

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

CRIMINAL WRIT PETITION NO. 2092 OF 2022

Nazeem Abdul Rahim Salar	...Petitioner
Versus	
1. The Commissioner of Police, Solapur	
2. The State of Maharashtra	
3. The Superintendent, Yerwada Central Prison, Pune	...Respondents

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Ms. Jayashree Tripathi, Advocate for the Petitioner.

Mrs. M. H. Mhatre, APP for the Respondent – State.

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**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

**RESERVED ON : 7th DECEMBER, 2022
PRONOUNCED ON : 16th DECEMBER, 2022**

JUDGMENT (PER PRAKASH D. NAIK, J.) :

1. Petitioner has invoked Writ Jurisdiction of this Court under Article 226 of the Constitution of India challenging the Order of Detention dated 28th February, 2022 passed by Commissioner of Police, Solapur under the “Maharashtra Prevention of Dangerous Activities of Slumlord, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and persons engaged in Black-Marketing of Essential Commodities Act, 1981” (hereinafter referred to M.P.D.A. Act). The impugned Order has been issued with a view to prevent the Petitioner from acting in any manner

prejudicial to the maintenance of public Order. Along with Order of detention, the Petitioner was also served upon the grounds of detention on the basis of which the impugned Order was issued by the Detaining Authority.

2. The Order of detention is based on C.R. No.3 of 2022 registered with MIDC Police Station, Solapur City for offences punishable under Sections 326, 323, 504, 506 read with 34 of the Indian Penal Code (for short 'IPC') and statements of two witnesses recorded in-camera. Witness 'A' has referred to the incident which had occurred in fourth week of December, 2021 and witness 'B' has referred to the incident which had occurred in first week of January, 2022. The Detaining Authority has arrived at the subjective satisfaction that, the criminal activities of the Petitioner shows that, he had proved himself as a 'Dangerous Person' within the meaning of Section 2(b-1) of the M.P.D.A. Act, 1981.

3. Learned Advocate for the Petitioner has urged following grounds assailing the impugned Order of detention.

- (i) The Medical Certificate of the injured in C.R. No.3 of 2022 registered with MIDC Police Station, Solapur City is not placed before the Detaining Authority and not supplied to the Petitioner.
- (ii) The Detaining Authority has considered old and stale cases

which had resulted in acquittal and copies of Judgment of acquittal are not supplied to the Petitioner.

4. The first ground relating to non-placement of Medical Certificate before the Detaining Authority has been raised as ground (f) in the Petition. The learned Advocate for the Petitioner submitted in paragraph 5 (1) of the grounds of detention, the Detaining Authority has stated that, the complainant is presently at Civil Hospital, Solapur for treatment and that, on 18th January, 2022 the Investigating Officer gave request letter to Medical Officer of Shri. Chatrapati Shivaji Maharaj Sarvopachar Rugnalay, Solapur about getting the Medical Certificate. The medical/injury report is not placed before the Detaining Authority and the copy is not furnished to the Petitioner. It is vital and important documents. The Petitioner is deprived of making effective representation and his rights guaranteed under Article 22(5) of the Constitution of India has been affected.

5. In support of submissions, the learned Advocate for the Petitioner has relied upon the following decisions:-

- (a) Kamla Kanhaiyalal Khushalani Vs. State of Maharashtra and Anr.¹
- (b) Union of India Vs. Ranu Bhandari²
- (c) V. C. Mohan Vs. Union of India and Others³.

1 AIR 1981 SC 814

2 (2008) 17 SCC 348

3 (2002) 3 SCC 451

6. The second ground urged by Petitioner is that, old, stale and acquitted cases have been referred in paragraph 4 of the grounds of detention. The acquittal Orders are not supplied to the Petitioner. The said documents have influenced the mind of detaining Authority while issuing Order of detention. This issue has been raised by Petitioner in ground No.6(g) of the Petition. The learned Advocate for the Petitioner submitted that, the Detaining Authority has referred to table of cases at paragraph 4 of the grounds of detention stating previous criminal history of the Petitioner. The Detaining Authority has stated that, offences at serial No.1 to 4 have resulted in acquittal. It is also stated that, the Petitioner has been acquitted from the offences as shown in paragraph 4 at serial No.1 to 4 and from the judgment of these offences, it is clear that, seriously injured witnesses have not given supportable evidence for prosecution. During the hearing they have agreed that, they have made out of Court settlement. Hence, declaring them as a hostile, the Court acquitted the Petitioner from the offences as mentioned above. Possibility can't be denied that, witnesses may have done like this only because of his terror. It is submitted that, no judgments of acquittal were furnished to the Petitioner on which reliance is placed by the Detaining Authority. It also shows that, old cases were considered by Detaining Authority while issuing the impugned Order

of detention. Non-supplying of documents has violated Petitioner's right under Article 22(5) of the Constitution of India.

7. Learned APP submitted that, the Medico Legal Certificate was issued on 23rd March, 2022, which is after the issuance of detention Order and the question of placing such document before the Detaining Authority does not arise. Both the grounds urged by Petitioner are devoid of merits. She relied upon the affidavit-in-reply filed by Detaining Authority. While dealing with the ground 6(f) of the Petition, the Detaining Authority in paragraph 13 of affidavit in reply has stated that, it is denied that, the medical document/injury report is an important and vital document in CR No.3 of 2022. It is also denied that, non-furnishing the said document amounts to non-communication of grounds of detention and that the Petitioner is deprived of making effective representation. The Detaining Authority has relied upon the material, copies of which were already furnished to the detenu at the time of execution of the Order of Detention. The Medico Legal Certificate is not a part of relied upon documents and the said document was not produced before the Detaining Authority and the copy of the same has not been furnished to the detenu. The second ground urged by the Petitioner has been replied by the Detaining Authority, vide paragraph 14 of the affidavit-in-reply wherein it is

stated that, the right of the detenu under Article 22(5) of the Constitution of India is not violated. Whatsoever document/material were considered and relied upon by Detaining Authority, while forming its subjective satisfaction, all such documents were furnished to the detenu in order to make effective representation before the Authority. In the beginning of paragraph 1 which is an introductory to the grounds of detention, the Detaining Authority has specifically mentioned that, the grounds are mentioned in paragraph 5, on which the Detention Order has been made by Detaining Authority. The Detaining Authority has segregated the material on which the subjective satisfaction is based on the referred documents. It was not mandatory to the Detaining Authority to supply the documents which were referred while completing narration of facts and not relied upon to form the subjective satisfaction that, the detenu is a 'Dangerous Person' and due to his prejudicial activities the Public Order has been disturbed in the locality.

8. Learned APP has relied upon the decision of the Supreme Court in the case of Mst. L. M. S. Ummu Saleema Vs. B. B. Gujaral and Another⁴.

9. The first ground urged by Petitioner/detenu is that, the Medico Legal Certificate relating to C.R. No.3 of 2022 is not placed

⁴ AIR 1981 SC 1191

before the Detaining Authority and not supplied to the Petitioner. In the ground of detention it is stated that, the Investigating Officer has given request letter to the Medical Officer about getting of certificate of injured/complainant. Learned APP has brought to our notice the fact that, the Medico Legal Certificate was issued on 23rd March, 2022 i.e. after the issuance of Order of detention. The question of placement of such document before the Detaining Authority therefore does not arise at all. Even otherwise, in the facts of this case we do not find any merit in the submission of learned counsel for the Petitioner that non-placement of said document has violated Petitioner's right under Article 22(5) of Constitution of India.

The second ground is based on the averment reflected in paragraph 4 of the grounds of detention. On perusal of the ground of detention it is clear that, in paragraph 5 of the grounds that, Detaining Authority has stated that, this detention Order is based on the offence and in-camera statements. The offence was referred in ground 5.1 whereas in-camera statements were referred to in para 5.2 and 5.3 of the grounds of detention. The judgment of acquittal referred to in para 4 does not form part of grounds of detention on the basis of which the Detention Order has been issued. In paragraph 4 itself it is mentioned that, in the past several offences referred to therein were registered against the Petitioner. The impugned Order

of detention is based on C.R. No. 3 of 2022 registered with MIDC Police Station, Solapur City and two in-camera statements. Thus, the submission of the learned counsel for the Petitioner that, the Order of acquittal should have been supplied to the Petitioner and that, it has affected Petitioner's right under Article 22(5) of the Constitution of India cannot be accepted. The law relating to placement of document before the Detaining Authority and supply of relied upon document is well settled. The decisions relied upon by the learned Advocate for the Petitioner were based on the factual matrix of the respective cases.

In view of the above, we do not find any reason to set aside the impugned Order of detention. The Petition therefore deserves to be dismissed.

ORDER

- (i) Criminal Writ Petition No.2092 of 2022 is dismissed.
- (ii) Rule is discharged.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)