

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5371 OF 2017

Kuldeep Balasaheb Ghodake @ Gandhye
Age 25 years, residing at Ekta Mitra
Mandal, Jyoti Nagar, in front of Public
Toilet, Chembur, Mumbai-400 089.

.... Petitioner

- Versus -

1. The Commissioner of Police
Mumbai.

2. The State of Maharashtra
(Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department
Mantralaya, Mumbai)

3. The Superintendent
Nashik Road Central Prison
Nashik.

4. The Secretary,
Hon'ble Advisory Board
constituted under Section 9 of
M.P.D.A. Act, 1981, Mantralaya
Mumbai – 400 032.

.... Respondents

Mr. Udaynath N. Tripathi for the Petitioner.
Mrs. Aruna S. Pai, Addl. Public Prosecutor, for the
Respondent-State.

**CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : MARCH 01, 2018

ORAL JUDGMENT (Per Shri PRAKASH D. NAIK, J.):

1. The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, challenging the order of detention, dated 6-10-2017, issued by respondent No.1 under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons, Video Pirates, Sand Smugglers And Persons Engaged in Black-marketing of Essential Commodities Act, 1981 (for the sake of brevity, hereinafter referred to as “the MPDA Act”). The order was executed on 6-10-2017. The order was issued with a view to prevent the petitioner/detenu from acting in any manner prejudicial to the maintenance of public order. Along with the detention order, the detenu was also served with grounds of detention formulated by the Detaining Authority on 6-10-2017.

2. The Detaining Authority in para 1 of the grounds of detention has stated, that in pursuance of Section 8 of the MPDA Act the grounds as mentioned in paragraph 5 below on which the detention order has been made by him against the detenu under sub-section (2) of Section 3 of the said Act are being communicated to him. It is further stated that copies of the documents placed before him are enclosed, except the names and identifying particulars of the victims/witnesses in paragraph Nos.5(c)(i) and 5(c)(ii) which cannot be furnished to the detenu in the public interest and for which the Detaining Authority claims privilege.

3. The Detaining Authority in para 2 of the grounds of detention has stated that the detenu is a violent type of dangerous criminal, having taken to the life of a criminal for the sake of easy money and to show his domination in the localities mentioned therein. It is also stated that the detenu and his associates are moving in the referred areas, with weapons and are engaged in criminal activities such as attempt to commit murder, assault, extortion, etc. The Detaining Authority has also

referred to the criminal cases which are registered against the detenu and which are reflected in para 4(a) of the grounds of detention. The said paragraph refers to cases registered vide C.R. Nos.154/2012, 212/2013, 354/2013, 85/2014, 154/2014, 143/2015, 137/2016, 159/2016 and 250/2016. The cases relating to said C.Rs are pending trial in Court. Paragraph 4(b) refers to externment proceedings initiated against the detenu. Paragraph 5(a) refers to a case registered vide C.R. No.150 of 2017 and paragraph 5(b) refers to C.R. No.192 of 2017. The Detaining Authority in paragraph 5(c) has referred to the statements of witnesses which were recorded in-camera and who are referred to as Witness-A and Witness-B. Their statements were recorded on 14-7-2017 and 19-7-2017. In paragraph 6 of the grounds it is stated that, the Detaining Authority is satisfied that, the detenu is a dangerous person as defined in the Act. His activities are prejudicial to the maintenance of public order. In para 7 of the grounds of detention the Detaining Authority has recorded the subjective satisfaction that after carefully going through the material

placed before him he is subjectively satisfied that he is acting in a manner prejudicial to the maintenance of public order. Detenu being a free person and in the event of his being at large and being a criminal, is likely to indulge in activities prejudicial to the maintenance of public order, peace and tranquility in future also, and with a view to preventing him from acting in such prejudicial manner in future, it is necessary to detain him under the MPDA Act.

4. Along with the grounds of detention, the detenu was also served with a list of documents along with documents which was divided into five parts. In part 4, the Detaining Authority has listed documents, running from pages 207 to 395. These documents contain the details of the criminal cases registered against the detenu. From the list of documents, it appears that in all documents running into 403 pages were placed before the Detaining Authority.

5. The petitioner has challenged the detention order on several grounds. We find force in the ground (b) raised in the

petition which reads as under:-

“(b) The Petitioner says and submits that in the grounds of detention, it is stated in paragraph No.1 that copies of documents placed before me are enclosed which means the complete compilation of documents consisting of 403 pages are placed before the detaining authority and considered by the said authority. The detaining authority has not specified the documents, which are relied on and which documents are not relied on but only referred to. As such extraneous material are considered, for arriving at his satisfaction and passing order. The Petitioner submits that only two registered cases and their material should be considered for detention whereas 10 registered criminal cases whose materials are not only placed and considered by the detaining authority but also influenced him to arrive at his satisfaction and pass order of detention. The order of detention is illegal and bad in law, liable to be quashed and set aside.”

6. Mr. Tripathi, learned counsel appearing for the petitioner, in support of the ground raised by him submitted that there is total non-application of mind on the part of the Detaining Authority. It is submitted that the Detaining Authority has taken into consideration extraneous material in arriving at the subjective satisfaction. It is submitted that there were about 403 pages of documents placed before the Detaining Authority. The Detaining Authority in the grounds has stated that reliance is placed on the two incidents which are reflected in part 5 and

the two in-camera statements. However, on perusal of the compilation of documents supplied along with the grounds of detention, it is apparent that several documents were placed before the Detaining Authority. It is submitted that in the opening/first paragraph of the grounds of detention, it is stated that the Detaining Authority communicates to the detenu the grounds as mentioned in paragraph 5, on which the detention order has been made by him and the copies of the documents placed before him were enclosed. The learned counsel further pointed out the averment made in paragraph 7 of the grounds of detention wherein it is stated that the Detaining Authority has carefully gone through the material placed before him and is subjectively satisfied that the detenu is acting in a manner prejudicial to the maintenance of public order. It is submitted that the subjective satisfaction of the Detaining Authority is apparently based on all the documents which is apparent from the averment referred to hereinabove. The counsel submitted that the Detaining Authority now cannot say that he has not relied upon the said documents in the light of the fact that all

the documents were placed before him and the conclusion is arrived at on the basis of the documents which is apparent from the averments made in paragraph 7 of the grounds of detention. The learned counsel placed reliance on the following decisions:-

- (i) Judgment of this Court, dated 31-1-2018, in the case of **Hanuman Rajaram Mhatre Vs. The Commissioner of Police, Thane and Others** {Criminal Writ Petition No.4646 of 2017},
- (ii) Judgment of this Court, dated 26-10-1989, in the case of **Vijay Shrikrishna Padwal Vs. Union of India & Others** {Criminal Writ Petition No.915 of 1989},
- (iii) Judgment of this Court, dated 6-1-2014, in the case of **Munna Dilawar Khan Vs. The Commissioner of Police, Mumbai & Others** {Criminal Writ Petition No.3953 of 2013}, and
- (iv) **Mushtaque Ali s/o Mohammad Ali Vs. State of Maharashtra & Anr.**, reported in 2004 All M.R. (Cri.) 1333.

7. Learned APP Mrs. Pai strongly opposed the ground raised by the petitioner. It is submitted that the documents which are reflected in parts 3 and 4 of the list of documents submitted to the detenu were not relied

upon by the Detaining Authority. It is submitted that the said documents although have been placed before the Detaining Authority, the subjective satisfaction of the Detaining Authority is not based on the said documents which is apparent from the introductory paragraph of the grounds of detention. It is submitted that in the first paragraph of the grounds of detention, it has been categorically mentioned that the order of detention is based on the grounds reflected in paragraph No.5 of the said grounds of detention. It is also stated that copies of the documents placed before the Detaining Authority are enclosed, except the names and identifying particulars of the witnesses in paragraph 5(c)(i) and 5(c)(ii) in the grounds of detention. From the said averments, it is amply clear that the documents reflected in parts 3 and 4 of list of documents are not considered by the Detaining Authority. Although the documents were placed before the Detaining Authority, no reliance has been placed on the said documents which are reflected in para 4 of the

list of documents. The learned APP further submitted that merely because the list is furnished to the detenu along with the said documents it would not mean that the Detaining Authority has relied on the said documents while arriving at the subjective satisfaction. The learned APP relied on the averments in the affidavit in reply filed by the Detaining Authority. In paragraph 8 of the affidavit in reply, the Detaining Authority has stated as under:-

“8. With reference to para 6(b) of the petition, I say that the material relied upon by me for issuing the order of detention has been furnished to the detenu along with the translation in the language known to the detenu in order to enable him to make effective representation. I say that in the opening para of the grounds of detention, I have specifically stated that I communicate to the detenu the grounds as mentioned in para 5 below on the basis of which I have issued the order of detention against the detenu. Hence, the copies of documents placed before me for issuing the order of detention is pertaining to para 5 of the grounds of detention which includes the two CRs i.e CR No.150 of 2017 dtd 01/06/2017 and CR No.192 of 2017 dtd 06/07/2017 along with the two in-camera statements of witnesses A and B recorded on 14th July, 2017 and 19th July, 2017. I say that since in para 1 of the grounds of detention, I have specifically stated about the grounds relied upon by me for issuing of the order of detention against the detenu. Hence, as Detaining Authority, it is not necessary for me to specify each and every

document relied upon for issuing the order of detention against the detenu. I deny that extraneous material was considered by me while arriving at my subjective satisfaction for issuing the order of detention against the detenu. I say that paras 2 to 4 of the grounds of detention are preamble/introduction to the grounds of detention and hence they are not the grounds of detention relied upon by me for issuing the order of detention against the detenu. I repeat and reiterate that the material relied upon by me for issuing the order of detention is stated in para 5 of the grounds of detention which states about two CRs and two in-camera statements. I say that the contents stated in paras 2 to 4 are merely preamble/introduction to the grounds of detention and not the actual grounds of detention relied upon by me for issuing the order of detention against the detenu. I say that the previous cases have been referred but not relied upon by me for issuing the present order of detention against the detenu. Hence, non furnishing of any of the documents pertaining to the preamble/introduction of the grounds of detention would not affect the detenu's right of representation. I deny that the contents stated in paras 2 to 4 had influenced me and was considered by me for issuing the order of detention against the detenu. I deny that the order of detention issued by me against the detenu is illegal, bad in law and liable to be quashed and set aside. Thus there is no substance in the say of the petitioner in this para.”

8. On going through the said reply, it is apparent that the Detaining Authority has stated that it is not necessary for him to specify each and every document relied upon for issuing the order of detention against the detenu. The submission that

the Detaining Authority has relied upon extraneous material, has been denied. It is also stated that the material relied upon by the Detaining Authority was sufficient to arrive at the subjective satisfaction for issuing the order of detention against the detenu. The material relied upon by the Detaining Authority for issuing the order of detention has been served upon the detenu along with the translation in the language known to him. The order is based on grounds reflected in paragraph 5 of grounds of detention. Paragraphs 2 to 4 of the grounds are preamble introduction to the grounds of detention and they are not the grounds of detention relied upon by the authority for issuing the order of detention. The material included two C.Rs and two in-camera statements. Previous cases have been referred but not relied upon for issuing the detention order. The learned APP relied upon the decisions in the case of **Smt. Asha Arun Gawli Vs. The State of Maharashtra & Ors.**, reported in 1999 All M.R. (Cri.) 20 and **Dr. Ramakrishna Rawat Vs. District Magistrate, Jabalpur and Another**, reported in (1975) 4 SCC 164. It is submitted that the petition is devoid of merit and

deserves to be dismissed.

9. We have gone through the order of detention, the grounds and the list of documents which were furnished to the detenu along with the grounds of detention. The order of detention has been issued against the detenu under the provisions of the MPDA Act, on being satisfied that the detenu is indulging in criminal activities of the nature which result in breach of public order and being a free person is likely to indulge in activities which are prejudicial to the maintenance of public order, peace and tranquility in future. The Detaining Authority is satisfied on the basis of the material on record that the detenu is a dangerous person within the meaning of the definition embodied under the provisions of the MPDA Act. It is also noted that in the introductory paragraph of the grounds of detention, it has been stated that the Detaining Authority has communicated to the detenu the grounds which are reflected in paragraph 5. However, the said paragraph also communicates that the copies of the documents placed before the Detaining Authority are enclosed. It is also pertinent to note that in

paragraph 7 of the grounds of detention, the Detaining Authority has categorically stated that the Detaining Authority has carefully gone through the material placed before him and is subjectively satisfied that the detenu is acting in a manner prejudicial to the maintenance of public order. It is, therefore, very clear that the Detaining Authority has considered all the documents which were placed before him. Apart from that, the fact that there were 403 pages of documents placed before the Detaining Authority, and about 200 pages are reflected in parts 3 and 4 of the list of documents. As stated above, in paragraph 7 of the grounds the Detaining Authority has stated that he has gone through the entire material which was placed before him and he is subjectively satisfied that, the detenu is acting in a manner prejudicial to the maintenance of public order. The reply tendered by the Detaining Authority states that it is not necessary for him to specify each and every document relied upon for issuing the order of detention against the detenu. We find that there is complete non-application of mind on the part of the Detaining Authority. It would not be possible to segregate

between documents referred to and relied upon. The explanation tendered in reply is an after-thought. The Detaining Authority claims that the order is based only on two C.Rs and two in-camera statements reflected in paragraph 5 of the grounds. There cannot be any speculation or guess-work as to which documents were referred to and relied upon. Paragraph 4(a) refers to cases of which documents are reflected in part 4 of the list of documents and averments in paragraph 4(b) refers to documents reflected in part 3 of the list. It is apparent that extraneous material was placed before the Detaining Authority while issuing the order of detention. The subjective satisfaction of the Detaining Authority is apparently based on the material which was placed before the Detaining Authority.

10. The grounds nowhere spelt out or segregated about which are the documents merely referred to and not relied upon by the Authority. In the case of **Hanuman Rajaram Mhatre** (supra) it was observed that, the subjective satisfaction formed by the Detaining Authority in similar situation suffered from non-application of mind, as the same is formed by taking into

consideration extraneous material and the order is vitiated. In the case of **Vijay Shrikrishna Padwal** (supra) the Detaining Authority had contended that the disputed document was not taken into consideration, though it was placed before the Authority. The Court observed that the copies of statements and documents are not placed before Detaining Authority as ritual. It must be presumed that, the Detaining Authority has referred to and relied upon the same. If he has not referred to and relied upon the documents which were placed before him it is wholly unnecessary and in fact misleading, to tell the detenu that these were the various documents which were placed before the Detaining Authority before he passed the order of detention. The duty cast on the Detaining Authority is not properly discharged unless Detaining Authority tells the detenu the documents to which reference has been made and upon which reliance was placed by him. It would be relevant to quote the observations of the Court in paragraph 10 of the said decision:

“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 these 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 statement 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 formulated the grounds of detention unless he 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 these 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.”

11. Relying upon the aforesaid decision this Court dealt with similar issue in the case of **Munna Dilawar Khan** (supra). The contention of Detaining Authority that the questioned document is not relied upon, that it is not vital document and that it is only referred to was rejected. Similar view was expressed in the earlier decision in the case of **Mushtaque Ali Mohammad Ali** (supra).

12. The learned APP had tried to distinguish the decision in the case of Hanuman Rajaram Mhatre (supra) by stating that in the said decision the factual aspects involved were different. It is submitted that in the ground of detention, which was the subject-matter of the said decision, it was stated that the Detaining Authority had relied upon the documents which were placed before him. In the present case, there is no statement in the grounds of detention that the Detaining Authority has relied upon all the documents which were placed before him. The learned APP also submitted that the two other decisions relied upon by the counsel for the petitioner are also in the peculiar

facts of the said cases and therefore the same cannot be relied upon. The learned APP placed strong reliance on the decisions referred to hereinabove. However, on perusal of the decision in the case of **Smt. Asha Arun Gawli** (supra), it is apparent that the same was delivered in the facts of that particular case. In the said case it was contended that, the Detaining Authority has referred to background of detenu which was submitted to be extraneous. The Court negated the contention on the ground that it was preamble and introduction. The other decision in the case of **Dr. Ramakrishna Rawat** (supra) also was delivered in different circumstances. The past events constituting chain culminating in the previous detention was under consideration, which was held to be background and not the grounds on which the order was based. In the present case, what has been observed hereinabove is that the compilation consisting of several documents was placed before the Detaining Authority and in the grounds of detention itself it has been made clear that the said documents were placed before the Detaining Authority and as such, in paragraph 7, the Detaining Authority has

carefully gone through the material placed before him. In the light of the factual aspects involved in the matter, by tendering an explanation in the affidavit in reply, the Detaining Authority cannot state that these documents which were placed before him were not relied upon. In the light of the observations made hereinabove, such a detention order cannot be upheld.

13. As a result of the above discussion, it is not necessary to consider the challenge to the detention order in question on other grounds, though urged by Mr. Tripathi. On the first ground itself we find that the detenu is entitled to the relief. That is how we allow this writ petition. We quash and set aside the order of detention, dated 6-10-2017. We direct that the detenu be released forthwith if not required in any other case. Rule is accordingly made absolute.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)