

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION No. 4646 of 2017.**Hanuman Rajaram Mhatre **..Petitioner.**residing at Shivaji Prerna
Society, Ground Floor,
Room No.3, Kopargaon,
Dombivali (West), District
Thane.**.. Respondents.**

Vs.

The Commissioner of Police,
Thane and Ors.Mr. U.N. Tripathi, Advocate for
the Petitioner.Ms. M.H. Mhatre, APP for the
State.**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.
Reserved on :- 25/01/2018.
Pronounced on- 31/01/2018.****JUDGMENT (Per: Smt. BHARATI, H. DANGRE,J)**

dated 6th September, 2017 passed by the Commissioner of Police, Thane has approached this Court praying for quashing and setting aside the order and for his release forthwith. The petitioner detenu has been detained by the impugned order of detention passed by respondent no.2 in exercise of the power conferred by sub-Section (2) of Section 3 of the *Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons Engaged in Black-marketing of Essential Commodities Act, 1981* (for short “MPDA Act, 1981”) and directing him to be detained in Taloja Central Prison, Navi Mumbai. The petitioner was served with the grounds of detention on the very same day.

2 The petitioner assails the detention order on various grounds, as set out in the petition. On reading of the petition and upon hearing the learned Advocate for the petitioner Shri. U.N. Tripathi, we find sufficient substance and force in ground (h) raised in the petition and on hearing the learned APP, appearing on behalf of the

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respondents, we feel it unnecessary to advert to the other grounds raised in the petition, since we have arrived at a conclusion that the said ground has sufficient substance and hence we proceed to deal with the said ground.

3 In the petition, the petitioner has raised ground (h) to the following effect;

(h) "The Petitioner says and submits that in the grounds of detention dated 06.09.2017 the detaining authority has clearly stated that the copies of documents placed before him on which he has relied upon and formed his subjective satisfaction which are enclosed. It is pertinent to note that as per the index of the compilation of documents, there are 84 documents running into 181 pages in total, which include various documents of various C.Rs of the year 2012 to year 2016 along with the documents which are referred to and on the basis of which satisfaction is arrived at by the detaining authority is taken into consideration. It is therefore, the detaining authority has taken into consideration extraneous material i.e 81 pages document which are neither relevant nor proximate for taking preventive action under M.P.D.A Act, 1981. The Petitioner submits that these extraneous material have influenced the mind of the detaining authority to initiate action under preventive laws. Moreover, the detaining authority nowhere in the grounds of detention have clearly spelt out or segregated about which are the documents merely referred to and not relied on whereas in paragraph No.1 it is stated

that all documents are relied upon for forming subjective satisfaction of the detaining authority. The satisfaction of the detaining authority vitiates since extraneous materials are taken into consideration. The order of detention is illegal and bad in law, liable to be quashed and set aside."

This ground has to be read together with ground (a) and (b) which read as follows:-

(a) The Petitioner says and submits that the detaining authority has passed the order of detention mechanically in a very casual and cavalier manner without applying his judicious mind which is clear from the grounds urged in this Writ Petition. There is 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.

(b) The Petitioner says and submits that the Detaining Authority has referred to and relied on a case vide C.R. No. I-08 of 2017 under Section 48(7) of Maharashtra Land Revenue Code. The details of the incident of this C.R. is narrated in paragraph 4(a) (I) of the grounds of detention. The Petitioner says and submits that he is categorized as a dangerous persons as defined in Section 2(b-1) of M.P.D.A. Act, 1981. The Section 2(b-1) contemplates the definition of 'dangerous person' which is as under : "Dangerous persons means a person, who either by himself or as a member or leader of a gang, habitually commits or

attempts to commit or abets of the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of Arms Ac, 1959.

It is pertinent to note here that offences under I.P.C. and Arms Act are to be considered to meet the requirement of dangerous person as defined in Section 2(b-1) of the said Act, whereas the ground considered and relied on in paragraph 4(a)(1) of the grounds of detention is under Section 48(7) of Maharashtra Land Revenue Code, 1966 r.w Section 15 of the Environment Code. Offences do not fall either I.P.C. or under Arms Act. Hence, this ground is irrelevant and on the basis of this ground a person cannot be held as a dangerous person. This 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.

4 The learned Counsel for the petitioner Shri Tripathi has invited our attention to the grounds of detention as supplied to the petitioner. On perusal of the grounds of detention, which have been formulated in pursuance of Section 8 of the MPDA Act, 1981, the Detaining Authority has observed as under:-

“In pursuance of section 08 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous

Persons and Video Pirates Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981, (Mah. Act No. LV of 1981) I, hereby communicate to you the grounds as mentioned in paragraph No. 4(a), 4(b), 4(c), 5(a) and 5(b) below on 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 upon and formed by subjective satisfaction, are enclosed, except the names and identifying particulars of witnesses / victims in connection with the grounds as mentioned in Para No. 5(a) and 5(b) below, which are not furnished to you in the public interest for which I claim privilege.”

Further the grounds of detention set out, list of offences registered against the detenu from 2012 till date and this includes nine C.Rs registered with Vishnu Nagar Police Station and it gives the status of said C.Rs. The Grounds of Detention then set out the preventive action initiated against the detenu. Then the Detaining Authority further sets out as under:-

“You have no ostensible means of livelihood. You always move in the area, armed with weapons and do not hesitate to use the same in the commission of offences. It shows that you have chosen criminal and Sand Smuggling activities as your means of

livelihood.

Since you were repeatedly indulging in criminal and Sand Smuggling activities, preventive actions were taken against you, under the existing law of the land in the past, however, the said preventive actions are found futile to prevent you from acting in similar manner.

Your criminal activities are noticed in the following incidents, which show continuance of your tendency and inclination towards committing crime, showing no respect to the existing law of the land.”

5 The learned Counsel Mr. Tripathi would argue that the Detaining Authority has taken into consideration the offences registered against the detenu from 2012 till date. However, he would submit that the Detaining Authority has further relied upon the instance mentioned in paragraphs 4 (a), 4(b), 4 (c), 5 (a) and 5 (b) for passing the detention order. He would argue that paragraph 4 (a) (1) is crime registered at Vishnunagar Police Station vide C.R. No. II-08/2017 under Section 48 (7) of the Maharashtra Land Revenue Code, 1966 with Section 15 of Environmental Code. According to the learned Counsel, the said C.R. is not the one which would fall within

the ambit of sub-clause (b-1) of Section 2 of the MPDA Act, 1981, which defines “*dangerous person*” to mean a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. According to the learned Counsel for the petitioner, reliance on this C.R. vitiates the subjective satisfaction of the Detaining Authority, specially when the Detaining Authority has based his subjective satisfaction on the basis of material produced before him and it had taken into consideration CR No. II-08/2017 along with another CR No. I-116/2017 and C.R. I-144/2017 registered under the provisions of Indian Penal Code and two in-camera statements. According to the learned Counsel, the copies of documents relating to CR No. II-08/2017 were placed before the Detaining Authority to arrive at a subjective satisfaction and the said documents were relied upon and also supplied to the petitioner along with grounds of detention. According to Mr Tripathi, consideration of extraneous

material reflects the non-application of mind of Detaining Authority. He would argue that as regards offence of smuggling of sand is concerned, the Act of 1981 deals with “sand smuggler” and the said Act authorizes the State Government to pass order in respect of any person with a view to prevent him to act in any manner prejudicial to the public order if a person is found to have engaged in the activity of smuggling of sand. However, the Detaining Authority has detained the petitioner being a “Dangerous person” and therefore he ought to have formed his subjective satisfaction only on the material which leads to the inference that the detenu is a “*dangerous person*”. Mr. Tripathi has invited our attention to the documents supplied to the petitioner along with the grounds of detention to demonstrate that the documents from serial No. 27 to serial no. 40 deal with Crime No.II-08/2017 which includes the complaint on the basis of which C.R.No. I-8/2017 was registered as well as statements of persons related to the said crime and other documents including the application for bail, receipt of depositing the bail amount etc. The learned Counsel would argue that consideration of the said material by the Detaining Authority in

relation to the offences under the Land Revenue Code and the Environmental Code would reveal that the Detaining Authority was influenced by the said alleged act of the detenu and has taken into consideration irrelevant extraneous material which vitiates the subjective satisfaction of the authority.

6 When we had called upon the learned APP to deal with the said ground, Ms. Mhatre, learned APP, invited our attention to that portion of the affidavit filed by the Detaining Authority where the said ground has been specifically dealt with. The relevant portion of the affidavit is reproduced as below :-

“With reference to grounds 6(b) of the petition, it is denied that the incident narrated in Paragraph No. 4 (a) (i) of the grounds of detention is irrelevant to hold that the detenu is a dangerous person. It is further denied that this shows total non-application of mind on my part.

It is submitted that I being Detaining Authority while issuing the order of detention has considered five incidents as stated by me in the above paragraph which are recent in point of time. The incident narrated in paragraph No. 4 (a) (i) of the grounds of detention is relied upon by me to show the criminal

background and the continuity of the detenu in a prejudicial activities which resulted into the registration of the said offences. Apart from the said incidents, after considering the rest of the material placed before me, it shows that the detenu is a dangerous person within the meaning of Section 2(b-1) of the M.P.D.A. Act and the said material is sufficient to issue the order of detention against the detenu. Thus, there is no substance in the say of the petitioner in this paragraph.

She also invited to the affidavit filed in pursuance of ground (b) which we had dealt-with and brought on record by way of additional affidavit filed by the Detaining Authority and the portion of the affidavit is reproduced below :-

“With reference to amended ground (h) of the petition, it is denied that I being the Detaining Authority have taken into consideration extraneous material, i.e 81 pages documents pertaining to C.R.s of the year 2012 to year 2016, which influenced my mind while initiating action under preventive laws. It is denied that in para No.1, it is stated that all documents are relied upon by me for forming subjective satisfaction, as nowhere in the grounds spelt out or segregated about which are the documents merely referred to and not relied upon by me, which vitiates the Order of Detention.

It is submitted that, I being the Detaining Authority have specifically stated in paragraph No.1 of the grounds of detention that, "I, hereby communicate to you the grounds as mentioned in para No.4(a), 4(b), 4(c), 5(a) and 5(b) below on which the Detention order has been passed by me 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 upon and formed my subjective satisfaction, are enclosed, except the names and identifying particulars of witness/victims in connection with the grounds as mentioned in Para No.5(a) and 5(b) below, which are not furnished to the detenu in the public interest for which I claim privilege'. Thus it is clarified by me in para No.1 that the Detention Order is not based on the averments in para 2 and 3 of the grounds of detention but is based on the averments in para 4(a), 4(b), 4(c), 5(a) and 5(b) of the grounds of detention. It is further clarified that the copies of documents placed before me on which I have relied upon and formed my subjective satisfaction are enclosed in respect to ground 4(a), 4(b), 4(c), 5(a) and 5(b) of the grounds of detention. The detenu ought to have read the paragraph No.1 of the ground of detention in its entirety and not in isolation to earlier statement of the same paragraph. It is further submitted that I being detaining authority has reached to my subjective satisfaction that the detenu is a dangerous persons and his activities are prejudicial to maintenance of public order on the basis of facts stated in ground No.4(a),

4(b), 4(c), 5(a) and 5(b) of the grounds of detention. The copies of documents pertaining to said grounds are placed and relied upon by me to form my subjective satisfaction is clearly spelt out in paragraph No.1 of the grounds of detention.”

The learned APP would argue that the Detaining Authority has formed “subjective satisfaction” on the basis of three C.Rs and two in-camera statements and she would submit that though the C.R.No. II-8/2017 which was registered under Section 48 (7) of the Maharashtra Land Revenue Code, 1966 read with Section 15 of the Environmental Code is ignored, there was sufficient material before the Detaining Authority to conclude that he is a “dangerous person” and the Detaining Authority was subjectively satisfied that he was of criminal character of violent and terrorizing nature, indulging into criminal activities which were adversely affecting the maintenance of public order of the locality. According to the learned APP, the Authority has also recorded a satisfaction that the detenu had created a reign of terror in the locality by indulging into criminal activities, as a result the residents were feeling a sense of insecurity and carrying their daily

avocation under constant shadow of fear and the Detaining Authority was satisfied that the Detenu was likely to indulge into similar activities in future, which would result into disturbances of public order of the area and therefore it was necessary to detain him under the provisions of the MPDA Act, 1981. Ms Mhatre would rely upon the judgment of this Court in the case of **Viki Baban Galte vs. The Commissioner of Police & Ors** (Criminal Writ Petition No. 2980 of 2016) to support her contention.

7 We have considered the ground pressed by the petitioner as regards non-application of mind by the detaining authority and reliance on extraneous material which resulted into subjective satisfaction being vitiated.

8 The MPDA Act, 1981 which is an enactment of preventive nature provides for preventive detention of slumlords, bootleggers, drug-offenders, dangerous persons, video pirates, sand smugglers and persons engaged in black-marketing of essential commodities and for

preventing their dangerous activities which are prejudicial to the maintenance of public order. Section 2 of the Act sets out what is meant by “acting in any manner prejudicial to the maintenance of public order” and it brings within its sweep the activities of slumlords, bootleggers, drug offenders, dangerous persons, sand smuggler, black-marketer, video-pirates within its ambit if the activities of such persons are adversely affecting or likely to affect adversely the maintenance of public order. The person whose activities, the Act aims to prevent have been allocated a definite connotation by attributing a specific meaning under the said Act.

Under the said Act, the power is conferred on the State Government, if it is satisfied with respect to any person covered by the category of enactment, with a view to prevent him from acting in any manner prejudicial to the maintenance of public order to make an order directing that such person should be detained. In order to avail the constitutional safeguards available to such detenu who has been preventively detained and conferred by Article 22 of the Constitution

of India, the enactment mandates communication of grounds of detention to the detenu as soon as after making the order of detention but not later than five days from passing of the order so as to afford the detenu an opportunity to make representation against the order to the State Government. By virtue of sub-section (2) of Section 8 of the MPDA Act, 1981 the detaining authority reserves right to withhold certain facts which it considers to be against the public interest to disclose.

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.

The grounds of detention reflects the mind of the Detaining Authority and Section 8 of the MPDA Act, 1981 makes it imperative on the part of the Detaining Authority to communicate the grounds on which the detention order has been made. The said

grounds of detention are required to be communicated within a period of five days from the date of detention to the detenu disclosing the mind of the Detaining Authority as to on what basis satisfaction is arrived at by him and also divulging the material on the basis of which such a satisfaction has been reached by the Detaining Authority. It is also necessary that the material on the basis of which the Detaining Authority has formed its satisfaction has to be supplied to the detenu so as to afford him an earliest opportunity of making a representation against the order to the State Government. The grounds of detention are thus reflection of Detaining Authority's mind and comprise of bunch of facts which persuade the Detaining Authority to pass an order of detention.

9 Perusal of the grounds of detention in the present case reflects that the Detaining Authority while communicating grounds of detention has clearly indicated that the grounds as mentioned in Paragraphs 4 (a),(b),(c) and 5(a) and 5(b) are the basis of the detention order passed under sub-Section (2) of Section 3 of the Act.

The Detaining Authority further reveals in the opening paragraph of grounds of detention that the copies of documents placed before the Detaining Authority on which he has relied upon and formed his subjective satisfaction are enclosed along with the grounds. The grounds of detention in paragraph 6 further records a finding that for the instances in forming the subjective satisfaction are quoted in paragraphs 4 (a), 4 (b), 4 (c) and 5(a) and 5(b).

Paragraph 6 of the order of detention needs a reproduction, since it reflects the mind set of the Detaining Authority.

“From the instances quoted in para 4(a), 4(b), 4(c) and 5(a), 5(b) above for the grounds of detention, I am subjectively satisfied that you are a criminal character of violent and terrorizing nature, including in criminal activities only to establish your criminal awe in the area and thereby to procure the pecuniary benefits by way of committing the offences in the limits of Vishnunagar Police Station, Thane under Thane Police Commissionerate. Your such criminal acts are punishable under Chapter XVI and XVII of Indian Penal Code, Maharashtra Land Revenue Code and Environmental code. You are habitually involved in the criminal and Sand Smuggling activities which adversely affect and also likely to affect adversely the maintenance of public order of the said locality and as such you are a 'dangerous person, as defined in section 2(b-1) of the in pursuance of section 08 of the Maharashtra Prevention of Dangerous Activities of Slumlords,

Bootleggers, Drug-offenders and Dangerous Persons and Video Pirates Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981, (Mah. Act No. LV of 1981)".

In paragraph 7 of the order of detention, the Detaining Authority reiterates that he had carefully gone through the material placed before him and he was subjectively satisfied that the detenu was acting in a manner prejudicial to the maintenance of public order.

We have noted that in the order of detention the detaining authority has formed the subjective satisfaction on the basis of material placed before him in the form of documents. Apart from the list of offences registered against the detenu from the year 2012 till date, the detaining authority has formed the subjective satisfaction on the basis of the incidents which are subject matter of three crimes and also on in-camera statements. C.R. No. II-8/17 is based on a complaint of a Circle Officer that Thakurli, Tahsil Kalyan and it alleges that when this officer along with the co-officers visited creek at Kopar, Taluka Kalyan to make survey of mangroves, they noticed excavation of sand from the creek bay and it is alleged that it was opened by the

detenu since in the said area only his sand plot existed. Based on this information, an FIR was registered under Section 48 (7) of the Land Revenue Code read with section 15 of the Environmental Code. The documents pertaining to the said C.R. were placed before the Detaining Authority for its consideration and it is clear that those documents went into forming of the subjective satisfaction by the detaining authority and the said documents since relied upon by the detaining authority, were supplied to the detenu. The grounds of detention also make a reference to the activities of the detenu which are punishable under the Maharashtra Land Revenue Code and Environmental Code and the detaining authority has arrived at a conclusion that the detenue was habitually involved in criminal and sand smuggling activities which adversely affect and also likely to affect adversely the maintenance of public order of locality. Further perusal of the in-camera statement in the form of witness No. "A" and witness No. "B" also refer to the activities of the detenu revolving around the sand purchases and its transportation. Witness No. "A" has stated that he was threatened by the detenu that if the witness did not

purchase sand from him then he is life would be endangered. Witness No. "B" also stated that he was threatened on account of suspicion harnessed by the detenu that this witness had informed the authority about excavation of sand by the detenu.

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(b-1) 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. The Hon'ble Apex Court dealing with the similar situation in the case of **Re Sushanta**

Goswami and others reported in **1969 (1) SCC 273** observed as under :-

“Ground No. II is to the effect that as a result of the petitioner's nefarious activities prejudicial to the maintenance of public order he has become a nuisance to the society and there have been disturbances and confusion in the lives of peaceful citizens of Dum Dum Police Station and the inhabitants thereof are in constant dread of disturbance of public order.

We do not consider that above grounds are relevant to public order and if some of the grounds which are given are irrelevant the order of detention cannot be upheld because the court cannot predicate what the subjective satisfaction of the authority would have been on the exclusion of those reason, vide Dwarka Das Bhatia v. The State of Jammu and Kashmir, (1956 SCR 945) and the recent decision of this court in Pushkar Mukherjee v. State of West Bengal. (WP No. 179/68, dt. 7-11-68) Therefore the order of detention is hereby set aside.”

11 The learned Counsel Shri Tripathi placed heavy reliance on the judgment of this Court (Coram: Jahagirdar & Nirgudkar, JJ) in case of Vijay Shrikrishna Padwal vs. the Union of India & Ors (Criminal Writ Petition No. 915/1989 decided on 26th October, 1989),

wherein the detention order was assailed on the ground that copy of the document supplied to the detenu was illegible and was in Urdu language, which disabled him from making a representation to the detaining authority. The detaining authority took a stand that the said document was not taken into consideration by the detaining authority though it was placed before him. In this context, the Division Bench observed as follows :-

“10. In our opinion, this is an unsustainable position to be taken up by a detaining authority. In the first place, we would regard it as a duty on the part of the detaining authority to furnish copies of the documents to which he referred and on which he placed reliance, to the detenu in a language known to the detenu. This can be done only when the detenu is informed of the documents to which the detaining authority made a reference and upon which he placed reliance. In the grounds of detention, which have been served upon the detenu, it has not been mentioned by the detaining authority that there are the documents to which he made reference and on which he placed reliance. However, an equivocal statement is to be found in Paragraph III of the grounds of detention, which is as follows:-

“The copies of statements and documents placed before me, as

mentioned in the accompanying list are enclosed.”

Pray, for what purpose those statements and documents were placed before him? Obviously, for the purpose of enabling him to formulate the grounds of detention. He could not have formulate the grounds of detention unless as referred to those documents or placed reliance upon the same. Mrs. Desai, the learned Public Prosecutor, has, with some vehemence, urged before us that this list only contains the documents which were placed before the detaining authority and it does not show that there are the copies of the documents upon which the detaining authority placed reliance. In our opinion, this argument cannot be upheld. How can a detenu know the documents to which the detaining authority made reference and upon which he relied? If the detenu is to be enabled to make a proper representation to the detaining authority, the grounds of detention furnished to him must necessarily include the documents on which reliance has been placed. The detenu must know which are the documents on which reliance has been placed by the detaining authority. This has not been told to the detenu in the instant case, if one is to believe the equivocal statement contained in Paragraph III of the grounds of detention.”

We find the said judgment supports the case of the petitioners and amply demonstrates that the entire material placed

before the Detaining Authority goes to form the subjective satisfaction.

In the present case, the detaining authority has categorically mentioned in the grounds that the detention order is passed on ground No. 4(a), 4(b), 4(c) and 5(a) and 5(b) which includes the material contained in relation to C.R.No. II-8/2017.

12 The learned APP Ms. Mhatre had argued before us that even if the detaining authority has relied upon CR No. II-08-2017, excluding said CR the detaining authority had sufficient material available on record, on which he had formed a subjective satisfaction that the detenu was “dangerous person”. She attempted to canvass before us that by taking recourse to Section 5A of the MPDA Act, 1981, by virtue of which an order of detention can be sustained on the remaining ground even if one of the grounds is found to be invalid or inoperative on account of it being vague, non-existent, not relevant, not connected or not proximately connected, or invalid for any other reasons whatsoever. No doubt, by virtue of Section 5A when a person has been detained in pursuance of an order of detention under Section

3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and merely because one of the grounds suffers from some infirmity as mentioned in sub-clause (a), detention order shall not be deemed to be invalid or inoperative. However, we fail to understand how Section 5A can be made applicable, since we have observed that the subjective satisfaction which is a thought process of applying mind to the given material placed before the Detaining Authority and extraneous and irrelevant material has resulted into formation of subjective satisfaction. As we have stated above, it is not possible for the person to segregate his thought process place it into compartments and when a person relies on material 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. 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. We are also unable to apply with the principle contained in Section 5A of MPDA Act, 1981 to the present case since it is not a case where one of the grounds on which detention order has been passed is vague or not relevant or invalid but because of consideration of the irrelevant material, according to us, the whole subjective satisfaction gets tainted and in such a case, we cannot segregate it as a ground, as is intended to be covered under Section 5A of the Act.

Ms Mhatre, learned APP has also placed heavy reliance on the judgment of this Court in the case of **Viki Baban Galte Vs. the Commissioner of Police, & Ors** (Criminal W.P. No. 2980/2016 decided on 25th January, 2017 (Coram:- Smt. V.K.Tahilramani & Revati Mohite Dere, JJ) referring to Section 5A of the Act. In the said case, the contention raised was that in one of the CRs which was relied upon by the Detaining Authority in forming the subjective satisfaction did not relate to maintenance of public order. However, there was other two C.Rs namely, C.R. No. 127/2016 and 128/2016 which

clearly made a case of extortion, resultantly affected the public order and the Court was satisfied that these two C.Rs affected the public order. In this backdrop, the Hon'ble Court observed that C.R. No. 43/2016 though referred only to an individual and had not affected the people in the locality or section of the public, the detention order was based on five grounds i.e. three C.Rs. and two in-camera statements and even if one of the grounds pertaining to C.R. No. 43/2016 is excluded, the detention order is sustainable on the remaining grounds. Thus, we fail to understand how this judgment is helpful to the Public Prosecutor.

13 In view of the aforesaid discussion, we are of the firm opinion that the subjective satisfaction formed by the Detaining Authority suffers from non-application of mind, as the same is formed by taking into consideration extraneous and irrelevant material and, therefore, it is vitiated. Since it is this subjective satisfaction formed by the Detaining Authority on which the edifice of the impugned order rests, resultantly the order of detention is also vitiated.

14 In the result, writ petition is allowed. The detention order

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dated 6/9/2017 passed by Commissioner of Police, Thane thereby detaining the petitioner Shri Hanuman Rajaram Mhatre, residing at Shivaji Prerna Society, Ground Floor, Room No.3, Kopargaon, Dombivali (West), District Thane is quashed and set aside. The petitioner/detenu is directed to be set at liberty forthwith, if he is not required in any other case/ offence;

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