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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR**

**CRIMINAL WRIT PETITION NO.132 OF 2022**

Shekh Kasam s/o Shekh Shekhji,  
Aged – 26 years, Occupation Private Work,  
R/o Chandkha Plot, Old City, Akola,  
District Akola,  
(Presently Central Prison, Yerwada,  
Pune).

..... **Petitioner.**

**:: V E R S U S ::**

1. State of Maharashtra,  
Through Advisory Board of  
Government of Maharashtra, Home  
Department (Special), Second Floor,  
Main Building, Mantralaya,  
Mumbai-32.

2. Office of the Collector & District  
Magistrate, Akola.

..... **Respondent.**

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Shri A.K.Bhangde, Counsel for the Petitioner.  
Shri M.J.Khan, Additional Public Prosecutor for the State.  
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**CORAM : ROHIT B.DEO & URMILA JOSHI PHALKE, JJ.**

**DATE : OCTOBER 19, 2022**

**ORAL JUDGMENT (Per : Urmila Joshi-Phalke, J.)**

1. Heard learned counsel Shri A.K.Bhangde for the  
petitioner and learned Additional Public Prosecutor Shri  
M.J.Khan for the State.

**2**

2. By this petition, the petitioner challenges order of detention dated 30.11.2021 passed by respondent No.2 and final order dated 5.1.2022 passed by respondent No.1 whereby the petitioner was detained under the provisions of the the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers & Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (for short, the said Act).

3. Brief facts are as under:

The petitioner is resident of Old City Akola, district Akola. Respondent No.2 on 30.11.2021 in pursuance of Section 8 of the said Act communicated grounds on which detention order has been passed under Section 3(1) of the said Act. Respondent No.2 passed the detention order on the basis of proposal received from the Police Inspector, Old City Police Station, District Akola contending that the petitioner is having criminal records and he is a dangerous person as defined in the said Act. The petitioner was involved in serious offences under provisions of the Indian Penal Code, Arms Act,

**3**

the Bombay Police Act, and the Maharashtra Control of Organised Crime Act, 1999. Respondent No.2 for taking preventive action relied on the cases pending before the Court and had considered total five cases. Respondent No.2 had also considered confidential statements of witnesses "A" and "B" dated 25.11.2021. Respondent No.2 had recorded his satisfaction that the petitioner is a 'dangerous person' within the meaning of Section 2(b-1) of the said Act. The said order was forwarded for approval of respondent No.1 and respondent No.1 approved the detention order on 5.1.2022. By the said final order, it was directed that the petitioner shall be detained continuously for a period of 12 months from the date of detention i.e.5.1.2022.

4. Being aggrieved and dissatisfied with the said orders passed by the detaining authority, this petition is preferred on various grounds including the ground that the said orders passed by the detaining Authorities are without subjective satisfaction of the respondent No.2 and without application of mind. It is further contention of the petitioner that there is no subjective satisfaction about unwillingness of witnesses "A" and "B" to come forward and to give statements

**4**

against petitioner that the ground of detention also no where expressly mentions that the persons whose in-camera statements are relied upon by the respondent No.2 have expressed unwillingness to come forward to depose against the petitioner. There was no endorsement of respondent No.2 on the said in-camera statements that he personally verified the said statements and, therefore, the order passed by the respondent No.2 is without application of mind and is liable to be quashed.

5. In response to the notice, the State had raised various grounds to support the order passed by the detaining Authority. It is contention of the State that after following due procedure and on subjective satisfaction, detaining Authority had passed the order. Therefore, no ground is made out to interfere with the said order.

6. Learned counsel Shri A.K.Bhangde for the petitioner submitted that the detention order was passed without application of mind. The grounds of detention no where state that the respondent No.2 satisfied himself regarding the grounds of detention. It is a mechanical order

**5**

passed by the detaining Authority. In support of the submissions, learned counsel for the petitioner placed reliance on decisions of this Court in the cases of on Gokul Sahabrao Sabale vs. The Commissioner of Police, Pune and ors, reported at 2017 ALL MR (Cri) 2051; Rajkumar @ Anda s/o Jaglal Jaiswal vs. State of Maharashtra and others, reported at [2017(3) Mh.L.J. (Cri) 475]; Rekha vs. State of Tamilnadu Tr. Sec. To Govt. and anr, reported at 2011 ALL MR (Cri) 2014 (SC), and and orders passed in Criminal Writ Petition No.531/2021 and Criminal Writ Petition No.768/2015 decided on 28.10.2021 and on 1.2.2016 respectively.

7. On the other hand, learned Additional Public Prosecutor Shri M.J.Khan for the State submitted that the detaining Authority had considered entire record while passing the order and came to conclusion that the petitioner is a dangerous person and pleased to pass the order of detention and, therefore, no interference is called for.

8. We have considered the rival contentions and also considered the grounds raised in support of the petition that the detaining authority has relied in-camera statements of two

**6**

witnesses. The grounds in respect subjective satisfaction is concerned, we have perused the record. The order passed by the respondent No.2 shows that respondent No.2 observed the material placed before it and only mentioned that he had subjectively satisfied himself that petitioner is acting in a manner prejudicial to the maintenance of public order. It is further observed that the detaining Authority is aware that the petitioner is on bail on all cases but considering the tendencies and inclination towards criminal activities by the petitioner, he is satisfied that petitioner is likely to revert to similar activities which are prejudicial to the maintenance of public order in future and it is necessary to detain the petitioner.

9. Regarding subjective satisfaction, the Division Bench of this Court in Criminal Writ Petition No.4646/2017 decided on 31.1.2018 at the Principal Seat observed that "communication of grounds presupposes formulation of grounds and such formulation requires application of mind of the detaining authority to the facts and material placed before it, that is to say to the relevant and proximate matter in regard to each individual's case. It should comprise all the

**7**

constituent facts and material that went into making of the mind of a statutory functionary. Thus, when the Authority gives its decision based on his subjective satisfaction, it is expected that he would record his satisfaction based on a bunch of facts and influenced by his personal feelings and opinion. We are satisfied that the impugned detention order so also order confirming the same are required to be set aside because in this case in the statements of witnesses who have given in-camera statements and in the impugned order no satisfaction is recorded about the unwillingness of such persons to come forward and give statements against the petitioner, in the event regular prosecution were to be lodged against the petitioner. In the absence of any material on this aspect, we have to conclude that detaining authority did not apply its mind to this crucial aspect and to that extent subjective satisfaction of the detaining authority stands vitiated.

10. The Honourable Apex Court in the case of in the case of **Rameshwar Shaw vs. District Magistrate, Burdwan and anr**, reported at **1964 SC 334** while considering detention of detainee under the order of detention passed under Section

**8**

3(1) of the Preventive Detention Act, 1950 observed that, *"it is true that in deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that if the said person is not detained, he may act in a prejudicial manner, and this conclusion can be reasonably reached by the authority generally in the light of the evidence about the past prejudicial activities of the said person. When evidence is placed before the authority in respect of such past conduct of the person, the authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a prejudicial manner."*

11. In the instant case, on careful perusal of those in-camera statements of witnesses it only states that the petitioner threatened them, abused them and extracted money from them. The satisfaction regarding the unwillingness was not at all recorded by the detaining authority. Learned Additional Public Prosecutor for the State strongly placed reliance upon the contents of grounds of detention to show that the Police Commissioner is conscious of contents of the said statements but nothing is on record to

**9**

show the Police Commissioner has verified the said statements. The reproduction of the contents of those statements nowhere shows subjective satisfaction envisaged in law. The subjective satisfaction has to be about unwillingness of such persons to come forward and to give statements against the petitioner. There is no whisper about this aspect in the impugned order. The record also does not show that any effort was made by the Police Commissioner to have a dialogue in this regard with the Assistant Commissioner of Police. The impugned orders based upon such in-camera statements are, therefore, bad in law. We are, therefore, satisfied subjective satisfaction is needed which has not been reached and recorded by the detaining Authority.

12. In this view of the matter, the petition deserves to be allowed. Hence, we proceed to pass following order:

**ORDER**

(1) The criminal writ petition is allowed.

**10**

(2) The order of detention dated 30.11.2021 passed by respondent No.2 and final order dated 5.1.2022 passed by respondent No.1 are hereby quashed and set aside.

(3) The Superintendent, Central Prison Yerwada, Pune shall release the detenue forthwith, if not required in any other offence.

Rule is made absolute in the aforesaid terms.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

!! BrWankhede !!

BHUSHAN  
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