several other grounds on which the order of detention has been slammed as illegal, however, since the learned counsel for the petitioner detenu had invited our attention to the grounds raised in paragraph (c) and on hearing him, we find much substance in the said ground, we do not intend to deal with the other grounds as raised in the petition.

3 Learned counsel for the petitioner Shri Tripathi would invite our attention to the grounds of detention

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communicated to the detenu on 29th January 2018. He would make a reference in the opening paragraph which reads thus :

“I hereby communicate to you 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 me on this day against you under sub-section (2) of Section 3 of the said Act. The copies of documents placed before me on which I have relied and formed my subjective satisfaction are enclosed, except the names and identifying particulars of witnesses/victims in connection with the grounds as mentioned in Para No.6.1 and 6.2 which are not furnished to you in the public interest for which I claim privilege”.

Learned counsel would submit that in paragraph no.3 of the grounds of detention, detaining authority has set out a chart of the offences registered against the detenu under Chapter 16 and 17 of the IPC as well as under Chapter 5 of the Arms Act. The said offences are registered in the year 2015, 2016 and 2017 and are pending adjudication before the competent Court. The Chart also includes the chapter cases initiated under Section 107 of the Code of Criminal Procedure where the detenu had executed a bond for keeping peace with the Special Executive Magistrate. According to the learned

counsel for the petitioner, the said offences have been relied upon by the detaining authority to arrive at a conclusion that the detenu is 'dangerous person' as defined in section 2(b-1) of the MPDA Act, 1981 and to conclude that the criminal activities of the detenu are prejudicial to the maintenance of the public order. The grounds of detention then proceed to state that the offences mentioned in paragraph no.3 of the ground reflect the criminal activities of the detenu and he was arrested in relation to the said offences, but it had no effect and rather the activities of the detenu are showing an ascending trend. Then, in para 3.3, the detaining authority has referred to the offences committed by the detenu during the period of bond executed for keeping peace which includes three offences registered at Kothrud Police Station, which are pending adjudication and there is enumeration of other two offences for the year 2017 registered with Kothrud Police Station, one of which is pending investigation. Shri Tripathi would submit that the grounds of detention in detail deal with the aforesaid offences and even the documents supporting the said grounds were supplied to the detenu since they were placed before the detaining

authority and relied on by the detaining authority. Learned counsel would submit that in ground no.5, the detaining authority has enumerated the particulars of offences which were taken into consideration for passing the order of detention which includes one C.R vide no.367/2017 registered under sections 307, 143, 144, 147, 148, 149, 504, 506, 427, 34 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. The grounds of detention further state that the detenu had applied for bail in the said offence and on 11th December 2017, he was released on bail by the Court at Pune. Another offence in form of C.R.No.476/2017 registered under Section 4/25 of the Arms Act r/w section 37(1)(3)/135 of the Maharashtra Police Act has also been made the basis for passing the order of detention. Apart from this, in ground no.6, the detaining authority had relied upon the statements of two witnesses who are residents of the area where the detenu had created a reign of terror and on account of said activities of the detenu, no person was ready to come openly against the detnu because of fear of retaliation. Reliance is then placed on statements of two witnesses residing

in the area of Kothrud, Pune to reflect the violent criminal activities of the detenu, in connivance with his criminal associates. The detaining authority, according to Advocate Tripathi has thus, construed the entire material placed before him and by relying on the said material, arrived at a subjective satisfaction that the detenu is acting in a manner prejudicial to the maintenance of public order and the entire material placed before him reflected his tendencies and inclination to indulge into offences of similar nature and the likelihood of he reverting to similar activities in future, prompted the detaining authority to initiate the preventive action, so as to prevent him from acting in such prejudicial manner in future. The learned counsel would submit that the grounds of detention would thus reflect that the detaining authority has based its subjective satisfaction on the material placed before him which was charted out in a tabular form and along with the said table, the relevant documents which are exhibited at Exhibit-C of the petition were supplied to the petitioner and he would thus submit that this includes the extraneous material in form of the offences which were only relied by the detaining authority to

demonstrate the habitual conduct of the detenu in the past and which do not form the basis of detention.

4 In support of the order of detention, we have heard learned AGP Mr.J.P.Yagnik appearing for the State who would refer to the affidavit filed by the Detaining authority on 18th June 2018. Mr.Yagnik would invite our attention to the stand of the detaining authority as against the ground (c) raised in the petition and he would submit that the detaining authority has dealt with the said ground in paragraph no.11 of the affidavit which reads thus :

“It is kindly submitted that the Detaining Authority has rightly mentioned in the opening paragraph of the grounds of detention that she is communicating to the Detenu the grounds on which the order of detention has been passed by the Detaining Authority, under section 3(2) of the MPDA Act, 1981. That the Detaining Authority has passed the order of detention on the grounds mentioned in paragraph 5 and 6. As such in the said paragraph No.5.1 and 5.2 Particulars of Offences considered for passing detention order have been mentioned and these offences are (1)Kothrud Police Station C.R.No.367/2017 u/s.307, 143, 144, 147, 148, 149, 504, 427, 34 of the IPC (2) Kothrud Police Station C.R.No.476/2017 u/s.307, 143, 144, 147, 148, 149, 504, 427, 34 of the IPC; r/w sec.4/25 of the Arms Act; r/w sec.37(1)/135 of the Maharashtra Police Act, 1951. These offences were committed during

the period of execution of bond for good behaviour in Kothrud Police Station, Pune Chapter Case bearing No.11/2017 u/s 110(e)(g) of Cr.P.C. The rest of the offences and preventive actions are mentioned in Para no.03 of the grounds of detention.

It is further submitted that in Detention Order at Para No.3, the Detaining Authority clearly mentioned i.e. *“There are six offences shown in the above chart of offences at Para No.3.1. Out of these, four offences mentioned at Sr.No.01 to 04 and preventive actions taken against Detenu are mentioned to show Detenu’s continuous criminal activities and the copies of F.I.Rs, charge sheets, arrest forms and relevant documents of preventive action are enclosed herewith and supplied to Detenu so that Detenu can make effective representation.”*

The Detaining Authority has never relied on offences at Sr.No.1 to 4 shown in the chart to issue the detention order. As such the factual details of those four cases have not been mentioned/communicated in paragraph 5 of the grounds of detention. It is further submitted that in Para no 6.1 and 6.2 of the Detention Order, the gist of the In-camera statements are mentioned and those statements and verification report of Assistant Commissioner of Police, Deccan Division Pune considered and supplied to the Detenu for compilation of the documents.

It is further submitted that out of 376 pages of the documents the Detaining Authority only relied upon the documents related with the offences mentioned in the Para no.5.1 and 5.2 of the grounds of Detention and in-camera statements of the witnesses mentioned in Para

no.6.1 and 6.2 to pass the order of detention. It is further submitted that the documents on which the detaining authority has relied are the vital documents and the same are duly furnished to the Detenu and his signature has been obtained on the office copy as acknowledgment.

5 Mr.Yagnik would submit that the petition in ground (c) alleges that all the documents of compilation running into 376 pages as per Index of the compilation are placed before the detaining authority, and are considered to formulate the grounds of detention, and therefore, the Detaining authority has applied his mind to the extraneous material pertaining to the C.Rs of the year 2015, 2016 and 2017. Mr.Yagnik would submit that the grounds of detention clearly dissect the material placed before the detaining authority into the material to reflect the criminal tendencies of the detenu and the material on the basis of which the detention order has been passed and he would thus submit that the order of detention has been passed on the basis of two C.Rs mentioned in para 5.1 and 5.2 and the in-camera statements mentioned in para 6.1 and 6.2 of the grounds of detention. Shri Yagnik would thus submit that the subjective satisfaction reached by the detaining authority is

based on relevant material and prays for dismissal of the petition. He would also submit that the order of detention has been confirmed by the Government on 12th March 2018 after due consideration of the subjective satisfaction on the part of the detaining authority.

6 We have carefully perused the writ petition along with its annexures and also the affidavits filed on behalf of the detaining authority and the State Government. Perusal of the index which has been placed along with the petition at Annexure 'C' would reflect that it comprise of 376 pages which include the grounds of detention. The said index also includes the material in relation to First Information Report as well as the charge-sheet in relation to Crime Nos. 185/15, 175/16, 180/16, 3/17, and 367/17. The FIR as well as the charge-sheet along with other details i.e. the statement of the complainant, arrest forms, form part and parcel of the said index. Not only this, certain other material in form of the spot panchnama, muddemal challan as well as the notes of investigation in relation to the said offences are also included in the said index

along with the supplementary notes. On perusal of the grounds of detention, the detaining authority has formulated a ground that the detenu is habitually committing the offences under Chapter XVI and XVII of the IPC and thus, he is a dangerous person as defined in Section 2(b-1) of the MPDA Act.

In order to establish that the detenu is "a dangerous person" which term has been assigned a definite connotation under the MPDA, 1981 Act to mean a person, who either by himself or as a member or leader of a gang, habitually commits or attempts to commit, or abate the commission of any of the offences punishable under chapter XVI or XVII of IPC or any of the offences punishable under Chapter 5 of the Arms Act. The MPDA Act 1981 empowers the State Government, on being satisfied with respect to any person that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, an order may be passed detaining such a person. The term "acting in any manner prejudicial to the maintenance of public order" has also been assigned a specific meaning under Section 2(a) of the Act and in case of a dangerous person, it is said that he is acting in an manner

prejudicial to the maintenance of public order when he is engaged or is making preparations for engaging in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order. Thus, for the purposes of exercising the powers to detain a dangerous person, the person must be habitually committing or attempting to commit or abetting the commission of any of the offences under Chapter XVI or XVII of the IPC or any of the offences punishable under Chapter 5 of the Arms Act, 1959.

7 In order to detain the petitioner detenu, under the provisions of MPDA Act, the detaining authority had formed an opinion that the detenu is a dangerous person who is engaged in any of the activities as a dangerous person and which have adversely affected or likely to affect adversely the maintenance of public order. In order to form an opinion that the detenu is a dangerous person, the detaining authority has referred to his habitual conduct which is reflected from his past activities as contained in ground no.3 of the grounds of detention. The detaining authority, in order to be satisfied about the habitual

conduct of the detenu has relied upon six offences which have been enumerated in paragraph no.3. The said offences have been relied upon to reflect the continuing activities of the detenu and to demonstrate that he is habitually indulging into the offences punishable under Chapter XVI and XVII of the Indian Penal Code making him "a dangerous person" as contemplated under section 2(b-i) of the Act. The detaining authority has also referred to another five offences committed by the detenu, all punishable under Chapter XVI or XVII of the IPC which are alleged to be committed by the detenu during the period of bond executed by him for keeping peace. Thus, the detaining authority while forming a subjective satisfaction that the petitioner is a dangerous person has referred to his past criminal activities and has taken note of the ascend in such activities of the detenu and arrived at a conclusion that inspite of arrest in the said offences or the preventive action initiated against him, he was not deterred from indulging into the activities and the detaining authority makes a reference to a crime registered at Kothrud Police Station on 1st August 2017 in which the detenu came to be arrested on 1st October 2017, on a

complaint made by one Shri Sanjay Vasant Bhise, resident of Kothrud, Pune. Another offence which the detaining authority relies upon to pass the order of detention is in form of C.R. no.476/2017 on a complaint registered by a police constable posted at Kothrud Police Station who alleged that on 22nd December 2017 when he was patrolling in the area of Sutar Dara, Pune, he received a wireless message that the detenu was threatening the people in the said locality and terrorizing them, and on reaching the said spot, he accosted the detenue who was armed with a *koyta*.

8 It is pertinent to note that the C.R.No.367 of 2017 reports of an incident dated 1st August 2017 and C.R.No. 476 of 2017 is based on an incident dated 22nd November 2017 and it is alleged that the said offences were committed by the detenu during the period of bond executed for good behavior. In proximity of the said date of commission of the offence by the detenu i.e. in the month of January 2017, there is another offence registered against him at Kothrud Police Station vide C.R.No.3/17 under section 326, 504, 34 of the IPC r/w section

4(25) of the Arms Act. Thus, the detaining authority has traced the criminal behavior of the detenu right from the year 2015 till his latest involvement in C.R.No. 476/2017 which reports of an incident dated 22nd December 2017. Apart from this, the subjective satisfaction of the detaining authority that the detenu has created a reign of terror in the residents of the area where he is residing and the adjoining area, is fortified by the statements of two in-camera witness and it is pertinent to note that Witness A narrates an incident dated 14th December 2017 and had stated that the detenu had intercepted the witness and he along with his associates was carrying weapons like *koyta* and sword and he created a ruckus in the locality which made the residents of the locality run helter skelter. Witness B speaks of an incident dated 16th December 2017, when the said witness was demanded an amount of Rs.2,000/- by the detenu and was threatened with dire consequences if the said amount is not paid and if he approached the police. Thus, both the in-camera witness speak of incidents which are in close proximity i.e. 14th December 2017 and 16th December 2017 whereas the latest C.R on which reliance is placed is dated 22nd December 2017 and 9th

October 2017. Thus, it can be seen that the detaining authority has attempted to establish a live link in the activities of the detenu right from 2015 and extending the same till the last activities of the detenu was reported i.e. 22nd December 2017, which resulted into passing an order of detention on 29th January 2018.

9 In such circumstances, it can be seen that the grounds of detention are based on the entire activities of the detenu spread over a period of time from 2015 to December 2017 and the relevant material reflecting the participation/ involvement of the detenu in these offences was placed before the detaining authority and it is this entire material which the detaining authority has taken into consideration while arriving at a subjective satisfaction, based on which the order of detention has been passed . It is not possible for the detaining authority to segregate the material placed before him as relevant or irrelevant on the premise of fixing of a cut-off date specifically when the whole subjective satisfaction of the detaining authority is based on the criminal activities of the

detenu and his habitual involvement into the offences punishable under Chapter XVI or XVII of the IPC.

In this backdrop, we find substance in the arguments of the learned counsel for the petitioner Advocate Tripathi. Shri Tripathi has placed reliance on the judgment delivered by this Court in case of ***Shri Hanuman Rajaram Mhatre Vs. Commissioner of Police, Thane***¹, which is decided by the same Bench where the order of detention has been quashed and set aside on a similar ground with the following observations :

“Article 22(5) of the Constitution of India has two facets namely, (i) communication of grounds on which detention order has been made and (ii) opportunity of making a representation against the order of detention. Communication of grounds presupposes formulation of grounds and such formulation requires application of mind of the detaining authority to the facts and material placed before it, that is to say to the relevant and proximate matter in regard to each individual’s case. It should comprise all the constituent facts and material that went into making of the mind of a statutory functionary. Thus, when the Authority gives its decision based on his subjective satisfaction, it is expected that he would record his satisfaction based on a bunch of facts and influenced by his personal feelings and opinion. The word “subjective” is defined in Oxford

¹ WP 4646/17 decided on 31/1/2018

Dictionary to mean dependent on the mind or on an individual's perception for its existence. The subjective satisfaction is the satisfaction of a reasonable man which can be arrived at on the basis of some material, influenced by or based on personal beliefs or feelings rather than on objective facts. It is an entire though process of an authority which goes into forming what is called "subjective satisfaction". It is a state of mind on which the conclusions are reached, based on the material placed before the authority and an extraneous consideration or material would affect the formation of subjective satisfaction".

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.

12 Rule is made absolute in terms of prayer clause (b). Since the order of detention dated 29th January 2018 is quashed and set aside, detenu Pawan Tukaram Kudale be released forthwith if not required in any other case.

In the view that we have taken in respect of ground in para 5(c) of the petition, we do not allow Mr.Tripathi to raise other grounds of challenge to the detention order.

Petitioner is set at liberty forthwith.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)