

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1210 OF 2021

Adil Khan s/o Nader Khan Pathan,
Age 27 years, Occ. Social Worker,
R/o Nehru Nagar, Katkat Gate,
Aurangabad. ...Petitioner...

Versus

1. The State of Maharashtra,
Through It's Secretary, Home Department,
Mantralaya, Mumbai.
2. The Commissioner of Police,
Aurangabad,
Police Commissioner Office,
District Aurangabad. ..Respondents..

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Mr. Quadri S.M.Saquebuddin h/f Mr. G.L. Deshpande,
Advocate for the petitioner.
Mr. R.D.Sanap, APP for the respondents No.1 and 2.

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.

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Reserved on : 12.02.2022
Pronounced on : 12.04.2022

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JUDGMENT :- (Per V. K. Jadhav, J.)

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at admission stage.
2. By way of this writ petition, the petitioner is challenging the order of detention No.2021/MPDA/DET-4/CB-70 dated 12.8.2021 under section 3(2) 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 (for short hereinafter called as 'the Act of 1981') passed by the respondent no.2, confirmed by the Advisory Board in reference no.128 of 2021 by order dated 22.9.2021 observing that there are sufficient grounds for the detention of the above detainee under section 3 (3) of the Act of 1981. Hence, this writ petition.

3. The learned counsel for the petitioner submits that, the detaining authority has not assigned any cogent reasons nor arrived at a subjective satisfaction about the activities of the petitioner pre-judicial to the maintenance of the public order. Learned counsel submits that, in terms of section 2(a)(iv) of the Act of 1981 a 'dangerous person' means he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of

public order. The learned counsel submits that in terms of the explanation for the purpose of clause (a), the public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, if any of the activities of any of the persons referred to in this clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof. The learned counsel submits that, in terms of section 2 (b-1) “dangerous person” means a person, who either by himself or as a member or leader of 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. Learned counsel submits that the detinue had given no opportunity to make a effective representation to the competent authority, which amounts to clear breach of the basic principles of preventive detention law under Article 22(5) of the Constitution of India. Learned counsel submits that, the order of detention is illegal

and bad in law for non-furnishing of the documents in the language known to the detenu. The learned counsel for the petitioner submits that the detaining authority has referred five cases in the impugned order and out of which Crime No.303 of 2021 registered with Begumpura Police Station is under section 160 of the Indian Penal Code. Learned counsel for the detenu submits that, section 160 of IPC do not fall within the ambit of chapter XVI and XVII of the Indian Penal Code, which is basic requirement of the detention order. Thus, the detaining authority has considered irrelevant materials for passing an order of detention. The same amounts to non-application of the mind by the detaining authority.

i) Learned counsel for the detenu submits that crime no.225 of 2018 registered with City Chowk Police Station, Aurangabad for the offence punishable under sections 143, 147, 148, 149, 337, 120(b) of the IPC are concerned, they are not the independent offences punishable for not more than three years of imprisonment. Learned counsel submits that, even section 337 of the IPC is also not more than six months

of imprisonment. Learned counsel submits that, so far as crime no.102 of 2019 registered with City Chowk Police Station, Aurangabad for the offence punishable under sections 324, 341, 504, 506, 34 of the IPC is concerned, it is pending for trial. Learned counsel for the detainee submits that the third crime bearing No.156 of 2019 registered with Chikalhana police Station, Aurangabad, which is pending for trial and the detainee has been released on bail. In paragraph no.7 of the bail order, it has been specifically observed by the Court granting bail that no specific role has been attributed to the detainee except his presence on the spot.

ii] Learned counsel submits that two in-camera statements referred in the impugned order are vague. In the in-camera statement, witness no.A' has stated that "on a day in the first week of June, 2021 at about 20.30 hours while he was returning from house, the incident took place" whereas, in a copy of the witness 'A' statement dated 2.7.2021 states that "in the last week of May 2021, one day at about 20.30 hours, the incident had taken place." Thus, the same is in complete variance with the material document (referred to and

relied on). It is not clear as to when the exact incident had taken place since two dates and months are mentioned. Thus, the statement is vague and cannot be relied on. The variance has created doubt and has affected the right to make effective representation on the part of the detainee.

iii] So far as in-camera statement of witness 'B' recorded on 3.7.2021 is concerned, vague statements have been made without referring the time, date, place and month of the incident. Thus, the order of detention is illegal and bad in law.

iv] Learned counsel for the detainee submits that, if the crime and in-camera statements are excluded then remains only one crime i.e. crime no.304 of 2021. It is well settled that a valid detention order cannot be passed on a single solitary incident. There has to be more than one offence/incident of the detainee so as to clamp Preventive Detention law against detainee.

v] The learned counsel for detainee submits that the order of detention dated 12.8.2021 came to be issued by the Detaining authority and the detainee was detained on 15.8.2021 and he was executed and served only one

page of order. Subsequently, the grounds of detention were served upon the detainee and on the very day i.e. on 18.8.2021 the detention order was approved by the State Government. It is to be noted that a representation of the detainee dated 23.8.2021 addressed to the detaining authority was received by the said authority on 24.8.2021, and, concerned authority has declined to consider the representation of the detainee since the approval of the order was already done on 18.8.2021. Thus, the detainee has lost the opportunity to make an effective representation to the detaining authority. Thus, pending approval of the detention order, the detainee has a right to make a representation to the detaining authority. Learned counsel submits that the impugned order is liable to be quashed and set aside.

4. The learned counsel for the petitioner, in order to substantiate his contentions, placed reliance on the following judgments :-

- (1) Rafat Yar Khan and others Vs. The State of Maharashtra in Criminal Application no.2238/2021 and 2248/2021 order dated 18.11.2021.

- (2) Maharashtra State through Police Inspector, Police Station City Chowk, Aurangabad Vs. Adil Khan Nader Khan in RCC No.2485/2019.
- (3) Banka Sneha Sheela Vs. The State of Telangana and others in Criminal Appeal No.733 of 2021.
- (4) Judgment of this Hon'ble Court Criminal Writ Petition No. 297/2008 (Devanand Vs. State);
- (5) Judgment of this Court in the case of Nasibula Khan Vs. M.N.Singh reported in 2002 (1) Mh.L.J 572.
- (6) Judgment of this Hon'ble Court in the case of Hrishi @ Sarjerao Baban Takele Vs. District Magistrate, in Criminal Writ Petition No.388/2017.
- (7) Devanand @ Deva Radhakrishna Mishra Vs. The State of Maharashtra and another in Criminal Writ Petition No.287 of 2008.
- (8) Vijaya Raju Gupta Vs R H Mendonca and others reported in 2000 (1) Mh.L.J. 449.

5. The learned APP submits that, the detenue is not entitled to challenge the order of detention on the basis of the grounds on which the detention has been effected in view of section 5-A of the Act of 1981 and, therefore, the petition is deserves to be dismissed at this stage only. The learned APP submits that, sufficiency or insufficiency of the grounds of detention cannot be a subject matter on the basis of which the petition could be entertained under article 226 and 227 of the

Constitution. Learned APP further submits that it is subjective satisfaction of the detaining authority that the acts of the petitioner are prejudicial to the maintenance of the public order and with a view to prevent him from committing such acts, detention is necessary.

i] The learned APP submits that the petitioner is a “dangerous person” as defined in the Act of 1981 and he has committed serious offences i.e. riot, causing hurt by an act which is dangerous to human life, attempt to murder, murder, voluntarily causing hurt, voluntarily causing hurt by dangerous weapons, wrongful restraining persons, committing affray, house trespass, etc. The learned APP submits that, as a result of his dangerous activities, the persons residing in the local jurisdiction of Police Station Begumpura and adjoining areas remain under constant fear and terror. Illegal and dangerous activities have become a serious threat and source of danger to the lives of law abiding and peace loving citizens of Aurangabad City and has become threat to the public order. The learned APP submits that the activities of the detenu has become

hazardous and prejudicial to the maintenance of public order in the area of Begumpura Police Station, Aurangabad and adjoining areas.

ii] The learned APP submits that, after considering the seriousness of the aforesaid crimes mentioned in the detention order, the Police Inspector of Police Station, Begumpura has conducted confidential inquiry, and in the inquiry, it was disclosed that due to his fear, nobody dares to give statement openly against him. Thus, on the assurance that their names and identity particulars would be kept secret, Police Inspector Begumpura Police Station succeeded in recording the in-camera statements of witness 'A' and 'B'. On completion of the confidential inquiry, on 5.7.2021 Police Inspector of Police Station Begumpura, Aurangabad submitted a proposal to the Detaining Authority i.e. respondent no.2 for taking action under section 3(1) of the Act of 1981. The Deputy Commissioner of Police, Zone-I, Aurangabad had verified the in-camera statements of witness 'A and B' and submitted the report to respondent no.2 on 27.7.2021.

iii] The learned APP submits that, in view of the offences registered against the detenue and in-camera statements of the witnesses, the petitioner is a “dangerous person” as defined in the Act of 1981 as he has committed serious offences punishable under Chapter XVI and XVII of the IPC. The learned APP submits that, the detaining authority after having subjective satisfaction passed the detention order on 12.8.2021. On 14.8.2021 detailed report alongwith the detention order, grounds of detention and relevant documents were submitted to the Additional Chief Secretary, Home Department, Mantralaya, Mumbai for approval under section 3(3) of the Act of 1981. Thereafter, on 15.8.2021, detention order was served on the petitioner and he was detained in Central Prison, Aurangabad. The learned APP submits that, in terms of the provisions of section (8) of sub-section (1), the grounds of detention and other relevant papers alongwith its Marathi Translation were served on the petitioner/detenue on 17.8.2021 in time. After receipt of report submitted by the detaining authority i.e. respondent no.2, the State Government vide order dated

30.9.2021 has confirmed the detention order. The learned APP submits that, there is no delay in passing the order and execution of the order and all the mandatory provisions have been complied with in a stipulated period. The learned APP submits that even the confirmation order is served on the petitioner on 17.10.2021.

iv] The learned APP submits that, the detenue has made a representation dated 23.8.2021 to the detaining authority and it was received to the office on 25.8.2021. However, till that time, the detention order issued by respondent no.2 was approved by the State Government vide Government Order dated 18.8.2021. Thus, the detenue's right as mentioned in paragraph no.14 of the grounds of detention to represent against detention to the detaining authority i.e. respondent no.2 was automatically extinguished and, accordingly, it was communicated to the detenue on 28.8.2021. The learned APP submits that there is no provision in the Act of 1981 to issue a show cause notice in preventive detention before passing the detention order. The

learned APP submits that, there is no substance in this writ petition and the same is liable to be dismissed.

6. Learned APP for the respondents/State in order to substantiate his submissions, placed reliance on the following judgments :-

- (1) T. Devaki vs. Government of Tamil Nadu and others, reported in (1990) 2 MANU/SC/0201/1990;
- (2) Secretary to Government of Tamil Nadu Public (law and Order) Revenue Department and Ors. vs. Kamala and others reported in (2018) MANU/SC/0355/2018;
- (3) Tushar vs. The State of Maharashtra and others reported in MANU/MH/2402/2017;
- (4) Siddhesh Bala Mhaskar vs. The Commissioner of Police, Thane and Ors. reported in MANU/MH/0354/2020;
- (5) Anna Durai and Ors. Vs. A.N.Roy and Ors. MANU/MH/0725/2006;
- (6) Santosh vs. The State of Maharashtra and Ors. reported in MANU/MH/0270/2013;
- (7) Istiyak Ahmed Siddiqui vs. A.N. Roy and Ors. reported in MANU/MH/00586/2005;
- (8) Abdul Nasar Adam Ismail through Abdul Basheer Adam Ismail vs. The State of Maharashtra and Ors. reported in MANU/SC/0292/2013;
- (9) Hemlata Kantilal Shah vs. The State of Maharashtra and Ors. reported in MANU/SC/0496/1981;
- (10) Amar @ Amarsingh Gulabsingh Rathod Vs. The State of Maharashtra and Ors. reported in 2003 Bom. C.R. (Cri.) 1573;

- (11) Dhanji Ram Sharma vs. Superintendent of Police, North Dist. Delhi Police Ors. reported in MANU/SC/0317/1966;
- (12) The Collector and District Magistrate, W.G.Dist. Eluru, Andhra Pradesh and Ors. reported in MANU/SC/1050/2004;
- (13) Sunil Fulchand Shah vs. Union of India (UOI) and Ors. reported MANU/SC/0109/2000;
- (14) State of Gujarat Vs. Adam Kasam Bhaya reported in MANU SC/0234/1981;
- (15) Ashok Kumar Vs. Delhi Administration and Ors. reported in MANU/SC/0052/1982;
- (16) Nagendra Nath Mondal Vs. The State of West Bengal reported in MANU/SC/0181/1972;
- (17) Sahib Singh Dugal Vs. Union of India (UOI) reported in MANU/SC/0085/1965;
- (18) Haradhan Saha Vs. The State of West Bengal and Ors. & Madan Lal Agarwala Vs. The State of West Bengal and Ors. reported in (1973) 3 SCC 198;
- (19) Champalal Punjaji Saha Vs. State of Maharashtra reported in (1982) 1/SCC/507;
- (20) Commissioner of Police and Ors Vs. C.Anita (Smt) reported in (2004) 7/SCC/467;
- (21) Dropti Devi and Another Vs Union of India and Ors. reported in (2012) 7/SCC/499;
- (22) Union of India and Another Vs. Chaya Ghoshal (Smt) and Another reported in (2005) 10/SCC/97; and
- (23) Varsha Shyam Amlani Vs. State of Maharashtra and Ors. reported in 2006(2) MhLJ(Cri)MLJ (Criminal) 859.

7. We have carefully considered the submissions advanced by the learned counsel for the petitioner and the learned APP for the respondents. With their able assistance, we have perused the grounds taken in the petition, annexures thereto and the case laws cited by the respective parties.

8. It appears that in view of the offences registered against the detenue and incamera statements of the two witnesses, the detaining authority is convinced that the petitioner is a dangerous person and the people residing within the local jurisdiction of the concerned police station and the residents residing in the adjoining locality are facing serious hardship due to fear and terror created by the detenue. Respondent no.2 was subjectively satisfied that if the detenue's criminal activities and dangerous activities are not prevented, the petitioner is likely to indulge in the similar activities on large scale, which would be prejudicial to the public order.

9. We have carefully perused the grounds of the detention. It apperas that the detenue has been

detained on the ground that since 2018 he has been indulged continuously in the commission of violent activities which has created terror in the mind of the residents of the area. There are two crimes bearing crime no.303 of 2021 and 304 of 2021 indicating the recent criminal activities of the detainee. In view of this history, confidential inquiry was conducted regarding his activities and, accordingly, two witnesses have come forward to give the statements in the incamera. On careful perusal of the statements, it appears that witness no.A was returning to home, the detainee demanded money from him. Thus, the detainee has shown him a knife and threatened him on the point of knife, forcibly removed an amount of Rs.4,900/- from the pocket of his shirt. Though, witness has raised hue and cry, however, no one has come forward to help him due to fear and terror of the detainee. So far as incamera statement of witness 'B' is concerned, he was drinking Tea, detainee has abused him in filthy language and, thereafter, forcibly removed an amount of Rs.6,000/- from his pocket of Shirt. Though witness has cried for help, but due to fear and terror of the

detenue, no one has come forward to help him. Even, the shop keepers have closed their shops.

10. Even though crime No.303 of 2021 is considered as a crime not relevant for passing the detention order, however, crime no.304 of 2021 coupled with incamera statements of the witnesses is sufficient to conclude that detaining authority, after subjective satisfaction has passed the impugned detention order.

11. Though crime no.304 of 2021 came to be quashed by this Court by order dated 18.11.2021 in criminal applicationno.2238 of 2021, however, the crime no.300 of 2021 registered with Begumpura Police Station and and 304 of 2021 registered with the same police station being the counter FIR's came to be quashed on the basis of the settlement arrived at between the parties. However, the fact remains that, there was a law and order problem since both the groups fought at a public place and disturbed the public tranquility. Even, the police machinery was extensively used to maintain the peace, law and order. Consequently, both the parties were saddled with the costs. Though, FIR against each

others came to be quashed on the basis of the settlement arrived at between the parties. However, at the time of passing of detention order, the said crime no.304 of 2021 was registered against the detainee. The petitioner/detainee cannot take advantage of the subsequent event of quashing of the FIR on the basis of the settlement.

12. In a case of **Banka Sneha Shila Vs. State of Telangana and others** in Criminal Appeal No.733 of 2021, relied upon by the learned counsel for the petitioner, in paragraph no.17 the Supreme Court has made following observations :-

17. To tear these observations out of context would be fraught with great danger when it comes to the liberty of a citizen under [Article 21](#) of the Constitution of India. The reason for not adopting a narrow meaning of ‘public order’ in that case was because of the expression “in the interests of” which occurs to [Article 19\(2\)](#) to 19(4) and which is pressed into service only when a law is challenged as being unconstitutional for being violative of [Article 19](#) of the Constitution. When a person is preventively detained, it is [Article 21](#) and [22](#) that are attracted and not [Article 19](#). Further, preventive detention must fall within the four corners of [Article 21](#) read with [Article 22](#) and the statute in question. To therefore argue that a liberal meaning must be given to the expression ‘public order’ in the context of a preventive detention statute is wholly inapposite and incorrect. On the contrary, considering that preventive

detention is a necessary evil only to prevent public disorder, the Court must ensure that the facts brought before it directly and inevitably lead to a harm, danger or alarm or feeling of insecurity among the general public or any section thereof at large.

13. In a case of **Devanand @ Deva Radhakrishna Mishra Vs. State of Maharashtra and another** in criminal writ petition no.297 of 2008, relied upon by the learned counsel for the petitioner, the Division Bench of this Court in paragraph no.21 of the judgment has made following observations :-

“21. In the judgment of Biru Mahato (supra), the Hon’ble Apex Court has held that in preventive detention matters affidavit filed by the deponent describing himself as District Magistrate could not have been accepted as he was not the District Magistrate whose subjective satisfaction was in issue. Mere occupation of the said office is not sufficient and successor in office cannot file his affidavit to substantiate such satisfaction of earlier occupant. Before the Hon’ble Apex Court subjective satisfaction of holder in office was put in issue. Even before us the said satisfaction has been put in issue by contending that the compelling reason to order detention of petitioner or imminent possibility of his release on bail has not been looked into by respondent no.2. The other ground on which such subjective satisfaction is assailed is in relation to incamera statements and verification thereof. Though, it has been argued before us that the affidavit in reply has been filed on behalf of the respondent no.2, we find that there is no such authority filed on record or mentioned in the affidavit sworn by Shri R.J. Rathod, Superintendent in the office of the Collector, Yavatmal.”

14. In a case of **Nasibullah Khan Vs. M.N Singh and others reported in (2002) BomLR 119**, relied upon by

the learned counsel for the petitioner, in paragraph nos.8 and 10 this Court has made following observations :-

“8. The next submission of Ms. Kamat is that after all it is subjective satisfaction of the detaining authority and, therefore, this court should not interfere in the order of detention passed by the detaining authority. In support of this contention she read out the affidavit in reply filed by the detaining authority on 9th October, 2001. It is true that the exercise of powers of detention depends on the subjective satisfaction of the detaining authority, but that does not mean that judicial scrutiny of such subjective satisfaction is shut-out. Such contention has been turned down in para 13 of the Judgment of the Apex Court in the case of [Khudiram Das v. The State of West Bengal and Ors.](#) In the absence of any material pointed out by the detaining authority either in the grounds of detention or in the reply affidavit to conclude that the detenu is likely to be released from custody in the near future, it cannot be said that the conditions laid down by the Supreme Court in Chelawat's case for issuing detention order in case of a person in custody are satisfied. This is a case where the basis for subjective satisfaction is itself absent and, therefore, there cannot be question of the detaining authority arriving at any subjective satisfaction, simply because the detaining authority says so.

10. In the aforesaid circumstances, in our opinion, there was no material for the detaining authority to arrive at the satisfaction for passing the impugned order under Section 3(1) of the MPDA Act. We are, therefore, of the view that the impugned order has been passed against the law laid down by the Apex Court in Chelawat's case (supra) and, therefore, cannot be sustained.”

15. In a case of **Hrishi @ Sarjerao Baban Takele Vs. The District Magistrate, Sangli and others** in Criminal Writ Petition no.388 of 2017, relied upon by the learned counsel for the petitioner, the Division Bench of this Court has referred the view expressed by the

Supreme Court in the case of Rushikesh Tanaji Bhoite Vs. State of Maharashtra and ors. reported in 2012 Cri.L.J. 1334. In paragraph nos.8 to 10 this Court has made following observations :-

“8. Mr. Tripathi pointed out that in the case of Rushikesh Bhoite (Supra), in paragraphs 9 and 10 of the said decision, it is observed as under :-

9. In a case where Detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.
 10. In the present case, since the order of bail dated August 15, 2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority. (emphasis supplied).
9. Mr. Tripathi pointed out that after making above observations in paragraphs 8, 9 and 10 of the decision in the case of Rushikesh Bhoite (Supra), the Supreme Court observed that the order of bail was neither placed before the Detaining Authority at the time of passing the detention order nor the Detaining Authority was aware of the order of bail. Hence, detention order is rendered invalid. It was further observed that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective satisfaction of the Detaining Authority. In the present case also, nowhere in the detention order or in the grounds of detention, the Detaining Authority has shown its awareness that bail was granted to the Detenu in C.R.No.36 of 2016. It is also an admitted fact that detailed order granting anticipatory bail to the Detenu running into six pages was not placed before the Detaining Authority nor a copy thereof was furnished to the Detenu.
10. In this view of the matter, the decision in the case of Rushikesh Bhoite (Supra) would squarely apply to the present case, hence, we have no option but to set aside the order of detention.

Accordingly, the detention order is quashed and set aside. The Detenu be set at liberty, if not wanted in any other case. Rule is made absolute in the above terms.”

16. In a case **Vijaya Raju Gupta Vs. R.H.Mendonca and others reported in 2001 (1) Mh.L.J. 449**, relied upon by the learned counsel for the petitioner, in paragraph no.6 the Division Bench of this Court has made following observations :-

“6. There remains no doubt in the light of the law laid down by the Apex Court that in-camera statement of person/witness can be utilised by the detaining authority for the purpose of arriving at subjective satisfaction for passing the order of detention. However, the Apex Court made it clear that the facts stated in the materials relied upon should be true and have a reasonable nexus with the purpose for which the order is passed. Necessary corollary, therefore is that the detaining authority must be satisfied about the truthfulness of the statements made in the in-camera statements. Testing it from this touch stone, we find that neither in the detention order nor in the grounds of detention, the detaining authority has stated anything that he was satisfied about the truthfulness of the statements made in in-camera statements. In the present case the petitioner has set up specific case that incamera statements were false and fabricated after the detenu was released on bail. The detaining authority in his first affidavit filed on 13-4-2000 has only denied that false and fabricated statements were recorded after the detenu was released on 3-7-1999. While denying that the documents were fabricated, the detaining authority in his aforesaid affidavit has further stated that the incamera statements were verified by the higher grade police officer of the rank of A.C.P. As a matter of fact, in two subsequent affidavits, this stand has been reiterated and further statement has been made that he was subjectively satisfied that the contents of the in-camera statements were true and

genuine since it was verified by the Assistant Commissioner of Police. The English translation of the verification made by the Assistant Commissioner of Police below the in-camera statements reads, “my statement was translated to me in Hindi which is in accordance with what I stated.” This means that the Assistant Commissioner of Police has only verified that the statement made by the witness was recorded as actually made by him. Therefore on the basis of mere verification, without there being something more by way of contemporaneous document or material more over when no such statement is made in the grounds of detention that the statements made in the in-camera statement were believed to be true, it is very difficult to hold that the detaining authority was in fact subjectively satisfied that the assertions made in in-camera statements were true. The detaining authority has to apply his mind about the truthfulness of the assertions made in in-camera statements which in the facts of the present case seems to have not been done which in our opinion vitiates the detention order.”

17. In the instant case, the detaining authority has recorded the compelling reasons to order the detention of the detainee. On careful perusal of the record and after considering the affidavit-in-reply filed by the respondent no.2, it appears that before passing the impugned order of detention, all procedural formalities have been scrupulously followed and after conscious application of mind, the respondent no.2 has arrived at a subjective satisfaction and then the order of detention

has been passed. We find no substance in this writ petition. Hence, we proceed to pass the following order.

ORDER

- i. Criminal writ petition is hereby dismissed.
- ii. Criminal writ petition accordingly disposed off.

(SANDIPKUMAR C. MORE, J.) (V.K. JADHAV, J.)

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