

RMA

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

WRIT PETITION NO. 1848 OF 2022

Monty Bahadur Karotiya

Age 25 Years,

R/o. Barrack No. 1132, Rm. No. 9

Implipada, Forver Line,

Ulhasnagar-3, District Thane.

.. **Petitioner**

V/s.

1. The Commissioner of Police,
Thane.

2. The State of Maharashtra
(Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department
Mantralaya, Mumbai.)

3. The Superintendent,
Yerwada Central Prison,
Pune.

.. **Respondents**

Ms. Jayashree Tripathi for Petitioner
Mrs. M.H. Mhatre, APP for State

**CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.**

DATE : 15th November, 2022.

JUDGMENT [PER MILIND N. JADHAV, J.]

. By the present Petition, Petitioner has challenged his order of detention dated 02.02.2022 passed by Respondent No. 1 - Commissioner of Police, Thane City under the provisions of Section 3(2) of the Maharashtra Prevention of Dangerous Activities of

Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, sand smugglers and persons engaged in Black Marketing of Essential Commodities Act, 1981 (for short **“the said Act”**).

2. Ms. Tripathi, learned Advocate for Petitioner submitted that though the Petitioner has taken many grounds to challenge detention order, ground (d) is the principal ground of challenge and has drawn our attention to the representation dated 08.03.2022 filed by the Petitioner. She submitted that by the said representation, Petitioner had specifically pleaded as under:-

“(d). The detenu says and submits that the detaining authority has arrived at his subjective satisfaction on incomplete set of documents of the solitary incident i.e. C.R. No. I-347/2021. The detenu further says and submits that at page No. 19 of the compilation of documents there is a letter addressed to the Medical Officer Madhyavarti Hospital, Ulhasnagar dated 22.10.2021 requesting for medical certificate and comments of five injured persons, even though the order of detention is passed on 02.02.2022 the reply of the said letter is not included in the compilation of documents, also there is only one injury certificate of the complainant furnished to the detenu. The injury certificate of the remaining persons are not placed before the detaining authority nor copy furnished to the detenu. Medico legal documents are important and vital documents in any given case, non-furnishing vital documents amounts to non-communication of grounds of detention. As a result of non-furnishing vital documents, the detenu is deprived of making any effective representation as such his rights guaranteed under Article 22(5) of the Constitution of India is violated. You are requested to furnish injury certificates of all the injured persons along with the comments and the reply of the Medical Officer Madhyavarti Hospital, Ulhasnagar to enable the detenu to make effective representation. The order of detention is illegal and bad in law for non-furnishing vital documents, liable to be revoked and set aside.”

3. Thus, it is seen that Petitioner had specifically brought to the notice of the Authority that by letter dated 22.10.2021, Police Officer

has addressed a letter to the District Medical Officer, Madhyavarti Hospital, Ulhasnagar seeking the medical certificates and details of the injuries as well as comments of the five injured persons in respect of C.R. No. I-347/2021. Ms. Tripathi submitted that this letter and the action taken thereon subsequently has not been taken cognizance of at the time of passing of the order of detention. She has further submitted that at the time of passing of the detention order, there was only one injury certificate pertaining to Laxmi (informant / complainant) available before the Detaining Authority as also given to the Petitioner. That, the injury certificates of the remaining four injured persons namely Ganesh Raju Hadale, Sharada Manoj Behanwal, Gauri Ganesh Hadale and Shruti Raju Hadale were not placed before the Detaining Authority nor copy of the same was furnished to the Petitioner. She has therefore submitted that in view of non-furnishing the vital documents on which the Detaining Authority is to arrive at its subjective satisfaction against the Petitioner amounts to non-communication of grounds of detention and deprivation of a valuable right of the Petitioner to make effective representation under the provisions of Article 22(5) of the Constitution of India. She has therefore termed the order of detention having been passed without furnishing the relevant vital documents to the Petitioner as well as the Detaining Authority having not examined them and submitted that the impugned order deserved to be quashed

and set aside.

3.1. Ms. Tripathi has relied upon the following decisions in support of her case:-

- (i) *Ramchandra Kamat Vs. Union of India & Ors.*¹
- (ii) *Nafisa K. Ghanem Vs. Union of India & Ors.*²
- (iii) *Rupesh Ram Thakur Vs. Comm. Of Police, Thane & Ors.*³
- (iv) *V.C. Mohan Vs. Union of India & Ors.*⁴
- (v) *State of U.P. Vs. Kamal Kishore Saini*⁵
- (vi) *A. Boomuswamy Vs. Union of India & Ors.*⁶

4. PER CONTRA, Mrs. Mhatre, learned APP appearing on behalf of the Respondents has drawn on attention to the following affidavit-in-replies which form part of the record:-

- (i) Affidavit dated 23.06.2022 filed by Mr. Jai Jeet Singh, Commissioner of Police, Thane District in support of the detention order;
- (ii) Affidavit dated 23.06.2022 filed by Mr. Shirish Mohod, Deputy Secretary, Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai;
- (iii) Affidavit dated 22.06.2022 filed by Ms. Rani Bhosale,

1 (1980) 2 SCC 270

2 (1982) 1 SCC 422

3 2018 ALL MR (Cri) 2264

4 (2002) 3 SCC 451

5 AIR 1988 SC 208

6 1991 1 Crimes (HC) 903

Superintendent of Jail, Yerwada Central Prison, Pune;

(iv) Additional Affidavit dated 23.08.2022 filed by Mr. Jai Jeet Singh, Commissioner of Police, Thane.

4.1. Mrs. Mhatre has relied upon the following decisions in support of her case:-

(i) *Shabaj Siddiq Khan @ Shadab Chikna Vs.*

*A.N. Roy, Commissioner of Police, Greater Bombay & Ors.*⁷

(ii) *L.M.S. Ummu Saleema Vs. B.B. Gujaral & Ors.*⁸

(iii) *State of Tamil Nadu & Anr. Vs.*

*Adullah Kadher Batcha & Anr.*⁹

4.2. We have perused the above affidavits and annexures thereto. We also directed the learned APP to produce the original file and copy of the letter dated 22.10.2021 and the injury certificates of the five injured witnesses in C.R. No. I-347/2021. Learned APP has placed on record a copy of letter dated 22.10.2021 (supra) addressed by the Police Officer to the District Health Officer, Madhyavarti Hospital, Ulhasnagar. It is seen that by the said letter, the Police Officer had sought medical certificates pertaining to the injuries sustained by the five injured witnesses. It is fairly submitted by the learned APP that on 22.10.2022, the Medical Officer forwarded the

7 2006 ALL MR (Cri) 806

8 AIR 1981 SC 1191

9 AIR 2009 SC 507

injury certificate of Laxmi Walmiki (first informant / complainant) to the Police Officer. The said certificate has also been placed on record by the learned APP. Perusal of the said certificate reveals that Laxmi had sustained no injuries at all. Learned APP has also fairly submitted that in so far as the injury certificates of other four injured witnesses are concerned namely Ganesh Hadale, Sharada Behanwal, Gauri Hadale and Raju Hadale, the said certificates were not obtained by the Police Officer nor they were placed before the Detaining Authority at the time of passing of the detention order.

4.3. In this context, it would be useful to refer to the additional affidavit-in-reply dated 23.08.2022 filed by Respondent No. 1. Respondent No. 1 has categorically admitted that only the injury certificate of Laxmi (complainant) was placed before him and except her, no one was injured in the said offence i.e, C.R. No. I-347/2021. It is pertinent to note that invocation and registration of C.R. No. I-347/2021 against the Petitioner is under Sections 324, 504, 506 read with 34 IPC along with provisions of the Arms Act. In specific reference to this context, the say of Respondent No. 1 in the additional affidavit is relevant. The same is reproduced hereunder:-

“..... On these allegations, on 22.10.2021 an FIR vide C.R. No. I-347 of 2021, u/s. 324, 504, 506 r/w 34 of IPC r/w Arms Act has been registered with Madhyavarti Police Station. The injured were rushed to the Police Station. Therefore along with injured persons, ‘Yadi’ of five injured has been forwarded

to the District Medical Officer, Madhyavarti Rugnalaya, Ulhasnagar, after noticing the injuries on their person on 22.10.2021. The said document was placed on Page No. 21 of the compilation. I say that in reply to the letter dated 22.10.2021 to the Medical Officer, the document i.e. injury certificate of complainant dated 22.10.2021 has been forwarded to the Police Station by the Medical Officer, which is placed at Page No. 23 of the compilation. I further say that except the document at Page No. 23, no other document showing injuries to any other person has been placed before me at the time of issuance of the present order of detention.

4. I say that on 19.08.2022, the statement of Police Officer who has issued the 'Yadi' of injured has been recorded, wherein he has stated that after noticing the injury on the person of Ganesh, the query has been raised in the said 'Yadi' dated 22.10.2021. Thus it is submitted that, no injury certificate was in existence before the Officer who has issued the 'Yadi' at Page No. 21 of the compilation.

5. I say that since the investigation of C.R. No. I-347 of 2021 was in progress, on 21.08.2022 the injury certificate of Shruti Hadale and Ganesh Hadale has been obtained by the sponsoring authority, which shows that all the injuries are simple. It is therefore submitted that only one injury certificate of the complainant has been placed before me and the copy of which was supplied to the detenu along with compilation."

5. From the above, it is clearly seen that the reliance of the Competent Authority / Detaining Authority on C.R. No. I-347/2021 in respect of invoking crime under Section 324 IPC which states that *whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or*

cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both, is completely misplaced when admittedly, none of the witnesses including the informant had sustained any injury due to the alleged weapon i.e. the sword attributed to have been held by Petitioner. Respondent No.1 has clearly admitted that only one injury certificate pertaining to Laxmi (complainant) was placed before the Authority.

6. We state that by now the law on the aforesaid subject is well settled in a catena of decisions passed by the Supreme Court. It is clear that documents and materiel mentioned in the grounds of detention have to be supplied to the detenue immediately on demand. A demand for such document should not be taken lightly and the Detaining Authority must be prepared to supply at least those material or documents with utmost despatch. The detenu cannot make any effective representation unless he get copies of documents which are expressly mentioned in the grounds of detention. The right of the detenu is an independent constitutional right available to him under

the provisions of Article 22 of the Constitution of India. It is not an empty formality. For the right to be exercised meaningfully, the detenu is entitled to know the grounds of detention and the material to support the same which have been referred to in the detention order.

7. The Detaining Authority has relied upon one C.R. and two incamera statements of witnesses whose identity is concealed for their safety and security. In the grounds for detention, the Detaining Authority had relied upon the facts mentioned by the informant / complainant namely Laxmi Walmiki in C.R. No. I-347/2021 under Sections 324, 504, 506 read with 34 IPC r/w. Sections 4 and 25 of the Arms Act r/w. Section 37(1) 135 of Maharashtra Police Act.

8. It appears to us that, the Detaining Authority has blindly relied upon the statement made by the informant without verifying any corroboration to the same. That, none of the injury certificates of any of the alleged injured witnesses in the said C.R. were before the Detaining Authority at the time of passing of the detention Order on 02.02.2022.

9. Perusal of record indicates that, the injury certificate issued in favour of Laxmi Walmiki i.e. informant clearly mentions that, she did not suffer any injury. While reaching to the subjective satisfaction that, the Petitioner is a dangerous person, Detaining Authority has

considered the fact that, the Petitioner assaulted witness Ganesh Hadale on his back with a sword. Injury certificate of Ganesh Hadale was never produced before Detaining Authority at the time of passing of the detention Order.

10. The Petitioner made a representation on 08.03.2022 calling for injury certificates of 5 witnesses i.e. Ganesh Hadale, Laxmi Walmiki, Sharada Manoj Behenwal, Gauri Hadale and Shruti Hadale. However, the State Government by its Order dated 17.03.2022 has rejected the said representation of the Petitioner without specifying any fact therein as to whether the said Certificates are in existence or whether those are relied upon by the Detaining Authority or otherwise. The communication dated 17.03.2022 signed by the Joint Secretary to the Government of Maharashtra, Home Department to the Petitioner appears to be issued mechanically without providing any specification thereof regarding any of the injury certificates therein.

11. It appears to us that, the right of the Petitioner to make effective representation as contemplated under Article 225 of the Constitution of India is therefore impaired.

12. The Detaining Authority by its affidavit dated 23.06.2022 and an additional affidavit dated 23.08.2022 has tried to improve its case by adopting a plea that, it never relied on any of injury certificates of the witnesses in the said crime, appears to be adopted

only with a view to improve the case and none else.

13. It clearly appears to us that, on the date of passing of the detention Order, the Detaining Authority has in fact taken into consideration the injury sustained by witnesses Ganesh Hadale and Laxmi Walmiki.

14. It therefore appears to us that, the Detaining Authority has taken into consideration extraneous material at the time of issuing the said detention Order.

15. In view of the above, we quash and set aside the detention Order dated 02.02.2022 bearing No. TC/PD/DO/MPDA/02/2022 issued by Respondent No.1.

16. Petitioner be released forthwith from Yerwada Central Prison, Pune, if not required in any other case/s.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2022.11.22
17:36:27
+0530