

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

CRIMINAL WRIT PETITION NO. 627 OF 2021

Sheikh Yetal s/o Sheikh Jabbar,
aged about 25 years, Occ. Pvt. Work,
R/o Khair Mohammad Plot,
Dapaki Road, Akola
(At present Central Prison, Aurangabad).

...PETITIONER

Versus

1. State of Maharashtra,
through Advisory Board of Government of Maharashtra,
Home Department (Special), Second Floor,
Main Building, Mantralaya, Mumbai – 32.
2. The Collector & District Magistrate,
Akola.

...RESPONDENTS

Shri A.K. Bhangde, Advocate for the petitioner.
Shri T.A. Mirza, A.P.P. for the respondents.

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CORAM : M.S. SONAK AND
PUSHPA V. GANEDIWALA, JJ.
DATED : DECEMBER 21, 2021.

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

Heard Mr. A.K. Bhangde, learned counsel for the
petitioner, and Mr. T.A. Mirza learned A.P.P. for the respondents.

2. Rule. The rule is made returnable forthwith at the request and with the consent of learned counsel for the parties.

3. The challenge in this petition is to the detention order dated 12/07/2021 and its confirmation on 12/08/2021 preventively detaining the petitioner 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**”).

4. Mr. Bhangde, learned counsel has raised several contentions to challenge the impugned detention orders. He has however focused on the ground that in this case, there is no satisfaction recorded by the authorities on the aspect of the unwillingness of the witnesses to give in-camera statements or even otherwise to depose before the regular Courts of law should a prosecution be launched against the petitioner. He submitted that the record of such satisfaction is crucial, and in the absence of the same, the impugned detention order is vitiated. He relies on **Pratap s/o Ajay Kharare Vs. The State of**

Maharashtra & Ors. (Criminal Writ Petition No. 531/2021 decided on 28/10/2021) and Sanjay s/o Ramlal Shahu Vs. State of Maharashtra & Anr. (Criminal Writ Petition No. 768/2015 decided on 01/02/2016).

5. Mr. Mirza, learned A.P.P. defends the impugned order based on the grounds set out therein. He submits that the detaining authority was satisfied that the witnesses are not coming forward to depose against the petitioner. He states that even the verification confirms this aspect, and therefore, this petition may be dismissed.

6. We have considered the rival contentions and perused the material on record. We have also considered the earlier decisions in the cases of **Pratap s/o Ajay Kharare** (*supra*) and **Sanjay s/o Ramlal Shahu** (*supra*). According to us, the ground raised by Mr. Bhangde is sufficient to interfere with the impugned detention order in the present case.

7. In this case, there are two in-camera statements that the detaining authority has relied on. These in-camera

statements are verified by the Sub-Divisional Police Officer. Now, this verification in the first instance records a satisfaction that the incident or the event referred to in the in-camera statements is true and correct. Secondly, the verification also records a satisfaction that the petitioner is indeed causing terror in the locality and creating a situation that is disturbing the public order.

8. There is no satisfaction recorded by the SDPO about the two witnesses who have given the in-camera statements not willing to come forward to depose against the petitioner should a criminal prosecution be launched against the petitioner. Record of such satisfaction is quite crucial because normally an order of preventive detention can be made if the alleged criminal activities of the detainee cannot be addressed by the regular procedures prescribed in the various criminal legislation enacted for this purpose.

9. In almost identical circumstances, this Court in the case of **Sanjay s/o Ramlal Shahu** (*supra*) made the following observations in paragraphs 5 to 8 :

“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 later on by the Assistant Commissioner of Police, Sakardara Region, Sakardara 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 reverifications 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.”*

10. Further, this Court in the case of **Pratap s/o Ajay Kharare** (*supra*) in almost identical circumstances and by following the earlier decision in **Sanjay s/o Ramlal Shahu** (*supra*) quashed the detention order on the ground now urged by Mr. Bhangde in this petition.

11. Therefore, following our earlier decisions in the cases of **Pratap s/o Ajay Kharare** (*supra*) and **Sanjay s/o Ramlal Shahu** (*supra*), we quash the impugned detention order and its confirmation. The rule is made absolute in terms of prayer clauses (ii) and (iii) which reads as follows :

“(ii) Quash and set aside the order of detention passed by the Respondent No.2 dated 12.07.2021 (Annexure-2) along with the Final Order passed by Respondent No.1 dated 12.08.2021 (Annexure-1).

(iii) Issue appropriate writ, direction or orders to respondents to forth with release the petitioner from Central Prison, Aurangabad.”

12. We, however, clarify that the petitioner is to be released forthwith unless his incarceration is required in any other matter. There shall be no order for costs.

(PUSHPA V. GANEDIWALA, J.)

(M.S. SONAK, J.)

Sumit

Digitally signed by SUMIT CHETAN
AGRAWAL
Signing Date: 22.12.2021 17:35