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

WRIT PETITION NO. 3106 OF 2018

Rahul Babulal Bhati
Age – 32 years, residing at 309,
Somwar Peth, Pune. ... Petitioner

Versus

1. The Commissioner of Police Pune City
2. The State of Maharashtra
(through Addl. Chief Secretary to
Government of Maharashtra,
Mantralaya, Home Department, 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 ... Respondents

Mr. U. N. Tripathi, for the Petitioner.
Mrs. M. H. Mhatre, APP for the State.

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

DATE : 6th OCTOBER, 2018.

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

1. The Petitioner, who is detenu detained under the
Maharashtra Prevention of Dangerous Activities of Slumlords,
Bootleggers, Drug-offenders and Dangerous Persons, Video

Pirats, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 ("MPDA", for short) by the Commissioner of Police, Pune City, has approached this Court, praying for quashing and setting aside the detention order bearing PCB/DET/3258/ 2017, dated 2nd December, 2017. The said order of detention is assailed by the detenu on various grounds and the foremost being that it is passed in a casual and cavalier and without judicious application of mind to the facts and the law applicable to the matter.

2. In support of the petition, we have heard Mr. Udaynath Tripathi, the learned Advocate for the Petitioner, who would press into service ground No.(b) raised in the petition which reads thus:

"(b) The Petitioner says and submits that the detaining authority has stated in paragraph 1 of the grounds of detention that the detention order has been passed by the detaining authority on the basis of paragraph No.5.1, 6.1 and 6.2 of the grounds of detention to arrive at her satisfaction and pass the detention order. It is further stated that the copies of documents placed before her on which she has relied and formed her subjective satisfaction are enclosed it is therefore clear that the detaining authority has relied on and formed her subjective satisfaction on the basis of all the documents/material about 44 documents running into total 232 pages are considered by the detaining authority which includes the documents of C.R.

No.185/2004, C.R. No.301/2008 and C.R. No. 176/2015 as well as externment order of 2016, thus the detaining authority has taken into consideration extraneous material for passing the order of detention. In paragraph 4 of the grounds of detention it is further stated that on going through Petitioner's criminal record it is evident that he is a habitual and dangerous criminal. It is pertinent to note that in paragraph 8 of the grounds of detention the detaining authority states that she has carefully gone through the material placed before her and she 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 material of three criminal cases of the year 2004, 2008 and 2015, which are absolutely old and stale cases. It is not only the detaining authority has considered extraneous material but these materials have influenced her in decision making and passing order of detention. The subjective satisfaction of the detaining authority vitiates for considering extraneous material for passing detention order. This also 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.”

Mr. Tripathi would submit that apart from the other grounds which he has spelt in the petition, he would invite attention of this Court to the Division Bench judgment (Ranjit More and Bharati Dangre JJ) delivered in Writ Petition No.2663 of 2018, dated 23rd August, 2018 and he would submit that the said judgment covers the case of the Petitioner in totality as the Detaining Authority in the present case also has relied on the entire documents in relation to the

offences which were taken into consideration to prove the antecedents of the detenu whereas the order of detention was passed only on the basis of CR No.208 of 2017 registered under Sections 392, 383, 427, 323, 594, 506(2) r/w 34 of Indian Penal Code against the present detenu and also two in-camera statements. According to Mr. Tripathi the material supplied to the detenu and which was also relied by the Detaining Authority while reaching the subjective satisfaction includes total 44 documents running into total 232 pages which includes the documents of the offences which have been committed in the year 2004, 2008, 2015 as well as the externment order passed in the year 2016. The precise submission of Mr. Tripathi is that taking into consideration extraneous material has vitiated the subjective satisfaction of the Detaining Authority and in this backdrop the detention order cannot survive. He would submit before us that the Court is convinced on these grounds, he need not press into service the other grounds raised in the petition.

3. On behalf of Detaining Authority, we have heard Mrs. Mhatre, the learned APP. She would rely upon the Affidavit filed by the Detaining Authority on 30th August, 2018. She would invite our attention to the response of the

Detaining Authority to ground 5(b) of the petition where the Detaining Authority has specifically denied that he has relied on extraneous material. She would submit that Detaining Authority in categorical words has dealt with the said ground in the following manner:

“It is submitted that the then Detaining Authority has relied upon the grounds mentioned in paragraph No.5.1, 6.1, and 6.2 and the material placed before her pertaining to the said grounds. The list of offences and preventive action mentioned in para 3 of the grounds of detention, is the past history of the detenu and the said material was not relied upon by her, while issuing the order of detention. The document i.e. copy of FIRs, first page of charge-sheet, arrest form and the document of preventive action was placed before her by the Sponsoring Authority only to show the criminal background of the detenu and the same was referred while completing the narration of facts and said material is in no way influenced my mind while issuing the order of detention. Thus there is no substance in the say of the petitioner in this para.”

4. We have carefully considered the petition along with the grounds of the detention served on the detenu and also the Affidavit filed by the Detaining Authority and State of Maharashtra. We have also considered the arguments advanced on behalf of the rival parties.

On perusal of the grounds of detention supplied to the detenu dated 2nd December, 2017, it can be seen that the

Detaining Authority in paragraph 1 of the grounds of the detention observes thus:

“I hereby communicate to you the grounds as mentioned in paragraph No.5.1, 6.1 and 6.2 below on the basis of which the detention order has been passed by him against you under Sub-section 2 of Section 3 of the MPDA Act. The copies of the documents placed before me on which I have relied and formed my subjective satisfaction, are enclosed and expect the names and identifying particulars of witnesses/victims in connections with the grounds as mentioned in para 6.1 and 6.2, which are not furnished to you in the public interest for which I claim privilege.”

Paragraph 3 of the ground of detention then enumerates the offences and preventive action initiated against the detenu and there is reference of three offences contained in different CRs registered with Faraskhana Police Station, Dehuroad and Swargate, and the status of the offences is shown as pending. The said offences are registered in the year 2004, 2008 and 2015 respectively. Reference is also made to preventive action initiated by Samarth Police Station and passed an order of externment under Section 56(1) (a) and (b) of the Maharashtra Police Act, 1951.

The Detaining Authority then proceed to state that the said offences are registered against the detenu from time to time for his criminal activities and he was also arrested, but

it has no effect on the detenu and he continued with his illegal and dangerous criminal activities and rather these activities are on the rising trend. Detaining Authority has further set out that he has considered the said offences and preventive action to show his continuing criminal activities and copies of the said FIRs, charge-sheets, arrest forms and preventive action were forwarded and supplied to the detenu so as to enable him to make effective report.

5. Based on the said offence and the preventive action, the Detaining Authority concludes that the detenu is an habitual and dangerous criminal involved in serious and violent crimes and his criminal activities are posing threat to the lives and properties of public. The Detaining Authority then makes a reference of the offences which were taken into consideration for passing the order of detention. Here he makes a reference to CR No. 208 of 2017 registered with Samarth Police Station on a complaint of one Dnyaneshwar Bhagat, who was running lottery centre. Based on his complaint, offence punishable under Sections 392, 384, 427, 323, 504, 506(2) r/w 34 of IPC and Sections 142, 37(1) and 135 of the Maharashtra Police Act, is registered against the detenu. The Detaining Authority then states out the details of

the investigation carried out in the said offense and the fact that the detenu was granted bail in the said offences by the Judicial Magistrate, First Class, Court No.1, Pune, on the same day and that is how he was out of the custody.

Apart from the said crime, reliance is placed by the Detaining Authority on the two statements recorded “in-camera”, in view of the fact that the residents of the locality where the detenu was operating were not ready to come forward and lodge a complaint on account of the fear and retaliation by the detenu. Reliance is placed upon statement of witness 'A' and witness 'B'.

Based on the aforesaid statement placed before the Detaining Authority, the Detaining Authority records that he is subjectively specify that the detenu is acting in a manner prejudicial to the maintenance of the public order. The Detaining Authority has also expressed that taken into consideration the offences committed by the detenu as well as the incident recorded in-camera statements and since the detenu has availed the bail facility in the said offence and is a free person, and likely to revert to similar activities, prejudicial to the maintenance of the public order, in future it would be necessary to detain him to indulge into such

activities.

This is how the grounds of detention are set out by the Detaining Authority and communicated to the detenu.

6. Perusal of the grounds of the detention would reveal that certain offences have been referred to by the Detaining Authority to demonstrate the criminal history of the detenu and his inclination towards indulging in criminal activities. For purpose of the detention, however, reliance is placed on only one CR and two in-camera statements. Perusal of the grounds of detention, however, disclose that the Detaining Authority had the entire material before him which included the material in relation to the three offences as well as one externment proceeding, which was not the basis for passing the order of detention but were relied upon by the Detaining Authority only to assess the criminal antecedents of the detenu. However, the entire material including the documents from the three offences and the externment proceeding referred to by the Detaining Authority in ground No.3 has been placed before the Detaining Authority and be formed part and parcel of the material on the basis of which the subjective satisfaction was reached. The said material was also supplied to the detenu and the index of these

documents placed on record at 'Exhibit-C' of the petition would reveal that the charge-sheets in CR No.185 of 2004, CR No.301 of 2008 and CR No.176 of 2015 have been included in the list of the documents apart from the necessary document of the relevant crime including the first information report, statement of the witnesses, arrest form etc. The Detaining Authority has, therefore, analysed the entire material placed before him and arrived at subjective satisfaction. The subjective satisfaction arrived by the Detaining Authority is based on the entire documents containing in 'Exhibit-C' and do not possible to segregate the said material as the one which has been only referred and relied upon to conclude the past criminal history of the detenu and one on the basis of which the order of the detention has been passed.

The Division Bench of this Court in the case of ***Premchand @ Babu Punjabi vs. The Commissiainer of Police and ors., Writ Petition No.2663 of 2018***, had an opportunity to deal with such similar contention contained in form of a ground identical to ground (b) and has observed thus:

“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 :

“8. 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 XVII 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.”

7. 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 was not the 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 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.208 of 2017 and two In-camera statements 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.

In the result we record that the impugned order of detention dated 2nd December, 2017 passed by Respondent no.1 cannot be sustained and is liable to be quashed and set

aside and it is quashed and set aside. The Writ Petition is allowed in terms of prayer clause (b).

8. Petitioner be released forthwith, if not required in any other offence.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]

Santosh
Subhash
Kulkarni

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by Santosh
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