

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

903 CRIMINAL WRIT PETITION NO.577 OF 2023

Nikhil @ Bhola Sunil Ajabe.

... Petitioner

Versus

1. The District Magistrate,
Jalgaon, District Jalgaon.
2. The State of Maharashtra,
Through Addl. Chief Secretary,
Home Department (Special),
Mantralaya, Mumbai 32.
3. The Superintendent,
Central Prison Amaravati, Jail Road,
Camp Area, District Amaravati.
4. Superintendent of Police,
Jalgaon.
5. Chalisgaon City Police Station,
Chalisgaon, District Jalgaon.

... Respondents

...
Mr. Yogesh Arun Jadhav, Advocate for Petitioner.
Mr. M. M. Nerlikar, APP for Respondents.

...

CORAM : R. G. AVACHAT and
SANJAY A. DESHMUKH, JJ.

DATE : 21st July, 2023.

Per Court:

1 Heard.

2 The challenge in this writ petition, under Article 226 of the
Constitution of India, is to the order of detention dated 30th January,

2023 passed by the learned District Magistrate. The order of detention has been confirmed by the State. The period of detention is of 12 months. The order has been challenged on many grounds. One of the grounds of challenge is sufficient for disposing of the present writ petition.

3 According to the petitioner, he had not been supplied with verified in-camera statements of the witnesses. According to the learned counsel for petitioner, in fact, 1 and ½ months after the petitioner was detained, he was supplied with a set of documents by the concerned police station. The petitioner has been detained in a jail at Amravati. According to him, by non-supplying of those documents, the petitioner has suffered prejudice in making an effective representation against an order of his detention. The same is sufficient for setting aside the order impugned herein.

4 The learned APP would, on the other hand, submit that affidavit-in-reply has been filed stating therein that each and every document relied on for passing the order of detention, has been supplied to the petitioner. The petitioner had even appeared through V.C. before the Advisory Board. He did not take any such objection. His petition is also silent to make out a case of having been unable to make a representation for want of non-supply of each and every

document relied on. The learned APP produced on record all the original documents suggesting each and every page therein, except two envelopes containing in-camera statements bears signature of the petitioner herein. He meant to say that the same is the evidence of supplying the petitioner with each and every document. It was only due to inadvertence, the signature of the petitioner could not be obtained on the said envelopes. He further submits that the first page of those documents is an index of all the documents supplied to the petitioner. Item Nos.4 and 5 therein pertain to sealed covers containing in-camera statements.

5 The petitioner has been detained as his activities as a dangerous person were found to be prejudicial to maintenance of public order. The petitioner in his petition has specifically averred in ground 'M' that in-camera statements duly verified, have not been supplied to him. In response to the said averment in the petition, our attention was drawn to the affidavit-in-reply, wherein it has been stated that all the documents relied on, while passing the order of detention, have been supplied to the petitioner. In the affidavit-in-reply, it has been denied that no such statements had ever been supplied to the petitioner. In compliance of the said mandate, the original set of documents has been placed before us to show each and every page of the compilation of the documents namely page Nos.1 to 253, are

shown to have borne signature of the petitioner herein, except two envelopes containing in-camera statements. On the other side of the signature of the petitioner, there is a signature of the Jailer of the jail in which the petitioner has been detained. None of those documents indicate the petitioner to have acknowledged receipt of each and every document, except bearing his signature. It is difficult to assume that the said signature is in token of acknowledgment of receipt of those documents. The concerned Jailer is one of the respondents in this petition. He has not filed his affidavit-in-reply denying the factum of not having supplied the petitioner with each and every document. It appears that the documents are supplied in the presence of Jailer, by the sponsoring authority. It appears that none of such pages bear signature of the sponsoring authority in token of having delivered those documents by him in the presence of Jailer. Even we accept the case of the respondent/State that the documents have been supplied to the petitioner, the fact remains that in the bunch of documents supplied to the petitioner, there are two envelopes at page Nos.14 and 15. Page No.13 and all the papers thereinbefore bear signature of the petitioner and all the pages from page No.16 onwards bear petitioner's signature. The authority concerned has no explanation to offer, except the ground of being inadvertence, as to why the petitioner's signature has not been obtained on those two envelopes, containing in-camera statements, in proof of or in acknowledgment of receipt of those

in-camera statements by the petitioner. We have, therefore, every reason to observe that the in-camera statements might not have been supplied to the petitioner.

6 By non-supply of such documents, there appears to be breach of Article 22(5) of the Constitution of India, which mandates that all the grounds on which the order of detention is passed are communicated to the detenu. It impliedly suggests copies of all documents relied on need to be supplied to him to enable him to make representation against the order of detention. For want of non-compliance of Article 22(5) of the Constitution of India, in our view, the order is liable to be set aside. Accordingly, the petition succeeds. Hence, the following order:-

ORDER

- I. The writ petition is allowed in terms of prayer clause (C).
- II. The impugned order dated 30th January, 2023 passed by the learned District Magistrate, Jalgaon is set aside.
- III. The petitioner be released forthwith, if not required in any other crime.

[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]