



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1713 OF 2023

Akash Anil Mudgal

Age : 28 years

R/o. Plot No. 01

Siddeshwar Housing Society

Siddharat Chowk, Solapur

Petitioner

Versus

1 Commissioner of Police
Solapur

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

3 The Superintendent
Yerwada Central Prison
Pune

Respondents

Ms. Jayshree Tripathi for the Petitioner.

Ms. S. D. Mhatre, APP for the State.

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 17th AUGUST 2023

JUDGMENT (Per : Gauri Godse, J.) :

1. By this petition, the petitioner challenges the order of detention bearing No.03/CB/DP/2023, dated 15th March 2023, issued by the Respondent No. 1- Commissioner of Police, Solapur, in the exercise of the powers conferred by sub-section (2) of section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (“**the M.P.D.A. Act**”) for detaining him.

2. Perusal of the detention order indicates that the detaining authority has relied upon CR No. 80 of 2023 dated 6th February 2023 registered against the petitioner for the offences punishable under sections 143, 144, 145, 147, 148, 149, 160, 324, 341 and 427 of the Indian Penal Code. The allegation against the petitioner in the said CR is that there was a dispute between two groups who also stopped the people around and the vehicles on the road by showing lathis and weapons, and they vandalised the vehicles on the road by

pelting stones. Members of both groups thereafter assaulted each other by using lathis and other weapons, creating terror and disturbance amongst the people. The petitioner is named one of the accused in the said CR who was involved in pelting stones and assaulting various people.

3. The detaining authority has relied upon two in-camera statements recorded on 15th February 2023 and 17th February 2023, referring to incidents of the second and third week of January 2023, respectively. The gist of in-camera statements reproduced in the detention order reveals that the petitioner and his associates were involved in threatening the people by holding weapons such as swords, knives, iron rods and sticks for the purpose of extorting money. The petitioner and his associates abused and assaulted the witness for the purpose of extorting money. Similar allegations are made against the petitioner by the witness of the second in-camera statement.

4. Learned counsel for the petitioner has raised various grounds to challenge the detention order; however, has pressed into service ground raised in clause (e) of paragraph 5 of the petition, which reads as under :

“e. The petitioner says and submits that in the grounds of detention at para 5-1 details of the incident is given, where the complainant who is also the informant is a Police Constable who is investigating the said C.R. states in the grounds as well as in his statement that he received information that persons involved in the incidents were admitted for treatment at Civil Hospital, Solapur and Central Hospital, Solapur. So, the complainant and PC/987 Anand Kamble first went to Civil Hospital and later to Central Hospital, Solapur, investigations were carried out and certain important details were taken. It is pertinent to note that even though there is a clear and specific reference of injured persons, no injury certificate or statement of injured persons are placed before the detaining authority nor copy furnished to the petitioner. Any medico legal document, and statement of the injured in a relied-on C.R. is most important and vital document, also the same is imperative to be placed before the detaining authority to arrive at his subjective satisfaction

and pass the order. Similarly, in the narration of the offence there is a specific reference of five vehicle nos. MH-13 C.A. 5459, MH-13.....” it is to be noted that no statement any owner or driver of the vehicle is also placed before the detaining authority nor copy furnished to the petitioner. In this case, statement of the injured person, statement of owner or driver of said vehicles, hospital admission documents and injury certificates are vital documents, which ought to have been placed before that detaining authority and copy should have been given to the petitioner to afford him the earliest opportunity of making effective representation. Non furnishing vital documents amounts to non-communication of grounds of detention, also the petitioner is deprived of making any effective representation. Thus, both facets of Article 22(5) of the constitution of India is violated. The order of detention is illegal and bad in law for non-supply of vital and most important document, liable to be quashed and set aside”.

5. Learned counsel for the petitioner submitted that in the CR registered against the petitioner, the injury certificate was part of the investigation and statements of the injured persons were also recorded as reflected in the detention order and the petitioner, along

with other co-accused, were arrested. Learned counsel submitted that the injury certificate of the injured persons with respect to the incident of the said CR and the statements of the injured persons, which were recorded, were not placed before the detaining authority.

6. Learned counsel thus submitted that the detaining authority has referred to and relied upon the injury certificate, as well as the statement of the injured persons, as referred to in the detention order. However, copies of the same were not placed before the detaining authority. She thus submitted that the non-placement of the injury certificate and the statement of the injured persons amounts to non-communication of ground of detention to the petitioner, which prevented the petitioner from making effective representation affecting his rights under Article 22(5) of the Constitution of India.

7. Learned counsel referred to the affidavit in reply filed on behalf of the detaining authority, which indicated that the relied-upon documents by the detaining authority were served upon the

petitioner belatedly on 28th May 2023 by email i.e. after the Petition was filed. She submitted that the detention order is dated 15th March 2023, and supplying copies of the relied-upon documents belatedly has prevented the petitioner from making an effective representation. She, therefore, submitted that on the said ground, the detention order stands vitiated, and the continued detention of the petitioner is rendered impermissible and illegal. Hence, she submitted that the detention order be quashed and set aside, and the petitioner be released forthwith.

8. In support of her submissions, learned counsel for the petitioner relied upon the decision of the Supreme Court in the case of *Kamla Kanhaiyalal Khushalani Vs. State of Maharashtra and Another* ¹, *Smt. Shalini Soni Vs. Union of India* ², *Ramchandra A. Kamat Vs. Union of India and Others* ³ and *Thahira Haris etc. Vs. Government of Karnataka and Others* ⁴. Learned counsel submitted that it is well settled principle of law that the documents and

1 AIR 1981 SC 814

2 AIR 1981 SC 431

3 (1980) 2 SCC 270

4 2009 ALL MR 9Cri) 3451(S.C.)

material relied upon in the detention order form an integral part of the grounds of detention and thus must be supplied to the detenu. She submitted that in all the aforesaid decisions, the Hon'ble Supreme Court has held that if the documents and material relied upon by the detaining authority are supplied belatedly, the same amounts to depriving the detenu of making an effective representation. Thus, she submitted that the principles of law laid down in the aforesaid decision squarely apply to the facts of the present case.

9. Learned APP supported the detention order by relying upon affidavit dated 3rd June 2023 of Shivshankar B. Patil, Superintendent, Yerwada Central Prison, and an affidavit dated 12th June 2023 of Dr. Rajendra Mane, Commissioner of Police, Solapur City. Learned APP submitted that all the documents relied upon by the detaining authority are supplied to the petitioner. With reference to the ground of objection raised in clause (e) above, learned APP by referring to the affidavit in reply of the detaining authority in paragraph 12, submitted that the detaining authority has specifically denied that

non-furnishing of vital documents amounts to non-communication of grounds of detention, which deprived the petitioner from making an effective representation.

10. She submitted that while issuing the detention order, all the relevant documents regarding the detention order, along with Marathi translation, were served on the petitioner on 15th March 2023. Learned APP further submitted that paragraph 13 of the ground of detention specified that if the petitioner required any specific documents, the same would be provided to him. She submitted that the medical documents/injury reports were served upon the petitioner through email on 28th May 2023 and were also served through special messenger on 29th May 2023.

11. With respect to the statements of the vehicle owners or drivers involved with the said CR, learned APP submitted that the said CR is under investigation, and the said statements are part of the investigation. Hence, the learned APP submitted that there is no substance in the ground raised by the petitioner that the non-

furnishing of vital documents has deprived the petitioner of making an effective representation.

12. We have considered the submissions made by both parties. We have perused the record. A perusal of the detention order indicates that the detaining authority has relied upon CR No. 80 of 2023 registered against the petitioner. The detaining authority has further relied upon the panchnama with respect to the recovery of weapons used in the offence of the said CR and the statements that were recorded during the investigation.

13. Learned counsel for the petitioner has raised a specific ground that though the statements of the injured persons were relied upon by the detaining authority, the injury certificate and the statements were not placed before the detaining authority. A perusal of the affidavit in reply filed on behalf of the detaining authority nowhere indicates that the documents relied upon by the detaining authority, i.e. statements of the injured and the injury certificate, were placed before the detaining authority.

14. The detention order further indicates that the detaining authority has relied upon the statements of the injured persons and the panchnama with respect to the recovery of weapons with reference to the said CR for the purpose of recording subjective satisfaction that the petitioner is a dangerous person.

15. It is well settled principle of law that while passing the order of detention, all the constitutional safeguards must be strictly observed. The Hon'ble Supreme Court in the case of ***Kamla Kanhaiyalal*** held that if the documents and material are supplied to the detenu belatedly, then the detenu is deprived of the opportunity of making an effective representation against the detention order. The Hon'ble Supreme Court in the said case has held in paragraphs 7 and 8 as under :

“7. It is well settled that the Court frowns on preventive detention without trial because the detenu is deprived of the right of proving his innocence in a trial by a court of law. It is, therefore, of the utmost importance that all the necessary safeguards laid down by the Constitution under Art. 21 or Art. 22 (5) should be complied with fully and strictly and

any departure from any of the safeguards would void the order of detention. This is so because in a civilised society, like ours, liberty of a citizen is a highly precious right and a prized possession and has to be protected unless it becomes absolutely essential to detain a person in order to prevent him from indulging in anti-national activities like smuggling, etc. We are fortified in our view by a decision of this Court in Sampat Prakash v. State of J. and K., (1969) 3 SCR 574: (AIR 1969 SC1153) where the following observations were made:

“that the restrictions placed on a person preventively detained must, consistently with the effectiveness of detention, be minimal”

8. *It is a matter of great concern and deep dismay that despite repeated warnings by this Court, the detaining authorities do not care to comply with the spirit and tenor of the constitutional safeguards contained in Art. 22 (5) of the Constitution. It is manifest that when the detaining authority applies its mind to the documents and materials which form the basis of the detention, the same are indeed placed before it and there could be no difficulty in getting*

photostat copies of the documents and materials, referred to in the order of detention, prepared and attaching the same along with the grounds of detention, if the detaining authority is really serious in passing a valid order of detention Unfortunately, the constitutional safeguards are not complied with, resulting in the orders of detention being set aside by the Court, even though on merits they might have been justified in suitable cases. We feel that it is high time that the Government should impress on the detaining authority the desirability of complying with the constitutional safeguards as adumbrated by the principles laid down in this regard.....”

16. The Hon’ble Supreme Court, in the case of ***Shalini Soni***, has also held that if the detenu is not supplied with vital documents relied upon for passing detention order, the opportunity solemnly guaranteed by Article 22(5) of the Constitution of India becomes reduced to an exercise of futility. Thus, the Hon’ble Supreme Court held that copies of documents to which reference is made in the ground of detention must be supplied to the detenu as part of the grounds.

17. The Hon'ble Supreme Court in the case of ***Ramchandra A Kamat*** has held that it is settled law that the appropriate authority is bound to give an opportunity to the detenu to make representation and to consider the representation of the detenu as early as possible. The Hon'ble Supreme Court in the said case held that the detaining authority cannot decline to furnish copies of the documents on the ground that the grounds were sufficiently detailed in the detention order, to enable the detenu to make an effective representation. Thus the Hon'ble Supreme Court held that if the detaining authority failed to act with reasonable expedition in furnishing the documents referred to in the ground of detention, it would amount to the detention not being in accordance with the procedure contemplated under the law.

18. In the facts of the said case of i.e. ***Ramchandra A Kamat***, the explanation given by the detaining authority regarding the delay in furnishing copies was thus not accepted by the Hon'ble Supreme Court. Hence the Hon'ble Supreme Court held that the petitioner's right to make an effective representation was infringed.

19. The Hon'ble Supreme Court in the case of ***Thahira Haris***, has also taken a similar view and held that the grounds communicated to the detenu must reveal the whole of the factual material considered by the detaining authority and not merely inferences of fact arrived at by the detaining authority. The Hon'ble Supreme Court further held that an opportunity to make a representation against the order of detention necessarily implies that the detenu is informed of all that has been taken into account against him in arriving at the decision to detain him. The Hon'ble Supreme Court thus held in paragraph 12 as under:

“12.If the detenu is not to be so informed the opportunity so solemnly guaranteed by the Constitution becomes reduced to an exercise in futility. Whatever angle from which the question is looked at, it is clear that “grounds” in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The ‘grounds’ must be self-sufficient and self-explanatory. In our view copies of documents to which reference is made in the ‘grounds’ must be supplied to the detenu as part of the ‘grounds’.”

20. In the present case, a perusal of the admitted fact shows that the documents and materials relied upon by the detaining authority were not supplied to the petitioner, along with the grounds of detention. Admittedly, the relevant material relied upon by the detaining authority was supplied to the petitioner belatedly, after the petition was filed. In view of the said admitted fact of non-supply of the material relied upon by the detaining authority amounts to depriving the petitioner of making an effective representation, which has infringed the petitioner's right under Article 22(5) of the Constitution of India. The principles laid down by the Hon'ble Supreme Court squarely applies to the facts of the present case.

21. For the reasons stated above the petitioner is deprived of his right to make an effective representation which has violated his constitutional right under Article 22 (5) of the Constitution. As a result we pass the following order :

- (i) Petition is allowed and Rule is made absolute in terms of prayer clause (b), which reads as under:

(b) The order of Detention bearing No. 03/CB/DP/2023 dated 15.03.2023 issued under Section 3 of M.P.D.A. Act, 1981 by the Respondent No. 1 be quashed and set aside and on quashing the same the petitioner be ordered for release forthwith.

(ii) The Detenu be released forthwith, if not required in any other case.

All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.