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

CRIMINAL WRIT PETITION NO.522 OF 2022

Nikhil s/o Mohan Wadive,
Aged 32 years, occupation private service,
R/o Camp Road, behind S.T.
Depot, Samadhan Nagar,
Amravati, Taluka and District Amravati. **Petitioner.**

:: V E R S U S ::

1. State of Maharashtra,
Through its Chief Secretary,
Home Department,
Mantralaya, Mumbai.

2. The Commissioner of Police,
Amravati City, Amravati.

3. The Police Inspector,
Police Station City Kotwali,
Amravati.

4. Assistant Commissioner of Police,
Rajapeth, Office of the
Commissioner of Police,
Amravati.

5. The Deputy Commissioner of
Police, Zone-2, Office of the
Commissioner of Police,
Amravati.

6. The Superintendent of Police,
Amravati. **Respondents.**

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Shri Syed Ateeb, Counsel for the Petitioner.
Shri S.S.Doifode, Additional Public Prosecutor for the State.
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CORAM : ROHIT B.DEO & URMILA JOSHI PHALKE, JJ.
DATE : OCTOBER 20, 2022

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

1. Heard learned counsel Shri Syed Ateeb for the petitioner and learned Additional Public Prosecutor for the State. **Rule.** Rule made returnable forthwith and heard finally.

2. The detention order dated 23.6.2022 passed by respondent No.2 and final order dated 24.8.2022 passed by respondent No.1 are under challenged in this petition by which the petitioner was detained under the provisions of 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 a permanent resident of district Amravati. Respondent No.3 - the Police Inspector, Police Station City Kotwali, Amravati had forwarded a proposal for detention on 31.5.2022 to respondent No.4 - The Assistant Commissioner of Police, Amravati along with confidential

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statements of witnesses "A" and "B" for initiating proceedings under Section 3 of the said Act. On receiving the said proposal, respondent No.4 forwarded recommendation to respondent No.2 on 2.6.2022. On 9.6.2022, respondent No.5 has also forwarded recommendation to respondent No.2 for detention of the petitioner. Respondent No.2 on 23.6.2002 has forwarded the communication to the petitioner with ground of detention and called explanation why he should not be detained on grounds mentioned in the communication.

4. The petitioner made a complaint to respondent No.2 against respondent No.3 - the Police Inspector wherein he specifically alleged that respondent No.3 - the Police Inspector threatened him to involve him in false cases. However, no action or enquiry was conducted by respondent No.2. Therefore, the petitioner had preferred Writ Petition No.75/2022 which was allowed. By the said petition, the petitioner had challenged grounds of detention as well as approval of the detention order passed by respondent No.1 on 24.8.2022.

5. The petitioner has challenged the order of detention on various grounds including the ground that

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without subjective satisfaction respondent No.2 has passed the detention order. The respondent No.2 blindly relied on in-camera statements of witnesses. It is further contention of the petitioner statements of confidential witnesses no where states specific dates mentioned by witnesses regarding the incident alleged and even no First Information Report has been lodged by said witnesses in respect of petitioner for the said incident. The detention order passed by the respondent No.2 was without personally verifying the same and without recording subjective satisfaction about the truthfulness of the said statements.

6. In response to 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, the detaining Authority had passed the order. Therefore, no ground is made out to interfere with the said order.

7. Learned counsel Shri Syeed Ateeb for the petitioner submitted that the detention order was passed without application of mind. The grounds of detention no where state that respondent No.2 satisfied himself regarding

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the grounds of detention. It is a mechanical order passed by the detaining Authority. In support of the submissions, learned Advocate for the petitioner placed reliance on the decision of the Honourable Apex Court in Criminal Appeal No.1708/2022 (**Sushanta Kumar Banik vs. State of Tripura and ors**) on 30.9.2022.

8. On the other hand, learned Additional Public Prosecutor Shri S.S.Doifode 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.

9. We have considered the rival contentions and also considered the grounds raised in support of the petitioner that the detaining Authority has relied in-camera statements of two witnesses. The ground in respect of 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 him and only mentioned that he had subjectively satisfied himself that the

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petitioner is acting in a manner prejudicial to the maintenance of public order.

10. 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 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

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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.

11. 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 detenu under the order of detention passed under Section 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*

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person in order to prevent him from acting in a prejudicial manner.”

12. In the case is hand, careful perusal of those in-camera statements of witnesses shows the petitioner threatened them, abused them and extracted money from them. Interestingly, there is noting on record to show the above said witnesses lodged any report against the detenue. The in-camera statements show the act of extortion and threatening. As already noted above, nothing of this sort was reported to the concerned police station. We find this so called material to be insufficient to term the detenue as dangerous person. Perusal of grounds of detention, show nothing mentioned in the grounds of detention to show that the regular application of the penal provision are insufficient to restrict the activities of the petitoiner. There is no satisfaction recorded by the detaining Authority on this count also. The satisfaction regarding the unwillingness was not at all recorded by the detaining Authority.

13. Learned Additional Public Prosecutor Shri S.S.Doifode for the State strongly placed reliance upon the contents of these paragraphs to show that the police

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Commissioner was conscious of comments of the said statements but noting is on record to 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 statement 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 order which is based upon such in-camera statements is, therefore, bad in law. We are, therefore, satisfied that required satisfaction which has not been reached and recorded by the detaining Authority

14. 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.

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(2) The order dated 23.6.2022 passed by the respondent No.2 and the order dated 24.8.2022 passed by the respondent No.1 are quashed and set aside.

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

Rule is made absolute in above terms.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DEO, J.)

!! BrWankhede !!

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