

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL WRIT PETITION NO. 146 OF 2020**

Mr.Jaggu Sardar @ Jagdish Tirathsing )  
 Labana @ Punjabi )  
 Age:- 38 Years, Occ.:- Business, )  
 R/at:- Barrack No. 356, Room No.7 )  
 Sonar Lane, Shiru Chowk, )  
 Ulhasnagar No.2, District – Thane. )  
 (At the present undergoing detention in the )  
 Yarvada Central Jail, Pune) .... Petitioner

**V/s.**

1. The State of Maharashtra )  
 (Through the Office of the Government )  
 Pleader, High Court, A.S. Mumbai) )
2. Section Officer, )  
 Home Department (Special), )  
 Second Floor, Main Building, )  
 Mantralaya, Mumbai – 32. )
3. Police Commissioner, )  
 Police Commissioner Office, Thane. ) ...Respondents

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Mr.Anil D.Joshi for the Petitioner.

Mrs.M.H.Mhatre, APP, for the Respondent -Sate.

**CORAM**

:

**S.S. SHINDE &  
V.G.BISHT, JJ.**

**RESERVED ON :**

**27TH FEBRUARY, 2020**

**PRONOUNCED ON:**

**9TH MARCH, 2020**

.....

**JUDGMENT (PER: V.G.BISHT, J.)**

1. Rule. Rule made returnable forthwith and heard with the consent of learned Counsel for the parties.

2. Commissioner of Police, Thane in exercise of the powers conferred under Section 3 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 (Maharashtra Act No. LV of 1981) (hereinafter referred to as "M.P.D.A. Act") read with Government Order, Home Department (Special) No. MPDA-0619/CR-121/SPL-3 (B) dated 28<sup>th</sup> June, 2019 has ordered the detention of Jaggu Sardar @ Jagdish Tirathsing Labana @ Punjabi, resident of Barrack No. 356, Room No. 7, Sonargalli, Shiru Chowk, Ulhasnagar No.2, Dist. Thane (hereinafter referred to as "detenu") vide order No.TC/PD/CO/MPDA/09/2019 dated 14<sup>th</sup> October, 2019.

3. Pursuant to this order, the State Government vide order dated 21<sup>st</sup> November, 2019 approved the detention and directed the detenu to be detained for a period of twelve (12) months on the basis of report submitted by the Advisory Board constituted under M.P.D.A. Act. Both the orders are impugned in the present Petition.

4. The validity of the impugned orders has been challenged on various grounds enumerated in the Petition but following main grounds have been pressed into service by the detenu :

- (i) Non-application of mind;

- (ii) Non-consideration of representation submitted by detenu;  
and
- (iii) Non-explanation of subjective satisfaction.

5. The object and scope of detaining a person under Section 3 of the M.P.D.A. Act is maintenance of public order, peace and tranquility. The detaining authority in the order of detention has also recorded as under :

*“Whereas, I the Commissioner of Police of the Police Commissionerate Thane is satisfied with respect to the person known as Jaggu Sardar @ Jagdish Tirathsingh Labana @ Punjabi, (Age 38 yrs) R/o. Barrack No. 356, Room No.7, Sonargalli, Shiru Chowk, Ulhasnagar No.2, Dist. Thane, that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order directing him to be detained 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 (Mah. Act No. LV of 1981) (hereinafter referred to as “the said Act”).”*

6. Thus, while passing the order of detention, the object of Section 3 of the M.P.D.A. Act as noted hereinabove was uppermost in the mind of detaining authority.

7. Mr.Joshi, learned Counsel for the petitioner/detenu, has vehemently outlined threefold submissions. Firstly, the order of detention suffers from vice of non-application of mind. Elaborating the same, learned Counsel submitted that detaining authority took into consideration the old cases registered against detenu without taking into consideration that those all cases are pending for adjudication and in none of the case the detenu is convicted. Secondly, the order of detention was passed without considering representation made by the detenu and, Thirdly, the detention order suffers from material irregularity inasmuch as the detaining authority has failed to explain subjective satisfaction which is required for passing of the order of detention.

8. The learned Counsel also placed reliance on the judgment passed by the Division Bench of Bombay High Court Bench at Aurangabad in **Criminal Writ Petition No. 1122 of 2017 on 4<sup>th</sup> December, 2017.** ( Mohammed Mustafa s/o. Mohammad Mastan Versus The State of Maharashtra).

9. In opposition, learned APP would contend that detenu has failed to demonstrate as to how there was non-application of mind before passing of detention order. According to him, it is wrong to say that the detaining authority considered the old cases while issuing the order of detention. Rather, detaining authority relied on C.R. No. I-331/19 under Sections

387, 504, 506 of the Indian Penal Code read with under Sections 37 (1), 135 of Maharashtra Police Act and C.R. No. I-347/19 under Sections 387, 386 read with under Sections 4,25 of Arms Act read with under Sections 37 (1), (135) of Maharashtra Police Act of Ulhasnagar Police Station, Thane and in-camera statements of witnesses "A" and "B" recorded on 29<sup>th</sup> August, 2019 and 2<sup>nd</sup> September, 2019 respectively and it is only thereafter being satisfied the detaining authority passed the detention order.

10. The learned APP then next contended that despite giving opportunities to the detenu, no such representation, as is claimed to has been moved, was ever presented either to the office of detaining authority or before the State Government and in such circumstances, there was no question of deciding or considering the representation of the detenu.

11. The learned APP then lastly submitted that after verifying the truthfulness and genuineness of the statements of witnesses recorded in those crime numbers and as also having regard to in-camera statements, the detaining authority arrived at a subjective satisfaction and accordingly the order of detention came to be passed. There being no merit in the contentions of the detenu, the same is liable to be dismissed, argued learned APP.

12. We intuitively feel that learned Counsel for the detenu is not right in his reading of whole obtaining situation reflecting through the record and therefore we do not find merits in his contentions. Let we qualify this with reasons.

13. It appears from the record that there are two relied upon cases of Ulhasnagar Police Station C.R. No. I-331/19 under Sections 387, 504, 506 of the Indian Penal Code read with under Sections 37 (1), (135) of Maharashtra Police Act came to be registered against the detenu on 22<sup>nd</sup> August, 2019 and is pending in the concerned Court whereas C.R. No. I-347/19 under Sections 387, 386 read with under Sections 4,25 of Arms Act read with under Sections 37 (1), (135) of Maharashtra Police Act of was registered on 31<sup>st</sup> August, 2019 and was under investigation at the time of conveying the detenu the grounds of detention. It must be kept in mind here that detention order came to be passed on 14<sup>th</sup> October, 2019. Thus, the above noted crime numbers had just been registered and found the basis for passing of order of detention.

14. In both the above noted crime numbers, the detaining authority carefully took into consideration the statements of all the witnesses. It also considered the gravity and seriousness of the offences allegedly committed by the detenu. Then, there are in-camera statements of witnesses "A" and "B".

15. Importantly enough, the truthfulness of both these in-camera statements were verified by ACP, Ulhasnagar Division.

16. The detaining authority, while appreciating in-camera statements and as also taking into consideration the registration of those two crime numbers i.e. C.R. Nos. I-331/19 and I-347/19, was of subjective view that the citizens of the localities and area from where those in-camera statements came to be recorded were under constant shadow of threats at the hands of detenu and that amounted to acting in a manner prejudicial to the maintenance of public order, peace and tranquility.

17. From the above, what this leads to, it should need no stressing, is that the detaining authority was not oblivious of impending threats and disturbance having regard to the propensity of the detenu indulging in criminal activities. Admittedly, those in-camera statements and as also the said crime numbers thus enabled detaining authority to arrive at subjective satisfaction.

18. What is at any rate more pertinent is that indeed there was not only application of mind but subjective satisfaction as well. To note that there was no irregularity on this count would be but fair comment.

19. A very loud claim has been made by the detenu that the order of detention came to be passed without considering representation made by him. While, on the other hand, respondent No.3 has categorically denied of having received any report of whatsoever nature from the side of detenu. This is apparent from the affidavit-in-reply filed by respondent No.3. Before we look into this, we deem it proper to refer a letter (**Exh. G**) addressed to the detenu wherein the grounds of detention were outlined by Commissioner of Police, Thane City.

20. A closer reading of the said letter would reveal that not only the grounds of detention were made known to detenu but all the relevant and necessary documents were given to him for his perusal. The detenu was also apprised of his right to make a representation to the detaining authority, if he so wished and was also given the name of authority to which representation was to be made. Not only that, he was also made aware of his right to make any representation to the Advisory Board against the detention order and his right of personal hearing by the Advisory Board.

21. We have already pointed out from the affidavit-in-reply of the detaining authority that no such representation was ever received by the detaining authority, a fact which is not at all controverted or assailed by detenu in any form and shape. If at all any representation was moved by detenu as is canvassed all along, it was incumbent on the part of the

detenu to furnish the details thereof and acknowledgment of his representation having so received by the competent authority. Except bare words nothing is forthcoming. This being so, we are not inclined to entertain the ground of non-consideration of representation at the hands of detaining authority.

22. We have carefully gone through the judgment relied by the learned Counsel for the detenu. In the said judgment, the detention order was challenged on the grounds that the inquiry was completed by Deputy Commissioner of Police, Aurangabad and that the period for which the petitioner could have been detained was only six months, however, the impugned order of the State Government directing his detention was beyond the period of six months and that copies of the statements of witnesses recorded in camera were not supplied to him. In the case in hand, none of the grounds exists and therefore, the petitioner cannot take advantage of the said decision.

23. It needs to be said and repeated, that not only there was application of mind but subjective satisfaction as well. The enduring conclusion from the above discussion is, first, that after taking due consideration of the in-camera statements and, second, that there were two crime numbers as well and over all gravity and seriousness of the sequence of events, the detaining authority was justified in passing the order of detention. We are of the confirmed view that no case is made

out to cause interference in the impugned order of detention, Hence, writ petition stands rejected. Rule stands discharged.

**(V.G.BISHT, J.)**

**(S.S. SHINDE, J.)**