

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 531 of 2021

Pratap s/o Ajay Kharare,
aged about 30 years,
R/o Vijay Nagar, Near Government Godown,
Dist. Akola.
(Presently at Central Prison, Nashik).

...PETITIONER

Versus

1. The State of Maharashtra,
through its Secretary,
Home Department, Mantralaya,
Mumbai – 32.
2. District Magistrate, Akola.
3. Superintendent, Central Prison,
Nashik, District Nashik.

...RESPONDENTS

Mr. R.M. Daga, Advocate for the petitioner.
Mr. T.A. Mirza, A.P.P. for the respondents/ State.

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CORAM : M.S. SONAK AND
PUSHPA V. GANEDIWALA, JJ.
DATE : OCTOBER 28, 2021.

ORAL JUDGMENT : (PER : M.S. SONAK, J.)

Heard Mr. Daga, learned counsel for the petitioner
and Mr. Mirza, learned A.P.P. for the respondents/ State.

2. The petitioner challenges the orders dated 12/05/2021 and 28/06/2021 detaining him under the provisions 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 (**“the said Act”**).

3. One of the grounds raised in support of this petition is that the detaining authority has relied upon “in-camera statements” of two witnesses. Mr. Daga submits that neither in the verification of these two statements nor in the impugned order any satisfaction has been recorded about unwillingness of such witnesses to come forward and give a statement against the petitioner. He submits that this was necessary before any subjective satisfaction to be said to have been genuinely reached before making the impugned detention order. He relies on the decision of this Court in the cases of **Sanjay s/o Ramlal Shahu Vs. State of Maharashtra and another (Criminal Writ Petition No. 768/2015 decided on 01/02/2016)** and **Gokul Sahabrao Sabale Vs. The Commissioner of Police Pune & Ors.,**

2017 ALL MR (Cri) 2051 in support of his contention.

4. Mr. Mirza, learned A.P.P. defends the impugned detention order based on the reasoning contained therein as also the explanations provided in the written filed by the detaining authority.

5. We have considered the rival contentions and we are satisfied that the impugned detention order as also the order confirming the same are required to be set-aside because, in this case, neither in the verification the statements of the witnesses who have given the in-camera statements nor in the impugned order there is any satisfaction recorded about the unwillingness of such persons to come forward and give statements against the petitioner, in the event, regular prosecution were to be launched against the petitioner. In the absence of any material on this aspect, we have to conclude that the detaining authority did not apply its mind to this crucial aspect and to that extent, subjective satisfaction of the detaining authority stands vitiated.

6. In **Sanjay Shahu** (*supra*) in quite similar circumstances the Division Bench of this Court interfered with the detention order which was under challenge. The contention similar to the one now raised by Mr. Daga finds reference in paragraph 5 and the same has been answered in paragraph 8 and therefore, the transcribed contents from paragraphs 5 to 8 for convenience of reference :

“5. Shri Nandeshwar, learned Counsel however has urged that subjective satisfaction required to be reached is about the unwillingness of such person to come forth to give any statement. He submits that thus, identity of this person is kept secret so as to extend him necessary protection. As identity is kept secret, and therefore, the person like petitioner whose liberty is at stake, does not get an effective opportunity to traverse those statements, requirement of recording subjective satisfaction is mandatory. According to him, the Police Commissioner nowhere expressly finds that the persons whose in-camera statements are relied upon by him have expressed un-willingness to come forward to depose against the petitioner or that because of terror allegedly spread by the petitioner in the locality, other persons are not ready and willing to come forward to give any statement or report.

6. Perusal of copies of in-camera statements made available to petitioner by the detaining authority show that statements are dated 09.04.2015, and the same have been

verified lateron by the Assistant Commissioner of Police, Sakkardara Region, Sakkardara on 06.06.2015. The said verification shows that the person whose in-camera statement was recorded appeared before the Assistant Commissioner of Police on 06.06.2015, and his statement recorded earlier on 09.04.2015, was read over to him and he accepted that it was correctly recorded and also accepted his signature upon it. Thereafter, it is mentioned that the spot was visited by the Assistant Commissioner of Police and the event, as recorded, was verified from the traders in the locality. The Authority (ACP), then mentions that he was satisfied that such an event had happened. It is further mentioned that the terror of petitioner in the locality was perceived by him. Both the re-verifications are on same lines.

7. *The original records are produced by the learned Addl. P.P. before us. Perusal of in-camera statements taken out from sealed envelope shows that the same do not bear any counter signature of the Police Commissioner to show that the Police Commissioner has gone through those statements or its verification. It is no doubt true that the contents thereof are produced in paragraphs mentioned supra, but, fact of or effect of verification has not been even mentioned.*

8. *Reproduction of contents of those statements cannot show subjective satisfaction envisaged in law. The subjective satisfaction has to be about unwillingness of such persons to come forward and to give statement against the petitioner. There is no whisper about this aspect in the impugned order. The records also do not show that any effort was made by the Police Commissioner to have a dialog in this*

regard with the Assistant Commissioner of Police. The impugned order which is based upon such in-camera statements is, therefore, bad in law.”

7. Similarly, in **Gokul Sabale** (*supra*), another Division Bench of this Court, relying upon **Sanjay Shahu** (*supra*) again, in quite similar circumstances, interfered with the impugned detention order. The discussion on this aspect is to be found in paragraph 11 of the said decision which reads as follows :

“11. After perusal of the record, it is clear that those three statements sans an endorsement of the Detaining Authority/ respondent no.1 that respondent no.1 has personally seen those statements and was satisfied, in respect of its contents and truthfulness. In that view of the matter, the decision cited before us applies in the present case with its full force. In Sanjay Ramlal shahu .vrs. State of Maharashtra and another (supra), this Court has specifically recorded a finding that reproduction of contents of those statements cannot show subjective satisfaction envisaged in law. The subjective satisfaction has to be about unwillingness of such persons to come forward and to give statement against the petitioner. Since there was no whisper about this aspect in the impugned order, the order was set aside. In the present case also the impugned order does not reflect the same.”

8. According to us, both the aforesaid decisions support the case of the petitioner on the ground which is now raised and pressed before us. Accordingly, by following the aforesaid two decisions, we set-aside the impugned detention order as also the order confirming the same.

9. Rule is accordingly made absolute in terms of prayer clauses (A) and (B) of this petition. The petitioner is ordered to be released from detention forthwith unless his detention is required in any other matter.

(PUSHPA V. GANEDIWALA, J.) (M.S. SONAK, J.)

Sumit