

Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.541 OF 2020**

Sagar Ramdas Yelmame
Age 23 years, r/o. Avdhoot Wadi,
Panchavati, Nashik, District-Nashik .. Petitioner

Versus

1. The Commissioner of Police
Nashik City.

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. .. Respondents

Ms. Jayshree Tripathi I/b. Mr. U.N. Tripathi for the Petitioner.
Mrs. M.H. Mhatre, APP for the State.

**CORAM : S.S.SHINDE &
M.S.KARNIK, JJ.**

DATE : OCTOBER 9, 2020

JUDGMENT : (PER M.S. KARNIK, J.)

Rule. Rule made returnable forthwith. Heard finally
with the consent of the learned counsel appearing for the
parties.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner challenges an order dated 10th October 2019 issued 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 ('M.P.D.A. Act' for short).

3. The order of detention dated 10th October 2019 came to be passed and served upon the Petitioner. The same was issued by the Respondent No.1-the Commissioner of Police, Nashik City viz. the detaining authority.

4. Shorn of unnecessary details the facts are as under :-

The detaining authority was of the opinion that the criminal record of the Petitioner shows that he is a "dangerous person" as defined in M.P.D.A. Act. Because of the dangerous activities of the Petitioner, people residing in the jurisdiction of Panchvati Police Station and adjoining areas remain under constant fear and terror. The Petitioner is indulging in offences, like attempt to murder, making preparation to commit dacoity, assembling for purpose of committing dacoity, mischief by fire of explosive substance with intent to cause damage to any property, voluntary causing hurt by dangerous weapons or

means, voluntary causing hurt, intentional insult with intent to provoke breach of the peace, criminal intimidation, possession of arm without holding license etc. and the said serious offences have been registered against the Petitioner at Panchvati Police Station, Nashik City under chapters XVI & XVII of IPC 1860 and Chapter V of Arm Act. In camera statements of witnesses 'A' and 'B' also came to be recorded apart from the various offences registered against the Petitioner. The detaining authority therefore came to a clear and unambiguous conclusion that the Petitioner is a hardened and dreaded criminal who has created fear and terror in the localities mentioned in the detention order for which the normal penal laws and preventive actions are futile to curb his unlawful activities. On the basis of the materials the detention order came to be passed.

5. The detention order is challenged on various grounds. Learned counsel for Petitioner restricted her challenge to the detention order on ground (e) of the Petition. Ground (e) of the Petition reads thus :-

“(e) The Petitioner says and submits that the detenu was furnished with copies of grounds of detention duly numbered, serially in English language as well as in Marathi language. It is pertinent to note that the detaining authority in the opening paragraph of the grounds of detention is communicating to the detenu the grounds as mentioned in paragraph No.4(a), 4a(i) and 4(a)(ii) and 5(i) and 5(ii), on which the order of detention has been passed. However, the grounds of

detention in English language do not contain and/or missing paragraphs 3(a), 3(b), 4 and 4(a). It is therefore, clear that the detenu is furnished an incomplete grounds of detention which amounts to non-communication of grounds of detention. Thus violating the first facet of Article 22(5) of the Constitution of India. However, it is to be further noted that in Marathi translation of paragraph 3(a), 3(b), 4, 4(a) are found in the compilation. Thus confusing the detenu to make effective representation. The detenu is deprived of comparing the Marathi translation with the English version of grounds of detention, to make effective representation. It is further to be noted that in the English grounds of detention there is a signature of the detaining authority at the end of the grounds served, whereas no such signature of the detaining authority is found in Marathi grounds of detention. Such a discrepancy creates confusion to the detenu and this amounts to total non communication of grounds of detention violating both the facets of Article 22(5) of the Constitution of India. The order of detention is illegal and bad in law, liable to be quashed and set aside."

6. Learned counsel would submit that the grounds of detention in English language as served on the detenu do not contain paragraphs 3(a), 3(b), 4 and 4(a). According to her the detenu is furnished incomplete grounds of detention which amounts to non-communication of grounds of detention. This according to her violates the provisions of Article 22(5) of the Constitution of India. She however, says that in the Marathi translation of the detention order, paragraphs 3(a), 3(b), 4, 4(a) are found. Learned counsel therefore submits that the detenu was deprived of making any effective representation. She would submit that the impugned order of detention is therefore vitiated.

7. Learned APP appearing on behalf of the Respondent No.1 in response to the aforesaid contentions of learned counsel for Petitioner, invites our attention to the affidavit filed on behalf of the Respondent No.1. She submits that no prejudice is caused to the detenu and in any case according to her, the detenu was served with a complete copy of the grounds in the English version of the order as well as Marathi translation of the order. She relied upon the signature of the detenu on every page of the detention order acknowledging the receipt thereof which contains paragraphs 3(a), 3(b), 4, 4(a).

8. We have heard learned counsel. In view of the narrow controversy it would only be pertinent to reproduce paragraph 12 of the affidavit filed on behalf of the Respondent No.1 which reads thus :-

“12. With reference to ground 5(e) of the petition, it is denied that the detenu is furnished with incomplete grounds of detention as para 3(a), 3(b), 4 and 4(a) were missing in grounds of detention in English thereby violating the first facet of Article 22(5) of the Constitution of India.

It is submitted that the order of detention has been executed on detenu on 10.10.2019 and he has been detained in jail on same day. At that time the detenu has been served with the complete set of order of detention, grounds of detention along with its compilation and translation of the same in Marathi in order to make effective representation against the order of detention. On each page of the said compilation in English as well as in Marathi, the signature of the

detenu has been obtained as an acknowledgment. Thus, there is no substance in the say of the petitioner in this para. I crave leave to refer to and rely upon of acknowledgment taken on the office copy on the grounds of detention.

It is further submitted that the order of detention has been issued originally in 'English' language which bears my signature whereas the translated copy of grounds of detention in Marathi, furnished to the detenu bears seal of my office. Thus, it is denied that there is discrepancy on this count which creates confusion to the detenu and amounts to non-communication of grounds violating both the facets of the Constitution of India."

9. Considering the nature of controversy, we have perused the original records. The English version of the impugned order bears the signature of the Petitioner on each and every page with an endorsement that he has received the original copy of the impugned order and even the contents are explained to him in vernacular. We find that even paragraphs 3(a), 3(b), 4, 4(a) are very much part of the impugned order which also bears the signature of the Petitioner. Even the affidavit filed by the Respondent No.1 records that on each page of the said compilation in English as well as in Marathi, the signature of the detenu has been obtained. The record reveals that the Petitioner has acknowledged that he has received the original copy and that the contents are explained in Marathi language. The endorsement alongwith his signature is seen on each page. We further find from the affidavit that order of

detention is issued originally in English language which bears the signature of the detaining authority whereas the translation copy of grounds of detention in Marathi furnished to the detenu bears the seal of his office. The Petitioner does not dispute that the Marathi translation contains all grounds. No prejudice is caused to the Petitioner according to us.

10. We, therefore, do not find any merit in the contention of the Petitioner that the detention order is vitiated on the ground that the some of the paragraphs alleged to be missing in the impugned order supplied to the Petitioner.

11. We, therefore, find no merit in this Petition. The Writ Petition is dismissed.

12. Rule is discharged with no order as to costs.

13. This judgment will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this judgment.

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)

Diksha
Rane

Digitally signed
by Diksha Rane
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2020.10.15
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