

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2875 OF 2019

SURAJ ASHOK THOMBARE

)...PETITIONER

V/s.

COMMISSIONER OF POLICE AND ORS.

)...RESPONDENTS

Mr.U.N.Tripathi a/w.Ms.Jayshree Tripathi, Advocate for the
Petitioner.

Ms.M.H.Mhatre, APP for the Respondent - State.

**CORAM: INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

**DATE : RESERVED ON 13th AUGUST 2019
PRONOUNCED ON 19th AUGUST 2019**

JUDGMENT : (PER : A.M.BADAR, J.)

1 By this petition, the petitioner/detenu is challenging
the order of his detention dated 24th January 2019 passed by the
first respondent 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, (hereinafter

referred to as M.P.D.A. Act for the sake of brevity). By the said impugned order passed under Section 3(2) of the said Act, by recording satisfaction that the petitioner is a dangerous person and it is necessary to detain him in order to prevent him from acting in a manner prejudicial to maintenance of public order, the respondent no.1 had ordered detention of petitioner/detenu Suraj Ashok Thombare.

2 Mr.Tripathi, the learned counsel appearing for the petitioner relying on Ground No.5(b) of the petition vehemently argued that in paragraph 8 of the Detention order, it is mentioned that the petitioner is a dangerous person as defined by Section 2(b) of the M.P.D.A. Act. He further argued that in paragraph 9 of the affidavit of respondent no.1 – Commissioner of Police, Pune, though it is pleaded that Section 2(b) is a minor typographical error, the provision of law invoked by the respondent no.1 is stated to be “22(b-1)” in the said reply affidavit. With this, Mr.Tripathi, the learned counsel argued that Section 2(b-1) of the M.P.D.A. Act defines the term dangerous person whereas Section

2(b) thereof defines the term bootlegger. The petitioner is detained on the ground that he is a dangerous person. It is argued that the petitioner being a person detained in prison has no access to law. Wrong mentioning of provision of law in the grounds of detention, as such, adversely affects his right to make effective representation against the Detention order. This negligent conduct of the Detaining Authority in quoting the section as 2(b), as such, has vitiated the order of detention. The learned counsel relied on judgment in the matter of **Salma Rehman Khan vs. M.N.Singh and Others**¹ in order to buttress this contention.

3 As against this, relying on the affidavit filed by the Detaining Authority, Ms.Mhatre, the learned APP, submitted that wrong mentioning of the sub-section to Section (2) of M.P.D.A. Act, is infact, a minor typographical error, which is not changing the nature of Detention Order and as such, has not caused any prejudice to the detenu in making effective representation. The learned APP candidly accepted the fact that in the return of the

¹ 2001 ALL MR (Cree) 2063

respondent no.1 typographical error cropped up as the relevant Section is quoted inadvertently as “22(b-1)” instead of “2(b-1). She further argued that the petitioner is a person knowing Marathi language and grounds of detention served in Marathi language correctly depict the relevant provision of law.

4 We have considered the submissions so advanced and also perused the record and proceedings. The grounds for detention dated 24th January 2019 supplied to the petitioner which are in Marathi language, are perused by us. Paragraph 8 of the grounds of detention clearly mentions that the petitioner is a dangerous person as defined by Section 2(b-1) of the M.P.D.A. Act. In this view of the matter, when correct provision of law is quoted in original Marathi version of the grounds of detention, it is not possible for us to conclude that the petitioner is confused because of wrong quoting of the relevant Section defining the term “dangerous person” and because of such confusion, his right to make effective representation is adversely affected. In the matter of Salma Rehman Khan (supra) the learned Division

Bench of this court has held that in the matter of preventive detention, the benefit of any ambiguity or doubt goes to the detenu and eternal vigilance is the price which the law expects from Sponsoring and Detaining Authorities if they want to sustain the order of detention by the court. This judgment is of no avail to the petitioner in the light of the fact that the original Marathi version of the grounds of detention supplied to the petitioner under his signature mentions the correct provision of law i.e. Section 2(b-1) of the M.P.D.A. Act. That apart, even in paragraph 7 of the English version of the grounds of detention supplied to the petitioner and annexed to the petition as Exhibit B it is categorically mentioned by the Detaining Authority that he is subjectively satisfied that the petitioner is a dangerous person as defined by Section 2(b-1) of the M.P.D.A. Act. As such, we are unable to concur with the submission of Mr.Tripathi, the learned counsel for the petitioner, in this regard.

5 Next submission advanced by Mr.Tripathi, the learned counsel for the petitioner, to assail the preventive detention of the

petitioner is to the effect that though the compilation furnished to the petitioner reflecting the grounds of detention as well as material relied by the Detaining Authority runs into 538 pages, pages bearing nos.325 to 333 were not supplied to the petitioner. By relying on judgment in the matter of **Smt.Shalini Soni vs. Union of India and Others**² it is argued that grounds communicated to the detenu must reveal the whole of the factual material considered by the Detaining Authority and not merely the inferences of fact arrived at by the Detaining Authority. It is constitutional responsibility of the Detaining Authority to supply all basic facts and material relied upon in the grounds to the detenu and failure to do so would vitiate the detention. It is argued that the detenu could not make effective representation for want of documents relied by the Detaining Authority i.e. after page no.324 to page no.333. As against this, duly sworn affidavit of the Detaining Authority categorically mentions that each and every document relied by the Detaining Authority was supplied to the petitioner and his signature has been obtained on each and every page by way of acknowledgment.

² AIR 1981 SUPREME COURT 431

6 We have perused the original record and we have confirmed the fact from the original record that each and every document relied upon by the Detaining Authority and found in the original record is supplied to the petitioner and the petitioner has signed on front page of each document in token of its receipt. From original record we have found that the petitioner has received the documents even from page nos.324 to 333. He has signed on each front page of those documents in token of receipt of the same. Therefore, it cannot be said that right of the petitioner to make effective representation is violated due to non-supply of relevant documents to the petitioner.

7 Relying on ground no.5(e) set out in the petition, Mr.Tripathi, the learned counsel, further argued that the Detaining Authority has not promptly acted and has not submitted report to the State Government forthwith and expeditiously, as required by provisions of Section 3(3) of M.P.D.A. Act. In this regard, we have noted the fact that the petitioner was actually detained on 31st January 2019 as stated in the affidavit dated 16th

July 2019 sworn by the Deputy Secretary, Home Department (Special) of the State of Maharashtra. This fact is not disputed by the petitioner by filing any counter affidavit. In its reply affidavit, the Detaining Authority has candidly stated in paragraph 12 that after issuance of Detention Order on 24th January 2019, the report under Section 3(3) of the M.P.D.A. Act was forwarded to the State Government on 29th January 2019, as there was holiday on 26th January 2019 and 27th January 2019, being fourth Saturday and Sunday. In this context, as actual detention of the petitioner took place on 31st January 2019 as stated in the affidavit of the State, this ground is of no avail to the petitioner.

8 Next ground urged by the learned counsel for the petitioner is to the effect that the detenu has right to lead evidence in rebuttal, produce witnesses and to examine them as well as to seek assistance of a friend/lawyer before the Advisory Board. These three rights of the detenu, as recognized by the Honourable Supreme Court in its judgment in the matter of Harbans Lal vs. M.L.Wadhawan and Others³ and A.K.Roy vs.

3 (1987) 1 Supreme Court Cases 151

Union of India and Another⁴ are not complied by the State. The petitioner is not apprised of these rights before he was interviewed by the Advisory Board, and as such, the Detention Order is vitiated.

9 To counter this submission, Ms.Mhatre, the learned APP, relied on the judgment of the Honourable Apex Court in the matter of **State of Maharashtra and Others vs. Shri Ramchandra Rammilan Mishra**⁵ and argued that the detenu is always free to produce witnesses before the Advisory Board in order to rebut the allegations leveled. It is not obligatory on the part of the Advisory Board to summons witnesses but it is duty of the detenu to produce the witnesses.

10 We have considered the submissions so advanced. We may note that grounds of detention at Exhibit B annexed to the petition contains following paragraphs 13 and 14 :

4 1982 CRI.L.J. 340

5 (2004) 4 Supreme Court Cases 509

“13 You are further informed that if you wish to make any representation to the Advisory Board against the detention order, you may do so and address it to the Chairman, Advisory Board, constituted under Section 9 of the said Act, C/o. Desk Officer, Desk-10, Home Department (Special), Mantralaya, Mumbai – 400032 and submit it through the Superintendent of the Jail, where you are detained.”

“14 You are also further informed that you shall be heard in person by the Advisory Board in due course if the board considers it essential to do so or if you so desire. If you desire to be heard in person by the Advisory Board, you may intimate your desire to the Advisory Board or to the Government of Maharashtra, through the Superintendent of the Jail, where you are detained, so that the Advisory Board may be intimated about it and necessary arrangements can be made to produce you before the Advisory Board on the date fixed by it for the purpose.”

This makes it clear that the petitioner/detenu was well informed by the Detaining Authority that he has right to make the

representation to the Advisory Board against the Detention Order and he shall be heard in person by the Advisory Board. In the matter of A.K.Roy (supra) while considering the provisions of the National Security Act, the Honourable Apex Court has held in paragraph 87 that it could not be held that the detenu has the right of legal representation in the proceedings before the Advisory Board when that choice is denied by the express language of Article 22(3)(b) read with Article 22(1). Paragraph 87 of the said judgment reads thus :

“87 On a combined reading of clauses (1) and (3) (b) of [Article 22](#), it is clear that the right to consult and to be defended by a legal practitioner of one's choice, which is conferred by clause (1), is denied by clause 3(b) to a person who is detained under any law providing for preventive detention. Thus, according to the express intendment of the Constitution itself, no person who is detained under any law, which provides for preventive detention, can claim the right to consult a legal practitioner of his choice or to be defended by him. In view of this, it seems to us difficult to hold, by the application of abstract, general principles or on a priori

considerations that the detenu has the right of being represented by a legal practitioner in the proceedings before the Advisory Board, Since the Constitution, as originally enacted, itself contemplates that such a right should not be made available to a detenu, it cannot be said that the denial of the said right is unfair, unjust or unreasonable. It is indeed true to say, after the decision in the Bank Nationalisation case, that though the subject of preventive detention is specifically dealt with in [Article 22](#), the requirements of [Article 21](#) have nevertheless to be satisfied. It is therefore necessary that the procedure prescribed by law for the proceedings before the Advisory Boards must be fair, just and reasonable. But then, the Constitution itself has provided a yardstick for the application of that standard, through the medium of the provisions contained in [Article 22\(3\)\(b\)](#). Howsoever much we would have liked to hold otherwise, we experience serious difficulty in taking the view that the procedure of the Advisory Boards in which the detenu is denied the right of legal representation is unfair unjust or unreasonable. If [Article 22](#) were silent on the question of the right of legal

representation, it would have been possible, indeed right and proper, to hold that the detenu cannot be denied the right of legal representation in the proceedings before the Advisory Boards. It is unfortunate that courts have been deprived of that choice by the express language of [Article 22\(3\)\(b\)](#) read with [Article 22\(1\)](#).”

However in paragraph 95 of the said report, the Honourable Supreme Court has held that the embargo on the appearance of legal practitioners should not be extended so as to prevent the detenu from being aided or assisted by a friend, who in truth and substance, is not a legal practitioner.

11 In the case in hand, it is not the contention of the petitioner that he is denied right to engage legal practitioner of his choice before the Advisory Board. In the matter of **Harbans Lal (supra)** following are the observations of the Honourable Apex Court in paragraphs 6 and 7 of that judgment :

“6 We have not been told that the Advisory Board has regulated any procedure that oral evidence will not be permitted when it enquires

into orders of detention. Even if there is any such procedure it will be of no legal consequence after the law in this behalf had been laid down by this Court in **A.K.Roy vs. Union of India and Another, 1982 Cri.L.J. 340.** The right to adduce oral evidence by examining witnesses is a right available to a detenu under the above decision and this should be deemed to be incorporated in the statute dealing with detention without trial. Support for this position was sought by the learned counsel for the petitioner from a decision of this Court in **Narendra Purshotam Umrao v. B.B. Gujral & Ors., [1979] 2 S.C.C. 637.** In that case, this Court was dealing with the absence of any express provision in **Section 8(b)** of the COFEPOSA Act placing an obligation to forward the representation made by a detenu alongwith the reference to 'the Advisory Board unlike those contained in Section 9 of the Preventive Detention Act, 1950 and **Section 10** of the Maintenance of Internal Security Act, 1971. It was contended in that case that in the absence of an express provision in this behalf no obligation was cast on the Government to consider the representation made by the detenu before forwarding it to the Advisory Board or to forward the

same to the Advisory Board. After discussing the scope of [Article 22\(5\)](#), this Court held "the constitutional safeguards embodied in [Article 22\(5\)](#) of the Constitution, as construed by this Court, must, therefore, be read into the provisions of Section 8(b) of Conservation of Foreign Exchange and Prevention of [Smuggling Activities Act](#), 1974 to prevent any arbitrary Executive action."

"7 This decision rendered by a three Judge Bench of this Court has laid down that the Constitutional safeguards embodied in [Article 22\(5\)](#) of the Constitution as understood by this Court must be read into [Section 8\(b\)](#) of the COFEPOSA Act. Therefore, the right in a detenu to adduce oral evidence in rebuttal, being a right in the nature of a Constitutional safeguard embodied in [Article 22\(5\)](#) of the Constitution as construed by this Court in A.K. Roy's case (supra) has necessarily to be read into [Section 8\(b\)](#) and (c) of the [COFEPOSA Act](#). If this right is denied to a detenu, the necessary consequence must follow. [Article 22\(7\)](#) enables Parliament to prescribe by law the procedure to be followed by an Advisory Board an inquiry under [Article 22\(4\)\(a\)](#). [Section 8](#) of the

COFEPOSA Act is a sequel to this prescription. There is nothing in [Section 8](#) prohibiting oral evidence of the witnesses tendered by a detenu being taken. The concept of inquiry by the Advisory Board takes within its ambit this aspect of 'hearing' also. This fight has received the seal of approval in A.K. Roy's case.”

12 No doubt the detenu has right to examine himself to examine himself as well as witnesses before the Advisory Board, it is for the detenu to produce the witnesses before the Advisory Board in order to rebut the allegations leveled. In the matter of **Shri Ramchandra Rammilan Mishra (supra)** the Honourable Apex Court has observed thus in paragraph 7 :

“7 The undisputed position, therefore, is that the detenu did not produce any witness for examination and even did not state before the Advisory Board that he wanted to examine the witness or that the witness was present. The High Court seems to have proceeded on the basis that once a representation is made indicating the desire to examine witness, there was no necessity for any oral prayer. That may be so. But as noticed in A.K.

Roy's case (*supra*), it was for the detenu to keep his witness ready for examination. The specific statement of the Secretary to the Advisory Board on affidavit is that detenu did not produce any witness for examination. It was not for the Advisory Board to summon any witness. When the detenu did not produce any witness for examination, there was no necessity for the Advisory Board to require the detenu to produce witnesses. The approach of the High Court which proceeded on the basis as if there was such an obligation on the Advisory Board, therefore, is not right. That apart the Court had nothing concrete before it to surmise that any witness was present, and the failure on the part of the Advisory Board to verify about the same constituted denial of an opportunity. We set aside the judgment of the High Court.”

13 In the case in hand, the petitioner was duly informed of his right to make representation before the Advisory Board as well as his right to be heard in person also by the Advisory Board. It is not the contention of the petitioner that he is denied right to

seek legal assistance before the Advisory Board. Therefore, we are unable to concur with the submission of the learned counsel for the petitioner that procedural safeguards are not followed by the respondents in not apprising the rights which the detenu has when he is produced before the Advisory Board. In the matter of **Kamleshkumar Ishwardas Patel vs. Union of India and Others** with connected appeals⁶ relied by the petitioner, the Honourable Supreme Court has held that the right to make a representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such representation. In the case in hand, this obligation is certainly followed by the State while communicating the grounds of detention to the petitioner. Therefore, the petitioner cannot be heard to say that the petitioner should have been expressly informed that he has right to examine himself or to adduce evidence of other witnesses and to seek assistance of a friend/lawyer of his choice. Paragraphs 13 and 14 of grounds of detention supplied to the petitioner

⁶ (1995) 4 Supreme Court Cases 51

makes the petitioner aware about his right before the Advisory Board. It was for him to adduce his own evidence and to examine witnesses if any, if he so desired. The petitioner has not even clarified in the pleadings whether he had sought for adducing evidence before the Advisory Board and whether he was represented by his friend or the legal advisor before the Advisory Board. Hence, vague averments in this regard cannot render the detention order illegal.

14 Apart from these grounds, nothing else is pointed out to demonstrate that order of detention is illegal. No other ground is pressed in service by the learned counsel for the petitioner.

15 For the reasons stated hereinabove, the petition is devoid of substance. Therefore, the order :

ORDER

The writ petition is dismissed.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)