

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4425 OF 2021

Shri. Siddhant Shashikant Wakode,
Age 26 years, R/o A-1, Dharwala Lane,
Opp. Deonar Main Gate,
Tat Nagar, Govandi, Mumbai 400 043. .. Petitioner

vs.

1. The Commissioner of Police,
Brihan Mumbai.
2. The State of Maharashtra,
Through Additional Chief Secretary
to Government of Maharashtra,
Mantralaya, Home Department,
Mantralaya, Mumbai.
3. The Superintendent,
Nashik Road Central Prison,
Nashik. .. Respondents

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Ms. Jayshree Tripathi, a/w. Mr. U.N. Tripathi, for the Petitioner.

Mr. J.P. Yagnik, APP, for State.

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CORAM: NITIN JAMDAR &
N.R. BORKAR, JJ.

DATE : 15 JULY 2022.

JUDGMENT (Per Nitin Jamdar, J.) :

By this petition, the Petitioner is seeking to quash the order

of detention dated 21 September 2021 issued by Respondent No.1 and that the Petitioner, who is placed under detention as per the impugned detention, be released forthwith.

2. The impugned order of detention is passed 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 (Mah. Act No.LV of 1981), (Amendment-1996, 2009, 2015).*

3. The order of detention refers to C.R. No.142 of 2016, lodged by Deonar Police Station on 12 June 2016 in respect of Section 307, 323, 504, 506(ii), 114, 34 I.P.C. r/w 4, 27 Arms Act r/w 37(1)(a) M.P. Act, C.R. No.287 of 2016, lodged by Deonar Police Station on 10 December 2017 in respect of Section 354, 509, 142, 143, 147, 149, 323, 504, 506 I.P.C., C.R. No.304 of 2018 lodged by Mankhurd Police Station on 29 October 2018 in respect of Section 324, 323, 504, 506(ii), 427, 143, 144, 147, 148, 149, 154 I.P.C. r/w 4, 25 Arms Act r/w 37(a)(1)(2), 135 M.P. Act; and C.R. No.150 of 2020 lodged by Govandi Police Station on 17 July 2020 in respect of Section 326, 323, 504, 34 I.P.C.

4. Apart from these crimes registered against the Petitioner,

the detaining authority has also relied upon the In-camera statements of Witness A and Witness B. After going through the material placed, the Detaining Authority-Respondent No.1 came to the conclusion that the Petitioner was acting prejudicially to the maintenance of public order passed. Accordingly, the order of detention was passed on 21 September 2021. Detention report was sent to the Government on 23 September 2021. The same was approved by the State Government on 27 September 2021 and by Advisory Board on 11 October 2021. The Petitioner made a representation on 20 October 2021, which was rejected. Thereafter, the Petitioner is before us.

5. We have heard Ms. Jayshree Tripathi, the learned Counsel for the Petitioner and Mr. J.P. Yagnik, the learned APP for the State.

6. It is contended by the Petitioner that the Detaining Authority has furnished a compilation of documents running into 310 pages, including the index of compilation, order of detention, committal order, grounds of detention along with documents supporting the order of detention. In the index of the compilation, it is categorically stated that the documents supplied to the Petitioner are supplied along with its English translations. Even the index of the compilation is translated in English language from its original Marathi version. Hence, it can be inferred that the original documents are in

the vernacular language i.e. in Hindi or in the Marathi language whose translations are provided in English language. It is contended that the order of detention, the committal order and the grounds of detention are only furnished in the translated version i.e. in English language. The originals of these documents which are in the vernacular language are not furnished at all. It was contended that since the original documents themselves were not furnished to the Petitioner the order of detention is vitiated. The learned Counsel for the Petitioner relied upon decision of the Supreme Court in the case of *Thahira Haris etc. vs. Government of Karnataka & Ors.*¹ and of the Division Bench in the case of *Moosa Velliat vs. The Asstt. Secretary, Government of Maharashtra and others*².

7. The reply affidavit of Respondent No.1 to the specific assertion is peculiar. It is stated that the grounds of detention were prepared in English language only and thus what was provided to the detenu itself was original. As the record will show this stand taken on affidavit is contrary to the record.

8. Both the index of the compilations served on the Petitioner in English and Marathi are on record compilation. The Part-I index of the English compilation, which is at page 36 of the paperbook in Part-1 refers to (1) "Detention order with English translation", (2) "Order

1 2009 All MR (Cri) 3451 (S.C.)

2 1983 CRI. L.J. 1246

of imprisonment with English translation”, (3) “grounds of detention with English translation”.

PART-I

Sr. No.	Subject	Page Numbers
1	Detention Order, with English translation	01 to 02
2	Order for imprisonment, with English translation	03 to 04
3	Grounds for detention, with English translation.	05 to 34

The Marathi version of the Index on page 39 of the paperbook is as follows:

— : भाग १ : —

अ.क्र.	विषय	पृष्ठक्रमांक
१.	स्थानबद्ध आदेश	०१ ते ०२
२.	कारागृहात ठेवण्याचे आदेश	०३ ते ०४
३.	स्थानबद्ध करण्याची कारणावली	०५ ते ३४

‘Part-1 of Index of Marathi version refers to (1) ‘Detention order’, (2) ‘Order of imprisonment’ (3) reasons for detention.

9. There is no ambiguity whatsoever in these official documents. “Grounds of detention, with English translation” clearly meant that original was in Marathi and there was an English translation thereof. The learned Counsel for the Petitioner has asserted, to which there is no denial, that it is normal practice to give both in English

and Marathi versions of grounds of detention.

10. The reply of the Respondents, as referred to above, is contrary to the record. It is stated in the reply that there never existed an original Marathi version. We will have to go by the official record, which clearly showed the original order of detention and grounds of detention were in Marathi. This conclusion is also supported by other circumstances such as the material in support of the grounds are given in both Marathi and English. We find no reason whatsoever why the original Marathi grounds of detention were not supplied to the Petitioner. It is not the stand of the Respondents that this compilation placed before is not correct. It is also not the stand of the Respondents that there was any typing error in mentioning English translation, assuming such stand can be taken in the Reply.

11. In the case of *Thahira Haris*, the Supreme Court has observed that all the necessary material and document must be given to the detenu and non-supply of it will prevent the detenu against preventive detention and the provisions of Article 22(5) would be violated.

12. We now turn to the argument of the learned APP that giving only English order did not prejudice the Petitioner. It would be a different matter if the stand of the State is that for some cogent and justifiable reason (if at all it can be given in law) that the original

grounds of detention could not be given to the Petitioner and English translation did not cause any prejudice. The reply is filed even to deny the official record. Authorities cannot be permitted to take such vacillating stands in matters of preventive detention. As is illustrated in series of decisions, the courts do not countenance casual approach of the executive while passing detention orders that take away personal liberty of the citizens.

13. The contention of the learned APP is that in the panchnama the Petitioner has sought for a document to be explained in English. The reply affidavit refers to a school leaving certificate from which it is stated that the Petitioner has studied in English medium till 8th standard. From this it is stated that the Petitioner has sufficient knowledge of English. This mere assertion that the Petitioner has studied upto 8th standard in English medium does not necessarily mean that the Petitioner had sufficient knowledge of English language. It is also not the case that the Petitioner does not know Marathi.

14. In the case of *Moose Velliat*, the Division Bench of this Court observed that the translation cannot take place of the original. The Division Bench noted that translations are not made nor are verified by the detaining authority. Normally the work of translation is left to subordinate officers or to reporting department. The translations are not made by experts or official translators. It is a free translation of

the original. The Court in some cases noticed that while translating there are apparent mistakes in two versions. Therefore, it is necessary that both, the original as well as translated copies should be supplied to detenu. The Division Bench observed that unless this is done detenu will not be in a position to ascertain whether the translation is faithful and true. Therefore, once all the material in support of the detention order was given to the Petitioner, both in Marathi with English translations, no reason is forthcoming as to why the original Marathi version of the Reasons for Detention was not given. It cannot be argued that the original version had no consequence at all.

15. The order of detention thus cannot be sustained. Accordingly, the Petitioner is entitled to succeed and the detention order will have to be quashed and set aside.

16. The writ petition is allowed. Rule is made absolute in terms of prayer clause (b).

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)