

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

CRIMINAL WRIT PETITION NO. 4498 OF 2021

Shri Bhushan Eknath Gaikwad
Aged 30 years, R/o. Kondhapuri,
Tal: Shirur, Dist: Pune.

... Petitioner.

V/s.

1. The District Magistrate,
Pune.

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

3. The Superintendent,
Yerwada Central Prison, Pune.

... Respondents.

Ms Jayashree Tripathi with U.N.Tripathi for the Petitioner.
Mr J.P.Yagnik, APP for the Respondent- State.

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CORAM : **NITIN JAMDAR AND
N.R. BORKAR, JJ.**

DATE: **14 July 2022.**

JUDGMENT: (Per Nitin Jamdar, J.)

By this petition, the Petitioner has challenged the order
of detention dated 1 October 2021 issued by Respondent No.1-

District Magistrate, Pune and has further prayed that the Petitioner be ordered to be released forthwith.

2. The impugned detention order was issued under section 3 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 (Act of 1981). The detention order was served on the Petitioner with the grounds of detention. The Petitioner made a representation dated 27 October 2021 to the State Government for consideration and revocation of the detention order. The representation was rejected, and the Petitioner is before us with this petition.

3. The order of detention is based upon C.R. No.437/2021 registered with Shikrapur Police Station and two in-camera statements of witness-A and witness-B. C.R. No.437/2021 was registered on the complaint of one Mr Sanjivkumar Krushnapal Sing. He has stated that he worked as Site Incharge in Khushi Infrastructure Company. He has stated that a labour contractor had contacted him to come to the company gate. At that time, the complainant saw the Petitioner and some other persons standing near the tea stall near the gate. There, the Petitioner threatened the complainant, picked up a wooden rod, and assaulted the complainant. The complainant was also beaten by an iron rod. The

shopkeeper next to the company gate closed their shutters. Thereafter the Petitioner and others left the spot in a four-wheeler. During the investigation, statements of witnesses were recorded. Statements of two in-camera statements were recorded. Statement of witness-A was recorded on 11 August 2021, narrating the incident that took place in the first week of July. The statement of witness B was recorded on 13 August 2021, narrating the incident that occurred a month before that date. After considering the material on record, the detaining authority recorded subjective satisfaction that the Petitioner is a dangerous person within the meaning of section 2(b-i) of the Act of 1981, and the activities of the Petitioner are prejudicial to the maintenance of public order in the area. Accordingly, the order of detention was passed on 1 October 2021. the Petitioner made a representation dated 27 October 2021, which was received by the Jail Authorities on 2 November 2021. The representation was rejected by order dated 26 November 2021, and the rejection was communicated to the Petitioner.

4. Heard Ms Tripathi for the Petitioner and Mr Yagnik, learned APP for the State. Rule is already issued in the petition.

5. The learned counsel for the Petitioner advanced two submissions. First, there is a delay in the disposal of representation of the Petitioner dated 27 October 2021, which was rejected on 26 November 2021 and the explanation given for this delay is entirely

unsatisfactory and unexplained. The second ground urged is that along with the grounds of detention, entire relevant material relied upon by the detaining authority was not supplied and, non-furnishing of vital documents violates the fundamental rights of the Petitioner under Article 22(5) of the Constitution of India. It was also contended that in the representation, a specific request was made to furnish these documents; despite the demand, the documents are not supplied to the Petitioner to date.

6. We take the second ground urged for consideration first. The Petitioner has categorically asserted in the petition that the Detaining Authority had taken C.R. No.437/2021 into consideration for passing the detention order. C.R. No.437/2021, which is a solitary incident, was on the complaint of Mr Sanjivkumar Krushnapal Sing. It is stated that the compilation of documents given to the Petitioner from pages 320 to 349 contains the FIR, but the complainant's statement was not furnished to the Petitioner. It is also asserted that a specific request was made to supply a copy of the statement of the Complainant in the representation of the Petitioner, but the authorities have not supplied these documents to the Petitioner until today.

7. In the affidavit-in-reply filed on behalf of the Detaining Authority, the response to those grounds is simplistic in one sentence that all the relevant documents of C.R. No.437/2021 were furnished

to the Petitioner along with the detention order, and the copy of the complaint was also furnished to the Petitioner which he has acknowledged. It is not the case of the Petitioner that the entire C.R. No.437/2021 was not given. The Petitioner has specifically asserted that out of the papers C.R. No.437/2021 given, a copy of the complainant's statement is missing. Therefore the reply should have been specific that even this statement was given. The reply does not state so.

8. Further, we have been shown the compilation given to the Petitioner, a true copy signed by the Police Inspector, Shikrapur Police Station. The reference to the FIR No.437/2021 is found in the compilation from page 320 onwards. It does not contain the statement of the complainant. Upon a query to the learned APP about whether the original record with the learned APP contains such a statement, the learned APP fairly accepted that the statement of the Complainant is not found. All submitted that an FIR copy in the compilation given to the Petitioner is available but not the statement of the complainant. All pages have been chronologically numbered.

9. The Supreme Court, in the case of *Kamla Kanhaiyalal Khushalani v. State of Maharashtra*¹ has laid down that the documents and material relied upon in the order of detention form an integral part of the grounds and must be supplied to the detenu

¹ AIR 1981 SC 814

pari passu the grounds of detention. If the documents and materials are supplied later, then the detenu is deprived of an opportunity of making an effective representation against the order of detention. Before an order of detention can be supported, the constitutional safeguards must be strictly observed. The Supreme Court reiterated this position of law in the decision in the case of *Union of India v. Ranu Bhandari*², noting that the consistent view is that when a detention order is passed, all the material relied upon by the detaining authority in making such an order, must be supplied to the detenu to enable him to make an effective representation against the detention order in compliance with Article 22(5) of the Constitution, irrespective of whether he had knowledge of the same or not. These have been recognized as the minimum safeguards to ensure that preventive detention laws do not become instruments of oppression in the hands of the authorities. It is also made clear that there is no legal requirement that a copy of every document mentioned in the order has to be supplied to the detenu, but copies of such documents relied upon by the detaining authority must be supplied.

10. In the case at hand, the detention order is based on solitary crime (apart from in-camera statements); the statement of the Complainant in the said FIR was a crucial document as it was relied upon by the Detaining Authority. There cannot be a dispute that the statement of the complainant is a vital document for the

2 (2008) 17 SCC 348

prosecution case. Non-furnishing this vital document has deprived the Petitioner of making an effective representation against the order of detention, violating the protection under Article 22(5) of the Constitution of India. The order of detention is thus illegal and bad in law. The Petitioner is, therefore, entitled to succeed, and the order of detention is required to be quashed and set aside.

11. Accordingly, Rule is made absolute in terms of prayer clause (b). The impugned order issued by Respondent No.1 dated 1 October 2021 is quashed and set aside. The Petitioner be released forthwith unless required in any other case.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)