

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1117 OF 2021

Ajay Nagesh Nagmode
Age : 26 Years, Occ. : Nil
Residing at Near Gautam Vidyalay,
Habhu Vasti, Old Degaon Naka,
Solapur.
(At present detained in Yerwada
Central Prison)

.... Petitioner
(Detenu)

Vs.

1. The State of Maharashtra
Through the Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai – 400 026
2. The Commissioner of Police
Solapur, having office at
New Administrative Building,
Gandhi Nagar, Solapur

3. The Superintendent,
Yerwada Central Prison, Pune
- Respondents

Mr. Satyavrut Joshi, Advocate for Petitioner.
Mr. J.P. Yagnik, APP for Respondent-State.

**CORAM : S.S. SHINDE &
MANISH PITALE, JJ.**

JUDGMENT RESERVED ON : 22.04.2021
JUDGMENT PRONOUNCED ON : 04.05.2021

JUDGMENT (PER MANISH PITALE, J.)

1. Heard respective Counsel. Rule. Rule made returnable forthwith with the consent of the parties.

2. By this Writ Petition, the Petitioner has challenged detention order dated 11th January, 2021 passed by the Respondent No.2, Commissioner of Police, Solapur 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 (hereinafter referred to as “MPDA Act” for short).

3. Although number of grounds have been raised in the writ petition, Mr. Satyavrat Joshi, the learned counsel appearing for the Petitioner, has pressed only three grounds in order to challenge the said detention order. The first ground of challenge raised on behalf of the

Petitioner is that the verification of the in-camera statements of two witnesses was not in accordance with law and that the detaining authority i.e. Respondent No.2 did not properly verify the truthfulness of the in-camera statements. On this basis, it was submitted that the detention order stood vitiated as it relied upon the said two in-camera statements of witnesses.

4. Secondly, it was submitted that translation of certain documents served alongwith the detention order was not proper, as a result of which the valuable right of the Petitioner under Article 22(5) of the Constitution of India stood violated. Thirdly, it was submitted that even as per the detention order, the Respondent No.2, detaining authority, has placed reliance on only one criminal proceeding bearing C.R. No. 966 of 2020 dated 22nd August, 2020. All other criminal proceedings were merely referred to and it was specifically stated in the detention order that such earlier criminal proceedings and an externment order passed in the years between 2015 and 2019, were not being relied upon. On this basis, it was submitted that the detaining authority-Respondent No. 2 could not have passed the

detention order on a singular criminal proceeding of the year 2020 alongwith the two in-camera statements of witnesses. It was further submitted that there was no live link between the said criminal proceeding initiated on 22nd August, 2020 and the detention order dated 11th January, 2021. Learned counsel appearing for the Petitioner specifically submitted that the Petitioner did not satisfy the definition of “dangerous person” as defined in Section 2(b-1) of the MPDA Act.

5. The learned counsel appearing for the Petitioner relied upon following judgments of this Court.

- (i) Criminal Writ Petition No. 660 of 2015 (Ravindra Singh @ Mulla Singh son of Sarvansingh Gaur Vs. Commissioner of Police (Nagpur City), Nagpur and Ors.) (Relevant Paras 8 and 9),
- (ii) Criminal Writ Petition No. 768 of 2015 (Sanjay son of Ramlal Sahu Vs. State of Maharashtra & Anr. (Relevant paras 7,8 & 9),
- (iii) Vijay Raju Gupta Vs. R.H. Mendonsa & Ors., reported in (2001) All Mah. Reporter (Criminal), page 48. (Relevant paras 5,6 & 7).
- (iv) Shahajan wife of Kalim Khan Shamshad Khan Pathan Vs. State of Maharashtra & Anr., reported in (2016) All Mah. Reporter (Criminal), 4233.

AND

Criminal Writ Petition No. 245 of 2014 (Mrunali Virendra Lonare Vs. Commissioner of Police & Ors. (Relevant paras 9,10, & 11)).

6. On the other hand, Mr. Yagnik, the learned APP submitted that none of the grounds specifically raised on behalf of the Petitioner deserve any consideration. It was submitted that insofar as the alleged improper verification of the in-camera statements was concerned, the position of law had been recently reiterated by this Court in its judgment dated 19th March, 2020 passed in Criminal Writ Petition No. 336 of 2021 (Pravin Ganpat Kakad Vs. Commissioner of Police, Nashik City, Nashik and Others). In the said judgment, this Court had relied upon an earlier judgment of Division Bench of this Court passed in the case of Santosh Kashinath Kamble Vs. State of Maharashtra and Ors. (judgment and order dated 3/4 March 2016 in Criminal Writ Petition No. 4510 of 2015). It was laid down categorically in these judgments that no specific format of verification was provided under the law and that as long as a Senior Officer had verified the in-camera statements and truthfulness of the same was believed by the detaining authority,

no fault could be found with such in-camera statements.

7. The learned APP submitted that in the present case the Assistant Commissioner of Police had specifically verified the truthfulness of the in-camera statements and endorsed the same, which was believed to be true by the detaining authority. Insofar as the question of true and correct translation of documents was concerned, the learned APP again relied upon the aforesaid judgment of this Court in the case of Pravin Ganpat Kakad (*supra*) and he submitted that as long as the error in translation was minor and no prejudice was caused to the detenu in making an effective and purposeful representation, no favourable order could be passed in the case of such a detenu merely because there was some minor error in translation. Insofar as the third ground was concerned, according to the learned APP, the criminal proceeding dated 22nd August, 2020, on which the detaining authority placed reliance did have a live link with the detention order, particularly because the in-camera statements were verified in November, 2020.

8. We have heard the learned counsel appearing for rival parties and perused the petition, documents filed therewith as also the record produced before us.

9. Insofar as the first ground regarding alleged improper verification of the in-camera statements is concerned, we have seen the original record and we find that the Assistant Commissioner of Police physically verified the correctness and truthfulness of such statements and thereupon endorsed each statement appending her signature to the same. In the detention order, the detaining authority i.e. Respondent No.2 referred to such an exercise carried out by the Assistant Commissioner of Police and also specifically recorded that the in-camera statements were found to be true by the detaining authority also. Considering the aforesaid record, we are of the opinion that the requirement of law in this regard stood satisfied.

10. Insofar as the judgments on which the learned counsel appearing for the Petitioner has placed reliance, suffice it to say that in those individual cases, this Court found on facts that the

in-camera statements could not be said to be reliable as their verification was not carried out in accordance with law. A perusal of the judgments of this Court, on which the learned APP has placed reliance i.e. Pravin Ganpat Kakad (supra) and Santosh Kashinath Kamble (supra), shows that there is no specific format laid down in law regarding verification of the in-camera statements. The law requires that a superior officer verifies the correctness of such in-camera statements and that the detaining authority refers to such verification and thereupon records satisfaction about the truthfulness of the same.

11. A perusal of the impugned detention order would show that the detaining authority in paragraph 5.2 has specifically referred to the manner in which the superior officer i.e. Assistant Commissioner of Police verified the in-camera statements and the fact that the detaining authority itself perused the record alongwith the verification and believed in the truthfulness of such in-camera statements. We find that the requirement of law has been satisfied in the present case and that therefore there is no substance in the said ground raised on behalf of the Petitioner.

12. Insofar as the ground regarding improper translation of documents vitiating the detention order is concerned, a perusal of the writ petition would show that no such specific ground has been raised therein. Even otherwise, when we specifically asked the learned counsel appearing for the Petitioner as to what were the glaring errors in translation, he could not point out any such aspect of the matter, except for showing that there were some minor errors in a few words translated in a few documents. The learned counsel for the Petitioner could not demonstrate how such minor error had prevented the Petitioner from moving an effective and purposeful representation. Therefore, there is no substance in the said ground raised on behalf of the Petitioner.

13. The last ground raised on behalf of the Petitioner pertains to the reliance placed by the Respondent No.2-detaining authority on only one criminal proceeding bearing C.R. No. 966 of 2020, registered on 22nd August, 2020 against the Petitioner. A perusal of the impugned detention order shows that although reference to earlier criminal

proceedings registered between the year 2015 and 2020 have been referred to, but it has been specifically stated in paragraph 4.1 that the detention order is not based on such offences. In fact, it is also categorically stated that the detention order is not based on an externment order issued on 30th March, 2019 and therefore, it becomes clear that the detention order is based only on the aforesaid CR No. 966 of 2020 dated 22nd August, 2020 read alongwith the two in-camera statements recorded in November, 2020.

14. The question is whether the aforesaid material i.e. the single criminal proceeding dated 22nd August, 2020 for offences under Sections 326, 324, 323, 504 and 506 read with 34 of the Indian Penal Code, alongwith the two in-camera statements, would be sufficient for the detaining authority to reach its conclusion that the Petitioner is a “dangerous person” as defined under Section 2(b-1) of the MPDA Act and that it was necessary to issue the detention order so as to maintain public order.

15. A perusal of the definition of “dangerous person” given in the MPDA Act would show that, it reads as follows:

“2. Definitions. In this Act, unless the context otherwise requires,—

(a)

(b)

(b-1) “dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. (LIV of 1959;).

16. A perusal of the said definition shows that when a person either individually or as a member of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapters XVI and XVII of the Indian Penal Code or any offences punishable under Chapter V of the Arms Act, he would stand covered under the said definition.

17. It is significant that such a person should be habitually committing such offences, which disturbs public order. In the present case, the Respondent No. 2-detaining authority has specifically relied

upon only the aforesaid C.R. No. 966 of 2020 dated 22nd August, 2020 and the in-camera statements. A perusal of the contents of the in-camera statements as quoted in the detention order, would show that the witnesses have referred to incidents that occurred in September 2020 and October 2020. In such a situation, when the detaining authority itself has placed reliance on a singular criminal proceeding and two in-camera statements, it becomes crucial that there is a live link established between the criminal proceeding relied upon and the detention order issued by the detaining authority.

18. In the present case, the singular criminal proceeding was registered on 22nd August, 2020, while the impugned detention order was issued on 11th January, 2021. There was a gap of about five months between these two dates. Even the in-camera statements pertain to incidents that allegedly occurred in September 2020 and October 2020, although it is recorded that such in-camera statements were verified in November 2020. We find that even if the in-camera statements are to be taken into consideration, there does not appear to be a live link between the material on which reliance is placed by the

detaining authority and the impugned detention order issued on 11th January, 2021. The nature of offences registered against the Petitioner on 22nd August, 2021 can be taken care of by ordinary law. The extraordinary step of issuing the detention order has to be justified on the basis of material that can demonstrate that the detenu is a dangerous person and that he has been habitually indulging in such activity, resulting in disturbance of public order.

19. The Hon'ble Supreme Court in the case of **T. Devaki Vs. Government of Tamil Nadu and others**, reported in **(1990) 2 SCC 456** held that there is a basic difference between 'Law and order' and 'public order'. The question whether a man has committed only a breach of law and order or has acted in the a manner prejudicial to public order, is a question of degree and extent of the reach of the act upon the society. It was held that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so much as to bring the case within the purview of preventive detention law. Such a solitary incident can only raise a law and order problem and no more. Applying the said position of law to the facts of the present case shows

that the contention raised on behalf of the petitioner deserves to be accepted.

20. On the basis of the material placed on record and the specific criminal proceeding, as also in-camera statements relied upon by the detaining authority, we are not convinced that such an extraordinary step of issuance of detention order was justified. The nature of such detention order is necessarily drastic because it results in detaining a person without recourse to ordinary law. It has to be based on proper subjective satisfaction recorded on the basis of cogent material indicating that unless such a drastic step is taken, there would be disturbance to public order. On the basis of the material placed before us, we are not satisfied that such a drastic action of issuing the impugned detention order was justified in the facts and circumstances of the present case. Therefore, we are inclined to allow the Writ Petition on the said ground.

21. Accordingly, the Writ Petition is allowed.

22. The impugned detention order dated 11th January, 2021

issued by the Respondent No.2, Commissioner of Police, Solapur, is quashed and set aside.

23. Consequently, the Petitioner is directed to be released forthwith unless required in any other case.

24. Rule is made absolute in above terms.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)