

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1398 OF 2019

Arvindsingh @ Avi @ Badshah
Ajit Singh Labhana

...Petitioner

vs.

The Commissioner of Police,
Thane and Others

...Respondents

Mr. Udaynath Tripathi a/w. Ms. Jayshri Tripathi, for the
Petitioner

Mrs. Madhavi Mhatre, APP for the Respondents-State.

**CORAM : S. S. SHINDE &
N.B. SURYAWANSHI, JJ.**

**ORDER RESERVED ON : OCTOBER 7, 2019
ORDER PRONOUNCED ON : OCTOBER 14, 2019**

ORDER (Per N.B. Suryawanshi, J.)

. This Petition takes exception to the order of detention dated 19th October, 2018 passed by Respondent No. 1 under 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 short “the said Act”) thereby detaining the Petitioner under the said Act.

2. Rule was granted in this matter vide order dated 26th March, 2019. Rule is made returnable forthwith with consent and at the request of learned counsel for the parties the matter is taken up for final hearing.

3. Heard learned counsel for the Petitioner and learned APP for the Respondent-State.

4. With the assistance of both the learned counsel, we have gone through the paper book and annexed documents.

5. The learned counsel for the Petitioner invoked grounds b, d, f, h, i and j to assail the impugned order of detention and argued the following points:

(i) The Petitioner was not given true translation of injury certificate, which is vital document and as a result of wrong translation of injury certificate, the Petitioner was deprived from making any effective representation.

(ii) The bail order of the Petitioner was translated by the detaining authority and the said translation was not true and faithful translation. The conditions imposed on the Petitioner

while releasing him on bail were not appropriately translated.

(iii) In paragraph 13 of the grounds of detention, the Petitioner's right to make effective representation is mentioned. The Petitioner was given to understand that he has right to seek assistance of any friend who is not a legal practitioner during the course of hearing before Advisory Board. According to the learned counsel for the Petitioner, this is not provided in the said Act or in the Constitution of India. The same confused the Petitioner while making effective representation.

(iv) There was delay in taking decision on the representation of the Petitioner.

(v) There is vagueness in the incident narrated by the witness 'B' as the ground of detention refers only words 'merely last week', without disclosing month and year of the occurrence of the incident which is vague as the date, month and year of the incident is kept vague.

(vi) Witness 'A' has stated that the detenu had forcibly taken away Rs. 210/- or 240/- from his pocket and threatened him. According to him the same is vague as no date and time etc. is mentioned and hence there is non application of mind on the

part of detaining authority, while passing the detention order.

6. The learned counsel for the Petitioner in support of his argument placed reliance on the judgment in the case of **Vijay Kumar Dharna @ Koka vs. Union of India and Others** reported in (1990) 1 Supreme Court Cases 606 and in the matter of **Sandip Suresh Ghag vs. The Commissioner of Police, Mumbai and Ors.** reported in 2014 ALL MR (Cri) 707.

7. The learned APP supported the order impugned and contended that the translation of the injury certificate is correct. However, instead of 'cm' word 'mm' is mentioned in typed version which is a typographical error. It is further argued that for the first time the Petitioner vide representation dated 15th February, 2019 made grievance about the wrong translation of the injury certificate which was received on 21st February, 2019 and immediately the copies of correctly translated injury certificates were handed over to the detenu on 23rd February, 2019 and the acknowledgment to that effect has been taken. In reply to the argument that wrong translation of the bail order was furnished to the detenu, the

learned APP states that merely because the timing in the conditions imposed on the detenu, to visit the police station 'between 11 am to 2 pm', on every Monday and Friday is not stated, that is an inadvertent omission and the corrected copy of translation was furnished to the detenu on 23rd February, 2019. The learned APP submits that the Petitioner had sufficient and fair opportunity of making effective representation. It is further argued that the detaining authority has recorded subjective satisfaction and appropriate procedure is followed, hence prayed for dismissal of the Writ Petition.

8. The first point argued by the learned counsel for the Petitioner is in respect of discrepancies of the documents, the same is without any merit. The injury certificate is on page 33 of the paper book whereas the typed copy is on page 34 and the translated copy in Hindi language provided to the Petitioner is on page 35. It is pertinent to note that the Hindi translation of the injury certificate is as per page 33. The dimension of the injury is correctly mentioned as 3 cm x 0.5 cm x 0.5 cm. Similarly, if the injury certificate on page 33 is compared with

the Hindi translation provided to page 35, the same is a true translation, wherein word 'cm' is correctly mentioned. The argument that the name of Dr. S.D.Gore is not mentioned in the translated copy is of no consequence as it has absolutely no bearing on the merits of the impugned order. It is also necessary to mention here that in the Hindi translated copy of the injury certificate at page 35 and on page 38, Dr. Gore's name is mentioned. Hence, there is no substance in the said argument of the Petitioner.

9. So far as the ground (d) is concerned, the Petitioner has placed on record the bail order issued in favour of the Petitioner. In the said order condition No. 3 states that accused shall remain present in concerned police station in between 11 am to 2 pm on every Monday and Friday till filing of the charge sheet. In Hindi translation given to the Petitioner, the timing '11 am to 2 pm' is not mentioned and only days, 'Monday and Friday' are mentioned. The detaining authority has accepted the fact of omission to mention the timing as an inadvertent omission and it was further pointed out by the learned APP that the corrected copy of the translation was furnished to the

detenu on 23rd February, 2019. Therefore there is no merit in the said ground raised by the Petitioner.

10. Learned APP was justified in placing reliance on the judgment of the Hon'ble Apex Court in the case of **Haridas Amarchand Shah vs. K.L. Verma and Ors. reported in (1989) SCC 250** to contend that the conditions of the bail order is not a vital material document. The Apex Court has held (in paragraph 7) that, *"the application for variation of the condition and the order made therein by the Magistrate to enable the detenu to come out and carry on his business activities as before. The condition imposed by the Magistrate directing the detenu to appear before the office of the Enforcement Department every day between 11 am to 2 pm has been varied to the extent that the accused to attend Enforcement Department as and when required . The condition imposed by the Magistrate has no relation to the activities carried on by the detenu and as such the High Court after considering all the circumstances held that the order varying the condition of bail was not a relevant document and failure to produce document before detaining authority before arriving*

at his subjective satisfaction had not vitiated the order.” In view of above ratio of the Hon’ble Apex Court there is no substance in the grounds raised above by the Petitioner.

11. The next argument in respect of vague ground relied upon by the detaining authority which does not disclose month and year of the taking away of amount of Rs. 210/- or 240/- and that there is non application of mind, is also not tenable. It is pertinent to note that in paragraph 5(B) of the grounds of detention, the date of recording of statement of witness ‘A’ is given as 4th September, 2018. It is further averred in the statement of witness ‘A’ that incident occurred in the month of July, 2018. He has stated that the Petitioner forcibly took Rs. 210/- or 240/- from his pocket and he cannot recollect the actual amount in his pocket at that point of time. Witness ‘B’ has stated that the incident with him occurred one week before 4th September, 2018. This cannot be said to be vague merely because exact date and time or amount is not mentioned. Sufficient particulars are given in the grounds of detention and hence, this argument is unacceptable. There is subjective satisfaction recorded by the detaining authority while passing

the impugned order of detention.

12. The next argument of the Petitioner that in the order of detention, the Petitioner was informed that you have a right to seek assistance of any friend who is not a legal practitioner during the course of hearing of the Advisory Board. This is not provided either in the said Act or in the Constitution of India. This has caused confusion and affected his right to make effective representation. We are unable to accept the said argument because the Petitioner was informed his right to defend his case before the Advisory Board through his friend. It is necessary to mention here that, the Advisory Board in its affidavit has categorically mentioned on page 66 that *“I say that on 29.11.2018, the detenu was present in person along with his advocate before the Advisory Board. The Hon’ble Advisory Board heard the detenu in person as well as his advocate on his representation was heard in detailed. The grounds raised in the present petition are the same grounds which were raised by the advocate for the detenu before the Advisory Board. After giving sufficient opportunity to the detenu the Advisory Board has forwarded its report to the*

State Government on 29.11.2018, thereby giving its opinion that there is sufficient cause for continued detention of the detenu under the MPDA Act". Hence, there is no substance in this contention and it is liable to be rejected.

13. The argument of the Petitioner that there is delay in deciding the representation of the Petitioner, which has vitiated the order, is also not sustainable. The Petitioner has made representation on 15th February, 2019 and the same was decided on 26th February, 2019 after following appropriate procedure and after application of mind by the detaining authority. Hence, there cannot be said to be any delay in deciding the representation of the Petitioner. Hence, that ground is also of not of any help to the Petitioner.

14. Thus we find no substance in the arguments of the Petitioner that right to make effective representation was denied to the Petitioner. The material on record does not support the said argument and the Petitioner had fair opportunity to make effective representation. The reliance placed by the learned counsel for the Petitioner in the case of

Sandip Ghag (supra) is misplaced. The facts of that case were totally different, in that case there was omission in the translated copy of the injury certificate. Detaining authority in that case stated that those were inadvertent mistake, which was not accepted by this Court. In the present matter, the facts are totally different and the said authority is not applicable in the present case.

15. Taking into consideration the facts, record and the judgments relied upon by the parties, we are of the considered opinion that there is no merit in the Petition. The detaining authority has recorded subjective satisfaction while passing the detention order. The detaining authority has considered relevant material and has rightly passed the detention order which need not be interfered with, in our extraordinary jurisdiction under Article 226 of the Constitution of India. The Writ Petition being devoid of any merits is hereby rejected.

16. Rule is discharged.

17. There shall be no order as to costs.

(N.B. SURYAWANSHI, J.)

(S.S. SHINDE, J.)