

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

WRIT PETITION NO.2663 OF 2018

Premchand @ Babu Punjabi
@ Tatu Manohar Dhakani
R/at Near Jai Ambe Medical Store
Barrack No.1127, Falwar Line
Ulhasnagar-3, District-Thane.

...Petitioner

V/s.

1. The Commissioner of Police
Thane.
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.V.N. Tripathi a/w Ms.Jayshree Tripathi for the Petitioner.

Mr.J.P. Yagnik, APP for the Respondent-State.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 23th AUGUST 2018

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

1. The present Writ Petition filed by the petitioner detenu,

taking an exception to the order dated 06.12.2017 passed by the Commissioner of Police, Thane, thereby detaining him under the provisions of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (MPDA Act, 1981) deserves to be allowed on the sole ground of non-application of mind on part of the Detaining Authority, as formulated by the petitioner in ground No.(b) of the petition. The order of detention is liable to be quashed and set aside as the Detaining Authority had taken into consideration the extraneous material, which had influenced the mind of the Detaining Authority and thus vitiated the subjective satisfaction reached by it.

2. The petitioner detenu was served with an order dated 06.12.2017 passed by the Commissioner of Police, Thane in exercise of powers conferred by Sub-Section (2) of Section 3 of the Act of 1981 by which the petitioner has been detained with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The petitioner was served with the grounds of detention in pursuance of Section 8 of the MPDA Act 1981 on the very same day i.e. on 06.12.2017. The grounds of

detention would reveal that the Detaining Authority has purported to communicate to the detenu the grounds as mentioned in paragraph No.4(a),4(b),5(a) and 5(b) on which the detention order has been made under sub-section 2 of Section 3 of the MPDA Act, 1981. The grounds of detention then set out that the copies of documents placed before the Detaining Authority are relied upon him and a subjective satisfaction has been arrived and the copies of the said documents have been furnished to the detenu except the names and identity of the particular witnesses in connection with the grounds mentioned in 5(a) and 5(b).

3. Perusal of the grounds of detention would further reveal that the Detaining Authority has made reference to the extract of History Sheet register maintained in the Central Police Station and has enlisted the criminal activities of the detenu since 2014 and his involvement in the criminal acts of Extortion, Riot, Robbery, Abuse, Hurt, Grievous hurt, Theft, Threatening to life etc., punishable under the Indian Penal Code and also punishable under the Arms Act 1959, Maharashtra Police Act. There is mention of eight criminal cases registered against the detenu from 2014 till the date of passing of the Detention order and it is mentioned the detenu was arrested thereafter the charge sheet has been filed in six

cases which are pending for adjudication. There is also a mention of the preventive action initiated against the detenu and it is then stated that the preventive actions were found to be futile to prevent the detenu from acting in similar manner. The said criminal activities were noticed by the Detaining Authority to infer his continuous tendency and inclination towards his committing crimes and in not showing any respect to the existing law of the land. The Detaining Authority has then relied upon two C.R. No. namely C.R. No.I-145/2017 under Section 379, 427, 34 of Indian Penal code read with 37(1), 135 of Maharashtra Police Act read with Section 4, 25 of the Arms Act. The details of the said C.R. find place in ground 4(a) of the grounds of detention. Ground No.4(b) makes reference to C.R. No.I-213/2017 under Section 394 of Indian Penal Code registered with the Central Police Station. From the said crimes the Detaining Authority has deducted an inference that the said offences are serious cognizable offences and the incidence therein are of serious nature. In this backdrop, the confidential inquiry was also conducted into the criminal activities of the detenu and no person in the locality was ready to come forward, openly make any grievance against the detenu. Resultantly the witnesses were assured confidentiality and two victims come forward for recording of their statement on an assurance that their identity would be kept secret

and they would not be called in any Court of law for deposing. Ground No.5(a) makes a reference to the statement of witness (A) who is resident of Forvar Line, Shivaji Chowk and he has given narration about an incident which had occurred a week before recording of his statement which is 23.08.2017. He has given the details of the said incident revolving around the detenu who had extorted an amount of Rs.1,700/- from this witness and when he sought help, no shopkeeper or passerby, on account of the fear of the detenu dared to come to his rescue. In ground No.5(b) reference is made to a statement of witnesses-B who speaks about incident dated 11.07.2017 when this witness was selling vegetable on his handcart near Jaslok school. This witness mention that the detenu arrived at the place and demanded money from vegetable venders as well as the present witnesses and when he refused to part with the cash, he was assaulted by wooden bamboo stick by the detenu and he was robbed Rs.450/-.

4. The grounds of detention make reference to the incident quoted in ground No.4(a), 4(b), 5(a) and 5(b) and conclude that the detenu is a habitual and dangerous criminal involved in serious crime and his criminal activities are threat to public life and property. The Detaining Authority based on the said

material had formed a subjective satisfaction that the detenu is “Dangerous Person” as defined in Section 2(b-1) of the MPDA Act 1981 and that he has unleashed a reign of terror and had become a perpetual danger to the society at large in the area of Central Police Station. In order to prevent him from reverting to the similar activities which are prejudicial to the maintenance of the public order in future, the Detaining Authority has expressed that it is necessary to detain him under the provisions of the MPDA Act, 1981.

5. Shri.Tripathi, the learned counsel appearing for the detenu would submit that the impugned order of detention is passed in a very casual and cavalier manner and there is total non application of mind on the part of the Detaining Authority. Without prejudice to the other grounds raised in the petition Shri.Tripathi would invite our attention to ground (b) as raised in the petition. Ground (b) reads thus :-

“b. The petitioner says and submits that the detailing authority has communicated to the petitioner the grounds as mentioned in paragraph No.4(a), 4(b), 5(a) and 5(b) on which the order of detention has been made by him under Section 3(2) of the M.P.D.A. Act, 1981. However, it is pertinent to note that in paragraph No.1 of the

grounds of detention it is clearly mentioned that the copies of documents placed before the detaining authority on which he relied upon and formed his subjective satisfaction are enclosed. It is therefore clear that all the documents i.e 43 documents running into 274 pages (as per Index of the compilation) are considered by the detaining authority for arriving at his subjective satisfaction and passing the order of detention. The petitioner further submits that the detaining authority has categorically states while recording his satisfaction in paragraph No.8 of the grounds of detention that he has gone through all materials places before his and he is subjectively satisfied that the petitioner is acting in a manner prejudicial to the maintenance of public order. Thus, it is crystal clear that the Detaining Authority has considered extraneous material apart from paragraph 4(a), 4(b), 5(a) and 5(b). This show total non-application of mind of the detaining authority. The satisfaction vitiates. Moreover, it is not stated by the detaining authority as to which are the documents he has relied on and which are the documents he has merely referred to. The order of detention is illegal and bad in law, for taking into consideration extraneous material, which has influenced the mind of the detaining authority. The order of detention is illegal, liable to be quashed and set aside.”

6. The submission of the Shri.Tripathi is that the

subjective satisfaction reached by the Detaining Authority is based on the entire documents running into 274 pages, whereas for passing the order of the detention the Detaining Authority has only relied on the incidents referred to in ground No.4(a), 4(b), 5(a) and 5(b). Shri.Tripathi would urge before us that the subjective satisfaction reached by the Detaining Authority is a complex procedure and the satisfaction is expected to be reached on the basis of the material placed before the Detaining Authority. His specific submission is that the Detaining Authority has himself mentioned in the grounds of detention that he had perused the entire material placed before him which includes the docket of 274 pages (as per index of the compilation) and then formed the subjective satisfaction that the activities of the detenu are prejudicial to the maintenance of the public order, Shri.Tripathi would submit that this vitiates the subjective satisfaction of the Detaining Authority and the detention order cannot be sustained when extraneous material has gone into the decision making process.

In response to the said ground raised in the petition the Detaining Authority has filed an affidavit and has responded to the said ground by stating that though the Detaining Authority has referred to the detenu's past record from 2014 to 2017 but order of detention is based upon only two C.R.'s and two in camera

statements as mentioned in 4(a), 4(b), 5(a) and 5(b) of the grounds of detention. It is stated in the affidavit that ground No.6 clearly contains a following statement:-

"From the incidence quoted in paragraph No.4(a), 4(b), 5(a) and 5(b) above from the grounds of detention, it is seen that you are habitual and dangerous criminal involved in serious crime. You are dangerous in criminal activities are threatening to public life and property."

It is then stated in the affidavit filed on behalf of the Detaining Authority that the Detaining Authority has relied upon only two C.R's and only two in camera statement for passing order of detention and therefore Detaining Authority was clear in his mind, about the basis for detention.

7. Shri.Yagnik, learned Assistant Government Pleader appearing on behalf of the Detaining Authority would urge before us that the Detaining Authority had no confusion in his mind and had clearly compartmentalized the past offences of the detenu from the one which the Detaining Authority has relied upon in Ground No.4(a),4(b). Shri.Yagnik would strenuously submit before us that in order to demonstrate that the detenu is a dangerous person, his

antecedents are necessarily to be taken into consideration in order to gauge the continuation of his activities and for this purpose the Detaining Authority has merely taken note of the offences committed by the detenu from 2014-2017, which are eight in number, along with the two preventive actions and has observed that the preventive actions did not deter the detenu from indulging into activities prejudicial to maintenance of the public order. He would submit that the distinction being drawn by the Detaining Authority, the argument of the learned counsel Shri.Tripathi that the subjective satisfaction itself is vitiated cannot be accepted.

8. We have perused the Writ Petition along with its annexures and also the affidavit filed by the Detaining Authority and the State of Maharashtra through Home Department. We have also considered the submissions advanced on behalf of the respective parties.

Perusal of ground-b would reveal that the attempt of the petitioner is to demonstrate that the subjective satisfaction of the Detaining Authority stands vitiated on account of the fact that though the Detaining Authority has communicated to the petitioner that Ground No.4(a), 4(b), 5(a) and 5(b) is the basis on which the order of detention has been made in exercise of power conferred

under Section 3(2) of the MPDA Act 1981. However, in the same breath the Detaining Authority has stated that the copies of the documents placed before him have been relied to form his subjective satisfaction. It is the case of the detenu that in all 43 documents running into 274 pages were placed before the Detaining Authority and have been considered by the Detaining Authority. The same number of documents have been supplied to the detenu. The index of those 274 pages would reveal that it also includes documents pertaining to the crimes mentioned in paragraph No.2 of the order of detention. The 274 pages also includes documents pertaining to C.R. No.145 of 2017 and C.R. No.I-213 of 2017, which has been the basis for passing the order of detention by the Detaining Authority. The index would therefore reveal that the Detaining Authority had also taken into consideration the documents in relation to crimes which do not form the basis of the detention order namely as mentioned in Ground No.4(a) and 4(b).

It is no doubt true that the grounds of detention reflect the mind of the Detaining Authority and Section 8 of the MPDA Act 1981 requires the Detaining Authority to communicate the said ground on the basis of which the detention order is passed so that the detenu is made aware as to on what basis he has been detained and also to enable him to make a representation as envisaged under

Article 22(5) of the Constitution of India. The grounds of detention thus divulge the mind of the Detaining Authority. The detention order is passed on the subjective satisfaction reached by the Detaining Authority. The subjective satisfaction is necessarily to be based on some material placed before the Detaining Authority and in order to sustain the subjective satisfaction, the detaining authority must reach the same on the relevant and material which is germane to formation of such a subjective satisfaction. In forming the subjective satisfaction, the Detaining Authority must necessarily rely upon the relevant and proximate matter in regard to each individual case and it should comprise of all the constitute facts and material that went into making of the mind of the statutory functionary.

9. This Court had an opportunity of dealing with a similar challenge in Writ Petition No.4646 of 2017 ***Hanuman Rajaram Mhatre V/s. The Commissioner of Police*** decided on 31.01.2018 to which one of us (Smt.Bharati H. Dangre, J) was a party, had observed thus :-

“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 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 thought process of an authority which goes into to 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. Perusal of the material on which the detaining authority has formed the subjective satisfaction that the detenu is "dangerous person", has revealed that the Authority has taken into consideration not only the

offences punishable under Chapter XVI or XVI of the IPC which is the basis for categorizing a person as “dangerous person” as defined in Section 2(b1) but it also refers to the material by which a person is clamped as “sand smuggler” who is engaged in unauthorized extraction, removal, collection, picking or transportation of sand. The Detaining Authority has not been able to segregate the activities of detenu and in any case when the facts and the material placed before the detaining authority has been bundled together, it is not always possible for a person to put it in strict water tight compartment and the subjective satisfaction would then be based on all the materials taken.

It is no doubt true that the court cannot substitute its opinion with the subjective satisfaction reached by the detaining authority but it is always open to the court to determine whether the formation of opinion is based on relevant material and whether the detaining authority has taken into consideration the relevant material and has excluded irrelevant and extraneous material. It is always open to the Court to examine whether reasons for formation of opinion have rational connection or relevant bearing for formation of such opinion and that it is not extraneous. Though the Court cannot arrogate to itself, responsibility of judging sufficiency of grounds, but if some of the grounds are found to be not relevant and if it affects the subjective satisfaction reached by the detaining authority, the Court

would not approve of such subjective satisfaction. The order of detention cannot be upheld in such circumstance because the Court cannot predicate as what subjective satisfaction the authority would have arrived at on exclusion of those grounds.”

10. The ground raised in the present petition being identical to the one dealt by this Court in the aforesaid Writ Petition where the detention order was quashed and set aside on the ground of the subjective satisfaction being vitiated, needs a similar treatment. The Detaining Authority has relied upon the documents pertaining to the crimes which have not been basis of the order of detention but only referred to by the Detaining Authority to reflect the past criminal conduct of the detenu. However, the material placed before the Detaining Authority was so intertwined that it is not possible to segregate the said material as to the one which relates to the two crimes on the basis of which the detention order is passed. More so ever when the entire material have been looked into by the Detaining Authority and has gone up in formulating the subjective satisfaction, it is not possible to conceptualize that the Detaining Authority is able to demonstrate that the detention order is only based on the material pertaining to C.R. No.I-145 of 2013 and I-213 of 2017 and no other material has gone into the decision

making process of the Detaining Authority. Since such a segregation is not possible when one speaks of a decision which is a cumulative effect of all and the entire material placed before the Detaining Authority, we find sufficient force in the argument of the learned counsel Shri.Tripathi to contend that the subjective satisfaction is based on extraneous material and therefore it stands vitiated. Though, Mr.Yagnik has attempted to justify the order of detention, we do not find force in the said submission, in view of the settled position of law that the subjective satisfaction reached by a authority must be justified only on the ground of consideration of the relevant material in contrast to the irrelevant and extraneous material.

In the result we record that the impugned order of detention dated 06.12.2017 cannot be sustained and is liable to be quashed and set aside. The order dated 06.12.2017 passed by the Commissioner of Police, Thane is quashed and set aside. The Writ Petition is allowed in terms of prayer clause (b).

11. Petitioner shall be released forthwith, if not required in any other case.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)

N.S. Kamble

page 16 of 16