

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 811 OF 2023

Raju Govind Chavan

...Petitioner

versus

1. The State of Maharashtra
2. The Collector/District Magistrate, Hingoli
3. Superintendent of Police, Hingoli
4. P.S.O. Kurunda Police Station,
District Hingoli

...Respondents

.....
Mr. U.L. Telgaonkar, Advocate for the petitioner
Mr. N.T. Bhagat, A.P.P. for respondents
.....

**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 27th JULY, 2023.**

PER COURT :-

Heard.

2. The challenge in this writ petition, under Article 226 of the Constitution of India, is to the order of detention dated 16th December, 2022 passed by the 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 detention of the petitioner, 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 bear thumb impression 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 thumb impression 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.15 and 16 therein pertain to sealed covers containing in-camera statements.

5 The petitioner has been detained as his activities as a bootlegger were found to be prejudicial to maintenance of public order. The petitioner has specifically contended that in-camera statements have not been supplied to him. In response to the said contention, 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.3 to 303, are shown to have borne thumb impression of the petitioner herein, except two envelopes containing in-camera statements. On the other side of the thumb impression 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 thumb impression. It is difficult to assume that the said thumb impression is in token of acknowledgment of receipt of those documents. It appears that the documents are supplied in the presence of Jailer, by the sponsoring

authority. It was specifically submitted by the learned advocate for the petitioner that those documents were received by the wife of the petitioner from the concerned police station one and half months after his detention. There is, however, no support in proof of the same. 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.101 and 102. All papers in the compilation, except page 101 and 102, bears petitioner's thumb impression. We failed to understand as to why the jailer and/or sponsoring authority did not obtain the petitioner's thumb impression on page Nos. 101 and 102 (sealed envelopes) allegedly containing the in-camera statements of two witnesses. The affidavit in reply does not contain any explanation, except the case of inadvertence, as to why the petitioner's thumb impression was not obtained on the covers/envelopes containing in-camera statements. We have therefore, to believe the petitioner's case that he has not been supplied with in-camera statements. We opened both the envelopes in the open court to find therein the in-camera statements to have not been duly verified. The Sub Divisional Officer, who is said to have verified those statements has simply put a word "verified" above his signature. It would be anybody's guess as to what he has verified. Whether he has verified the identity of the persons giving statements or the signature of the other officers appearing thereon. As such, it is a case of petitioner's to have not been supplied with two in-camera

statements and even if we accept the respondents' case, that said statements are in fact been supplied to the petitioner, those have not been duly verified.

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 have to be communicated to the detainee. It impliedly suggests copies of all documents relied on need to be supplied 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 clauses "C" and "D".
- II. The petitioner be released forthwith, if not required in any other crime.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)

rlj/