

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

WRIT PETITION NO.3404 OF 2021

**PRIYA
RAJESH
SOPARKAR**

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Prakash Shivaji Ghadge
Age – 22 years,
Jogeshwari Colane No.01,
Kalepadal Hadapsar, Pune,
Pune.

... Petitioner

V/s.

1. The Commissioner of Police,
Pune City.
2. The State of Maharashtra
(Through Addl. Chief Secretary
to the Government of Maharashtra,
Home Department,
Mantralaya, Mumbai.
3. The Superintendent,
Yerwada Central Prison,
Pune.

... Respondents

Ms. Jayshree Tripathi, Advocate for the Petitioner.
Ms. S.D. Shinde, APP for Respondent No.2/State.

**CORAM: NITIN JAMDAR AND
N.R. BORKAR, J.J.
DATE: 15 JULY 2022.**

JUDGEMENT (*Per Nitin Jamdar, J.*):-

1. By this writ petition, Petitioner has challenged the order of detention dated 3 August 2021 issued by the Respondent No.1. The order of detention is issued under section 3(2) of the Maharashtra

Prevention of Danger Activities of Slumlords, Bootleggers (Drug Offenders, Dangerous Persons and Video Pirates) Act, 1981 (for short "MPDA Act"). Since the Petitioner was detained pursuant to the order, the Petitioner has also prayed for his release.

2. The order of detention is based on two cases, i.e. C.R.Nos.318 of 2021 and 358 of 2021 and two in-camera statements of the witnesses (A) and (B). The first case, i.e. C.R.No. 318 of 2021 was registered upon the complaint that on 24 April 2021, when the complainant was playing football with his friend, the Petitioner and his friend came to the complainant and started abusing and beating his friend with hockey sticks. The friend ran away in fear. After that, the Petitioner started beating the complainant with a baseball bat. After medical treatment, the complainant lodged the complaint at Hadapsar police station. On the complaint, an offence was registered against the Petitioner at Hadapsar police station vide Crime No.318 of 2021 under sections 324, 323, 143, 147, 148, 149 r/w 34 of the Indian Penal Code and offences under Maharashtra Police Act. Petitioner was arrested on 25 April 2021 and released on bail on 26 April 2021.

3. The second case registered was Crime No.358 of 2021. The complainant in this case, stated that on 12 May 2021, when he was sitting with his friend, the Petitioner and his accomplice approached them holding a sickle and started beating the complainant with a wooden log and sickle. The complainant's friend tried to intervene, but he was also assaulted. The Petitioner and his friend threatened people

who had gathered, who ran away in fear. The Petitioner was arrested on 18 May 2021 and was remanded to Judicial Custody. On 19 July 2021, Petitioner applied for bail.

4. A confidential inquiry was conducted about the criminal activities wherein it was revealed that Petitioner had terrorized the residents of the area. Statements of two witnesses were recorded and were duly verified. Witness (A) stated that when he was going on his bicycle in April, the Petitioner stopped the witness, took out the sickle, and threatened him. The Petitioner took away money from the witness's pocket. Due to fear, nobody came to help the Witness. Petitioner warned the Witness that he should not complain to the police; otherwise, he would be killed. Witness (B) stated that in March, when the Witness was going on his two-wheeler in the evening, the Petitioner accosted him and threatened him with a sickle putting the blade on his neck and forcibly took money from his pocket. Petitioner warned the Witness not to complain to the police.

5. The Detaining Authority referring to these facts recorded the subjective satisfaction that the Petitioner is a Dangerous Person as defined under section 2(b-1) of the MPDA Act, 1981. Material along with the details was supplied to the Petitioner. Accordingly, the impugned order of detention was passed. The Petitioner made a representation which was rejected; thereafter, the Petitioner filed the present petition.

6. We have heard Ms.Jayshree Tripathi, learned counsel for the Petitioner and Ms.S.D.Shinde, learned APP for the State.

7. The learned counsel for the Petitioner urged two grounds of challenge. First, the order of detention came to be passed when the Petitioner was in custody, and it is only to defeat the release of the Petitioner on bail that two in-camera statements were recorded and the order of detention was passed. The learned counsel contended that the action of the Respondent is not preventive but punitive to nullify the bail. Secondly it was contended that there are disparities between translation in Marathi and English translation on the grounds of detention supplied to the Petitioner. On the first ground of challenge, the learned APP contended that there is no error in the order of detention, and it continues to be a preventive action and is a permissible course of action as laid down in the decision of *Kamarunnissa Vs. Union of India and anr.*¹ It is not necessary, however, to elaborate further on this ground as the petitioner is entitled to succeed on second ground of challenge for the following reasons.

8. The second contention is based on the disparity between translation in Marathi and English translation on the grounds of detention supplied to the Petitioner. The learned counsel for the Petitioner submitted that there are several material discrepancies and omissions in the Marathi and English translation of the grounds, which has caused confusion in the mind of the Petitioner and resulted in denial of the Petitioner's right under Article 22(5) of making an

¹ (1991)1 Supreme Court Cases 128

effective representation. The learned counsel for the Petitioner has relied upon decisions in the cases of *Vijay Kumar Dharna alias Koka Vs. Union of India and ors.*², *Rohit Sidram Khatal Vs. Commissioner of Police, Solapur*³ *Sandip Suresh Ghag Vs. Commissioner of Police, Mumbai*⁴ and *Noor Mohd. Khan Vs. M.N.Singh and ors.*⁵. Learned APP submitted that the discrepancies are not material and, therefore, there is no denial of opportunity to make an effective representation.

9. We have gone through the English translation and the Marathi version of the grounds of detention. The grounds of detention, which constituted subjective satisfaction that preventive action is necessary. In the Marathi version, in respect of C.R. No.318 of 2021, there is a paragraph which refers to the incident of 23 April 2021, where there was an altercation between the complainant and the unknown person, who at that time, brought one Omkar Ghadge and further incident took place. In the English translation, the entire incident of 23 April 2021 is omitted. The narration of the incident of 24 April 2021 refers to Omkar Ghadge and Petitioner's role in the incident of 23 April 2021. The English translation gives an impression that the incident of 24 April 2021 was standalone with no background. The Marathi version gives a background. Other discrepancies are regarding the names of the accomplices, which are not found in the English version. The English version also does not contain the sentence that the offence was registered on 25 April 2021 at 2.12 p.m. The Marathi version

² (1990)1 SCC 606

³ Cry. W.P. No.1576 of 2020

⁴ 2014 ALL MR (Cri) 707

⁵ 2001 ALL MR (Cri) 1988

gives the name of the Investigating Officer, which details are found in the English version.

10. The disparities in translation regarding grounds of detention have arisen for consideration of the Court on various occasions in the case referred and relied upon by the Petitioner. The test to be applied is whether, on account of infirmity, the detainee could have been misled or confused in the exercise of the right under Article 22(5) of the Constitution of India. The question of prejudice also does not arise.

11. In the case at hand, the omission of the entire incident, which was a motive of the offence, from the English translation cannot be considered a minor error. The Petitioner would not be able to ascertain whether the earlier incident, i.e. of 23 April 2021, which was cited as a motive for the offence of 24 April 2021, formed the material for subjective satisfaction. In the English version, it did not form part of the material, wherein in the Marathi version, it did. The earlier incident was the motive for the next, and if that is considered, the nature of the offence would change and, consequently, its gravity. It would show premeditation. The Petitioner would be unsure if this earlier incident weighed with the Authority in forming subjective satisfaction or not. Resultant confusion would undoubtedly impair the Petitioner's right under Article 22(5) of the Constitution of India. The Division Benches of this Court, in the case of *Sandeep Suresh Ghag and Rohit Sidram Khatal*, have given effect to this position of law and quashed the orders of detention.

12. In the view of this factual and legal position, the Petitioner is justified in contending that his right to effective representation under Article 22(5) of the Constitution of India is violated. Thus, the impugned detention order deserves to be quashed and set aside on this ground.

13. Accordingly, Rule is made absolute in terms of prayer clause (b); that is, the order of detention dated 3 August 2021 is quashed and set aside. Petitioner is set forthwith at liberty unless wanted in any other case.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

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