

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3018 OF 2019

Lakhan Rohidas Jagtap	}	
Age : ____ years, Occupation _	}	
House No. 966,	}	
Mahatma Gandhi Society	}	
Padmavati, Pune	}	... <u>PETITIONER</u> / (Detenu)

VERSUS

1. The Commissioner of Police	}	
Pune.	}	
2. The State of Maharashtra	}	
(Through Addl. Chief Secretary	}	
to Government of Maharashtra	}	
Mantralaya, Home Department	}	
Mantralaya, Mumbai	}	
3. The Superintendent	}	
Yerwada Central Prison,	}	
Pune	}	
4. The Secretary,	}	
Hon'ble Advisory Board	}	
Constituted under Section 9 of	}	
M.P.D.A. Act, 1981, Mantralaya	}	
Mumbai – 400 032.	}	... <u>RESPONDENTS</u>

Ms. Jayshree Tripathi a/w Mr. Udaynath Tripathi for the Petitioner.
Mrs. M.H. Mhatre, APP for Respondent - State

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

RESERVED ON : 11th NOVEMBER 2019
PRONOUNCED ON : 19th NOVEMBER 2019

JUDGMENT (PER S. S. SHINDE, J)

1. Heard both sides.

2. The Petitioner / Detenu Lakhan Rohidas Jagtap has preferred this Petition questioning the preventive detention order passed against him on 15th March 2019 by Respondent No. 1 – Commissioner of Police, Pune City. The said detention order has been passed under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug offenders, Dangerous persons and Video Pirates Act, 1981 (hereinafter referred to as 'MPDA Act'). The said detention order has been issued as the Detenu is a Dangerous person whose activities are prejudicial to the maintenance of public order. The detention order is based on two Crimes i.e. C.R. No. 465 of 2018 registered with Bharati Vidyapeeth Police Station, Pune for the offences punishable under Sections 307, 323, 504, 34 of the Indian Penal Code, and another incident occurred on 21st November 2018 vide C.R. no. 330 of 2018 registered with Sahakarnagar Police Station, Pune for the offences punishable under Sections 37(1)(3), 135 of the Maharashtra Police Act read with 4(25) of Arms Act, and two in-camera statements of witnesses 'A' and 'B', recorded on 20th January 2019 and 5th February 2019 respectively.

3. Though the number of grounds have been raised in the present

petition whereby the detention order has been assailed, however, the learned counsel appearing for the Petitioner / Detenu has pressed only two grounds before us i.e. ground nos. 'e' and 'f'. Those grounds are reproduced herein below in verbatim.

- e. The Petitioner says and submits that the detaining authority has taken into consideration 2 criminal cases vide C.R. No. 464 of 2019 under Section 307, 323, 504, 34 of I.P.C. registered at Bharati Vidyapeet Police Station, Pune, the Second case vide C.R. No. 330 of 2018 under Section 37 (1) (3), 135 of Maharashtra Police Act, r.w. Section 4(25) of Arms Act registered at Sahakar Nagar Police Station, Pune. These two cases are considered by the detaining authority for arriving at his satisfaction and passing the order of detention. It is stated that in C.R. No. 465 of 2018, the Hon'ble Additional Sessions Judge, Pune ordered for release of the detenu on 11.01.2019 by passing a reasoned order running into 3 pages. It is pertinent to note here that the sponsoring authority has not placed before the detaining authority the bail order passed with reasoning in C.R. No. 465 of 2018, what is found at page*

No. 201 of compilation of documents is an operative part of the order, which is cryptic and short order whereas detailed reasoned order is withheld by the sponsoring authority. Thus, the detaining authority is not aware of the reasons given by the Ld. Sessions Court, Pune, there are many vital facts which are most relevant for taking into consideration. The Ld. Sessions Court while granting bail to the detenu has observed in paragraph 5 of the order that since other two Accused were already released on bail therefore, on the ground of parity the detenu is entitled to be released on bail. Further, one vital aspect in the order found in the reasoned order that the detenu is granted bail on furnishing P.R. bond of Rs. 50,000/- with one or two sureties in like amount whereas the detaining authority in the cryptic order at page 201 of the compilation has stated that the detenu will be released on bail on furnishing P.R. Bond of 50,000/- with one surety in like amount. such a variance between two versions in the bail order vitiates the satisfaction of the detaining authority and creates confusion with the detenu. The order of detention is illegal and bad in law for non-placement of vital

documents like reasoned bail order, which is most relevant and relied on by the detaining authority. The order of detention is illegal and bad in law, liable to be quashed and set aside.

- f. The Petitioner says and submits that the detaining authority has taken into consideration two statements of witness 'A' and 'B' recorded in-camera which are found at page 289 and 295. There are lot of variances in recording the statements and their verification done by Asst. Commissioner of Police, Swargate, Pune. The verification by Asst. Commissioner of Police are not done properly as per requirement of law. The Verifying Officer should record his satisfaction to the effect that the incidents stated by the witnesses are true and genuine, which is the requirement of law and in both the verifications the truthfulness of incidents are not disclosed by the Asst. Commissioner of Police, Swargate, Pune. It is a matter of surprise to note that in the verification of witness 'B'. It is stated that witness 'A' has stated on 08.02.2019, which is nothing but a simply copies verification are not according*

to requirement of law and to meet the purpose of verification. Both the statements are not authentic and valid and cannot be taken into consideration by detaining authority merely putting his signature as 'seen' blindly. The order of detention is illegal and bad in law, liable to be quashed and set aside.

4. Learned counsel appearing for the Petitioner / Detenu submits that, the detenu was granted bail in C.R. No. 465 of 2018 by the learned Additional Sessions Judge, Pune on 11th January 2019 by passing a reasoned order running into three pages. However, only operative part of the said order was placed before the detaining authority and reasoning part was not placed. Thus, the detaining authority is not aware of the reasons given by the Ld. Sessions Court, Pune, there are many vital facts which are most relevant for taking into consideration. Since detaining authority had no occasion to look in to the reasons assigned in said bail order, therefore, as a result the relevant material has not been considered, which would have made difference while arrive at subjective satisfaction by the detaining authority. Hence, in such a case subjective satisfaction of detaining authority is vitiated. In support of aforesaid legal proposition, learned counsel appearing for the Petitioner / Detenu placed reliance on ratio laid down in the unreported judgment of the

Division Bench (Smt. V.K. Tahilramani, & Sandeep K. Shinde,JJ.) of the Bombay High Court at Principal seat, in the Case of Hrishikesh @ Sarjerao Baban Takele Vs. The District Magistrate, Sangli and Ors¹ and the Judgment of the Supreme Court in the case of Rushikesh Tanaji Bhoite Versus State of Maharashtra and Ors²

5. Learned counsel appearing for the Petitioner / Detenu relying upon the ground 'f' in the Petition, reproduced herein above, submits that, the statement of the witness 'A' and witness 'B' are not properly verified according to requirement of law to meet the purpose of verification. Both the statements are not authentic and valid and cannot be taken into consideration by detaining authority merely putting his signature 'seen' blindly. In support of aforesaid contention learned counsel appearing for the Petitioner / Detenu placed reliance on the decision in the case of Mrs. Zabin Salim Hamja Shaikh Vs. Shri A.N. Roy and Ors. reported in 2006 ALL MR (Cri) 3324. Therefore, learned counsel appearing for the Petitioner submits that, Petition deserves to be allowed.

6. On the other hand, learned APP appearing for the Respondent – State invites attention of this Court to the affidavit filed by one Dr. K. Ventaktesham, Commissioner of Police, Pune and Mr. Aniruddha Venkatesh

1 Criminal Writ Petition No. 388 of 2017.

2 (2012) 2 Supreme Court Cases 72

Jewlikar, Deputy Secretary (In-charge), Government of Maharashtra, Home Department(Special), Mantralaya, Mumbai and Mr. Devendra H. Chandel, Secretary, Advisory, Board, MPDA Act, 1981, Home Department (Special), State of Maharashtra, Mumbai and submits that, there is a proper application of mind by detaining authority to the material placed before him and said authority has taken note of the fact that, the detenu applied for bail before the Additional Sessions Judge, Pune on 21.12.2018, and said Court granted bail to him on 09.01.2019. It is further submitted that, in-camera statements of witnesses have been properly verified by the Assistant Commissioner of Police, and properly considered by the detaining authority while passing the order of detention. Therefore, relying upon the original record, so also affidavits filed by the Respondents, learned APP appearing for the Respondent – State submits that Petition is devoid of any merits and same may be dismissed.

7. We have appreciated the rival contentions so also perused the original record pertains to the case of the Petitioner and the grounds taken in the Petition and replies filed by Respondents. Admittedly, only the operative part of the bail order granting bail to the Petitioner by the Additional Sessions Judge, Pune on 21.12.2018 was placed before the detaining authority, and not the full text of the order. Therefore, the detaining authority had no occasion to apply his mind to the reasons for granting bail to the Petitioner / Detenu

before recording the subjective satisfaction for passing the order of detention. It was incumbent on the part of the sponsoring authority to place full text of the order granting bail to the Petitioner / Detenu before the detaining authority before passing the detention order. It is true that there is a casual reference in the grounds supplied to detenu while passing the order of detention to the extent that the detenu filed the application for bail in connection with the aforesaid crime and bail was granted to him however, it is an admitted position that the reasoning part of the order of granting bail was not placed before the said authority and copy of the said order was not furnished to the detenu. Therefore, we find considerable force in the submissions of the learned counsel appearing for the Petitioner / Detenu that the concerned authority has no occasion to apply his mind to the reasons assigned by the Sessions Court while granting bail and therefore, subjective satisfaction of the detaining authority is vitiated and in absence of full text of the bail order since not supplied to detenu, he is deprived of making an effective representation against the order of detention.

8. We have verified from the original record has produced before us by Mrs. Mhatre, learned APP that a) verification made by the Assistant Commissioner of Police placed on record in the affidavit of Respondent – Officers is the same as in the original statements, b) the proposal submitted to

the detaining authority was prepared and forwarded by the sponsoring authority, c) the said proposal was passed on the basis of two in-camera statements as well as verification made by the Assistant Commissioner of Police and another d) the verification was made by the Assistant Commissioner of Police remained silent about the truthfulness of the incidents which has covered by the in-camera statements. The verification has dealt with the identification of the complainants and also inquiry from other people residing in the vicinity, and their reply that the incident as narrated by witness 'A' is true. It is observed in the verification that the statement of the witness 'A' and apprehension expressed by other persons residing in the vicinity appears to be genuine and true. However, as observed in the decision of the Division Bench in the case of Mrs. Zabin Salim Hamja Shaikh (Supra), the verification required to be done by the Senior Police Officer of such in-camera statement required as additional condition to be met i.e. the satisfaction of the verification officer regarding the truthfulness of the incident that was claims to have occurred and as disclosed by the respective complainants i.e. witness 'A' and witness 'B'. Such a verification ensures the subjective satisfaction of the Senior Police Officer who has verified the statements so as to ascertain the identity of the witness and truthfulness of his statement. However, in the present case the Assistant Commissioner of Police while recording the statement of witness 'A' has only mentioned that the witness 'A' was called in

the office of the Commissioner of Police, Swargate and inquiry about his name and address was made, and he told his name and address. In order to verify his statement the Assistant Commissioner of Police made inquiry with other people residing in the said vicinity, and it was revealed that, the incident stated by the witness 'A' is correct. However, Assistant Commissioner of Police, has not recorded satisfaction to the effect that incidents stated by the witnesses are true and genuine.

9. In that view of the matter keeping in view the judgment of the Supreme Court in the case of Rushikesh Tanaji Bhoite (Supra) and the unreported judgment of the Division Bench in the case of Hrishi @ Sarjerao Baban Takele (Supra), and the Judgment of the Division Bench in the case of Mrs. Zabin Salim Hamja Shaikh (Supra) and after applying the ratio in the above judgments to the facts of the present case, we are of the considered view that it was incumbent on the part of the sponsoring authority to place full text of the order granting bail in favour of the detenu before the detaining authority so as to facilitate him to take an appropriate decision thereby recording the subjective satisfaction, and secondly the verification made by the Assistant Commissioner of Police is also not keeping in view the mandate of law i.e. the satisfaction of the verifying officer regarding truthfulness of the incident that claims to have occurred as disclosed by the respective

complainants. Such a verification ensures the police officer's subjective satisfaction that the statement as recorded by the Police Inspector was genuine, the identity of the witness has been established and the incident disclosed found to be true. The aforesaid view taken by us gets support from the authoritative pronouncement of the Division Bench (B.H. Marlapalle & Naresh H. Patil, JJ.) in the case of Mrs. Zabin Salim Hamja Shaikh (Supra) and in particular observations in paragraph 8 of the said judgment.

10. In that view of the matter an irresistible conclusion is that, the order of detention cannot legally sustain and therefore, the impugned order is liable to be quashed and set aside. Hence, the following order is passed:

ORDER

- A. The impugned order of Detention bearing D.O. No. PCB/DET/828/2019 dated 15.03.2019 issued under Section 3 of M.P.D.A. Act 1981 by the Respondent No. 1 is hereby quashed and set aside.
- B. The Petitioner / Detenu - Lakhon Rohidas Jagtap be set at liberty forthwith, if not required in any other case.
- C. Rule made absolute in above terms with no order as to costs.

(N. B. SURYAWANSHI, J.)

(S. S. SHINDE, J.)