

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

Criminal Writ Petition No.575/2021

Raju s/o Ghularam Dharane,
aged 36 years, Occ.-Private, R/o.-At Vathoda,
Tah-Kelapur, P.S. Pandharkawada,
Dist- Yawatmal.

... Petitioner.

Versus

1. State of Maharashtra,
through its Secretary, Home Department,
Mantralaya, Mumbai-32.
 2. State of Maharashtra,
through the District Magistrate, Yawatmal,
Tah. Yawatmal, District Yawatmal.
 3. State of Maharashtra,
through the Police Superintendent, Yawatmal,
Dist- Yawatmal.
 4. State of Maharashtra,
through Sub-Divisional Police Officer,
Pandharkawada, Dist- Yawatmal.
 5. State of Maharashtra,
through Police Inspector, Police Station,
Pandharkawada, Dist- Yawatmal.
- ... Respondents.

Mr. S.N. Nandeshwar, Adv for petitioner.
Mr. T.A. Mirza, APP for State.

CORAM: M.S. SONAK & PUSHPA V. GANEDIWALA, JJ.
DATE: 22-11-2021.

Oral Judgment (Per: M.S. Sonak, J.)

Heard Mr. Nandeshwar, learned Counsel for the
petitioner, and Mr. Mirza learned APP for the State.

2. **Rule.** The rule is made returnable forthwith at the request of learned Counsel for the parties.

3. The challenge in this petition is to the order dated 27-05-2021 made 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, preventively detaining the petitioner for one year.

4. We have heard the learned Counsel for the parties.

5. The learned Counsel for the petitioner has raised several grounds to assail the impugned detention order. However, according to us, there is no necessity to advert all such grounds because this petition is required to be allowed *inter alia* on the ground that there was no proper verification of the in-camera statements of the two witnesses even though the Detaining Authority has chosen to rely upon the same.

6. In this case, the Detaining Authority has relied upon a solitary instance reflected in Criminal Case No.0283/2021 in which

the petitioner is alleged to have committed an offense under Section 65(E) of the Maharashtra Prohibition Act. In addition, the Detaining Authority has relied upon two in-camera statements to purportedly arrive at the subjective satisfaction that such preventive detention was necessary.

7. Criminal Case No.0283/2021 relates to the incident dated 18-03-2021. The petitioner was released on bail on the next date i.e. on 19-03-2021. The two in-camera statements were recorded on 23-01-2021. The first in-camera statement relates to an incident of January 2021 and the second in-camera statement relates to an incident of December 2020.

8. Mr. Nandeshwar, learned Counsel, pointed out that on the copies supplied to the petitioner there is no reference to verification of such statements by the Sub-Divisional Police Officer (SDPO). Therefore, we requested the learned APP to apprise us as to whether the original contains any such verification. Mr. Mirza learned APP, placed before us the copy of the original detention order. In the transcripts of the in-camera statements, there is an endorsement in the margin styled as “verified”, below which is appended the signature of the SDPO.

9. In this case, we are not going into the issue as to whether the copy supplied to the petitioner ought to have also contained such endorsement, having regard to the provisions of Articles 22(5) of the Constitution of India. However, we find the verification that is contemplated in such matters cannot be said to have been properly carried out. The SDPO in this case should have verified the correctness of the statement and further, should have also verified that the witnesses were indeed not forthcoming to depose against the petitioner. Further, all these aspects should have been recorded on the statements or some other document. In absence of all this, we cannot say that there has been a proper verification of the in-camera statements.

10. In **Vijaya Raju Gupta vs R.H. Mendonca and others**, reported in **2001(1) Mh.L.J. 449**, the Division Bench of this Court, following the decision of the Hon'ble Supreme Court in **Phulwari Jagdambaprasad Pathak (Smt) vs R.H. Mendonca and others**, reported in **(2000) 6 SCC 751** held that in-camera statements of persons/witnesses can be utilized by the Detaining Authority to arrive at subjective satisfaction for making an order of detention. However, the facts stated in the materials relied upon should be true and must have reasonable nexus with the purpose for which the order is made.

A necessary corollary, therefore is that the Detaining Authority must be satisfied with the truthfulness of the statements made in the in-camera statements. Therefore, when neither in the detention order nor in the grounds of detention, the Detaining Authority has stated anything regards the satisfaction about the truthfulness of the statements made in the in-camera statements, the detention order will stand vitiated.

11. Further, the Division Bench also found fault with the detention order in which the Assistant Commissioner of Police merely stated that he had verified the statements, but, there was no contemporaneous document or material in support of the same. The Division Bench also faulted the detention order because there was no statement made by the Assistant Commissioner of Police or in the grounds of detention that the statements made in the in-camera statement were believed to be true. The position in the present case is also quite similar. Neither the SDPO nor the Detaining Authority has applied its mind to the in-camera statements or verified them as explained by the Division Bench. Therefore, having regard to the law laid down by the Division Bench in the **Vijaya Raju Gupta** (supra), the impugned detention order warrants interference.

11. The impugned detention order dated 27-05-2021 is accordingly set aside and the rule is made absolute in terms of prayer clause (i). The petitioner is ordered to be released from detention forthwith, if not required in connection in any other matter.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)