

rkmore

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4074 OF 2018

Anil Babu Dhivare

..Petitioner

vs.

The Commissioner of Police, Thane & Ors.

..Respondents

Mr.U.N. Tripathi, for the Petitioner.

Mrs.M.H.Mhatre, APP for the State.

**CORAM : INDRAJIT MAHANTY &
V.K.JADHAV, JJ.**

DATE : 13th December, 2018.

P.C.

1] Heard Mr. Tripathi, learned counsel appearing for the Petitioner and Mrs.Mhatre, learned APP for the State.

2] Mr.Tripathi, learned counsel for the Petitioner seeks to challenge the order of detention of the Petitioner dated 15th December, 2017 under Section 3 of the 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 (for short “the said Act”). He submits that the order clearly indicates the grounds on which the Petitioner has been detained. He submits that that even though reference of grounds is made in the impugned order in para no.4(a), 4(b), 5(a) and 5(b) as the grounds of

detention, yet the same order indicates the copies of several documents had been placed before the detaining authority, to exercise his discretion which runs into 230 pages and covers various cases against the Petitioner right since the year 2015 onwards. It is contended by the learned counsel that the detaining authority has considered irrelevant material alongwith relevant material consequently making the impugned order susceptible to challenge.

3] Mr.Tripathi, learned counsel for the Petitioner, placed reliance on the Judgment of this Court in Writ Petition No.4646 of 2017 passed by the Division Bench of this Court (Croam : Shri S.C. Dharmadhikari and Smt. Bharati H. Dangre, JJ) dated 31st January 2018, wherein, in a similar set of facts, the Division Bench had come to the conclusion that “it is not possible for the person to segregate his thought process place it into compartments and when a person relies on materials placed before him, the relevant material and irrelevant material gets entangled together and forms the basis of the subjective satisfaction, then it is not possible to discern the irrelevant or extraneous material and keep the subjective satisfaction, intact on the basis of relevant material.”

The Division Bench concluded that, “ In such circumstances, we are of the firm opinion that the subjective satisfaction reached by the detaining authority cannot be segregated into two water-tight compartments.”

In the above referred case, the contention advanced by the APP by placing reliance on the principle contained in Section 5A of the said Act also came to be rejected, interalia, on the ground that the detention order was vague and the relevant and irrelevant facts cannot be segregated and accordingly the whole “subjective satisfaction” gets tainted and in such a case, segregation is not possible.

4] We have heard learned Mrs. Mhatre, learned APP for the State. She fairly submits that this case is covered by the Judgment of this Court referred hereinabove.

5] In view of the above, Writ Petition No. 4074 of 2018 is allowed in terms of prayer clause 9(b) extracted hereinbelow :

“The order of Detention bearing D.O. No.TC/PD/MPDA/09/2017 dated 15.12.2017 issued under Section 3 of M.P.D.A. Act 1981 by the Respondent No.1 be quashed and set aside and on quashing the same the Petitioner be ordered for release forthwith.”

6] The Petitioner be set at liberty forthwith if not required in any other case/offence.

(V.K.JADHAV, J)

(INDRAJIT MAHANTY, J)