

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4485 OF 2021

Sushant @ Sushen Narayan Thakur

Age : 29 years,

R/o. Nhavagaon, Tal. Panvel,

District – Raigad

.. Petitioner

v/s.

1. The Commissioner of Police,
Navi Mumbai

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

3. The Superintendent,
Nashik Road Central Prison,
Nashik

.. Respondents

....

Ms. Jayashree Tripathi, for the Petitioner.

Mrs. S.D. Shinde, APP, for State.

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

DATE : 1 JULY 2022.

Oral Judgment (Per Nitin Jamdar, J.) :

By this petition, the Petitioner - Detenu is challenging the

order of detention bearing No.PD/MPDA/01/2021 dated 18 August 2021 issued under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (M.P.D.A. Act 1981).

2. The Petitioner was served with an order of detention under Section 3(2) of M.P.D.A. Act 1981 dated 18 August 2021 and the grounds of detention were supplied to the Petitioner. The Petitioner submitted representation to the State-Government on 27 October 2021 for consideration. Since the representation was not fruitful, the present petition is filed under Article 226 of the Constitution of India for a writ of habeas corpus challenging the order of detention.

3. We have heard Ms. Jayashree Tripathi, learned Counsel for the Petitioner and Ms. S.D. Shinde, APP for the Respondent - State.

4. Two grounds are raised by the Petitioner for challenging the order of detention. First is that the verification upon the in-camera statements of two witnesses A and B was not given along with the order of detention, thereby affecting the right of the Petitioner detenu under Article 22(5) of Constitution of India to make an effective representation. Second ground stated in the witnesses of three police officers relied upon Police diaries which were not furnished to the Petitioner.

5. As regards the second contention of that station diary copies were not given, in the reply explanation is sought to be given that this ground does not exist and there was an typographical error, which is sought to be made capital of. Be that as it may, according to us, the Petitioner is entitled to succeed on the first ground of challenge.

6. The first ground of challenge, is, as stated above, that the Petitioner was not given the verification in respect of two in-camera statements of witnesses A and B recorded on 2 April 2021 and 3 May 2021 along with the order of detention.

7. The learned Counsel for the Petitioner has relied upon two decisions of this Court in the cases of *Shri Mehmood Shahjad Khan @ Pathan vs. The State of Maharashtra & Anr.*¹ and *Rohidas @ Pintya Laxman Gupte vs. The Commissioner of Police, Pune & Ors.*².

8. In the case of *Mehmood Khan*, the Division Bench has observed that it is the consistent view taken by this Court is that failure to supply copies of the verification of the in-camera statements or verified statements to the person detained results into a breach of Article 22(5) of the Constitution of India. In the case of *Rohidas Gupte*, also the Division Bench set aside the detention order on the ground that the verification was not supplied with the documents. No contrary legal position is shown.

1 2013 All MR (Cri) 3349

2 Criminal Writ Petition No.395 of 2015 dated 17 April 2015.

9. In the affidavit filed by the Commissioner of Police dated 22 December 2021 in this petition, it is stated that the verification of the supervisory officer, i.e. Assistant Commissioner of Police, was provided to the Police on 26 November 2021, thus not along with the document supplied. Therefore, it is not in dispute that the verification was not supplied along with the order of detention dated 28 August 2020. Since non-supply of the verification of the in-camera statements, along with document supplied, has violated the Petitioner's right under Article 22(5) of the Constitution of India vitiating the order of detention. The petition is entitled to succeed.

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

11. The Petitioner be set-forth at liberty, unless required in any other case.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)