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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3056 OF 2023

Santosh Sonba Bodke

Age : 29 years, Occ : Nil

R/o. 1205, Sasne Colony

Lakshteerth, Vasahat

Kolhapur

(At present detained in the Yerwada Central
Prison)

Petitioner

Versus

1. The State of Maharashtra
(Through the Additional Chief
Secretary, Home Department,
having office at Mantralaya,
Mumbai

2. The Collector, Kolhapur
Swaraj Bhavan
Nagalapark
Kolhapur-416 003

3. The Superintendent
Yerwada Central Prison
Pune

Respondents

Mr. Satyavrat Joshi a/w. Mr. Samay Pawar and Mr. Ashish Vernekar for
the Petitioner.

Mr. J. P. Yagnik, APP for the State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
DATE : 30th OCTOBER 2023**

JUDGMENT (Per : Gauri Godse, J.) :

1. By this petition, the petitioner challenges the order of detention bearing No. Home/Pol/MPDA/SR/01/2023 dated 3rd March 2023 issued by the District Magistrate, Kolhapur, in 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 the petitioner.

2. Perusal of the detention order indicates that the detaining authority has relied upon a complaint registered against the petitioner vide CR No.343 of 2022 dated 2nd December 2022

registered with Laxmipuri Police Station for the offences punishable under sections 143, 147, 148, 149, 324, 323, 504, 506, 120B read with Section 34 of the Indian Penal Code. In the said CR, the allegation against the petitioner is that the petitioner terrorised the complainant by hatching a criminal conspiracy and gathering an unlawful assembly with deadly weapons in a public place by assaulting the complainant and causing injuries to the complainant, as he had quit the job recommended by the petitioner.

3. The detaining authority has further relied upon two in-camera statements. The allegation in the in-camera statement of witness 'A' is that the petitioner injured people who complained about him. Witness 'A' stated that whenever anyone opposed the petitioner for molesting women, attacking police on duty, robbing people for money and injuring people, the petitioner injured the persons complaining against him. The allegation against the petitioner in the said in-camera statement is also that the petitioner threatened the witness and extorted money.

4. Similar allegations are made by witness 'B' against the petitioner. Witness 'B' has stated that the petitioner is a well-known gangster and is involved in serious crimes. The said witness has stated that the petitioner indulges in hooliganism and has created terror in the area by extorting money from poor traders, fruit sellers, shopkeepers, etc. Thus, by relying upon the aforesaid CR and the two in-camera statements, the detaining authority has recorded subjective satisfaction that the petitioner is a 'dangerous person' and is required to be detained to prevent him from indulging in any prejudicial activities in future.

5. Learned counsel for the petitioner has raised various grounds to challenge the detention order. However, it is not necessary to examine all the grounds in as much as the petition ought to be allowed on the ground raised in clause (C) of paragraph 5, which reads as under :

“(C) That once the detaining authority made a specific assertion in para 3.1 of the impugned order of detention that

it does not want to rely upon the FIR bearing C.R.No. 343 of 2022 registered with Laxmipuri, Kolhapur. It would not lie in the teeth of the Detaining Authority to again rely upon the same material to pass the order of detention and hence there has been a violation of the Principle of natural justice and consequently the Detention order deserves to be quashed.”

6. The learned counsel for the petitioner submitted that the detaining authority has referred to five CRs registered against the petitioner. In paragraph no. 3.1 of the detention order, CR No. 343 of 2022, dated 2nd December 2022, is listed as Serial No. 5. In paragraph no. 3.1 the detaining authority has stated that the said five CRs in paragraph 3.1 have not been relied upon while passing the detention order; however, the same are only referred to show that the petitioner is a habitual offender and indulges in serious offences.

7. The learned counsel for the petitioner further submitted that in paragraph 4 of the detention order, the detaining authority has

relied upon and considered the offences mentioned in paragraph no. 5.1 and the two in-camera statements for issuing the detention order. He further submitted that the CR relied upon by the detaining authority as CR No. 343 of 2022 dated 2nd December 2022, registered with Laxmipuri Police Station is mentioned at serial number 5 in the list in paragraph 3.1 shown as not relied upon CRs.

8. The learned counsel thus submitted that though the detaining authority had specifically stated that CR No. 343 of 2022 is not relied upon for issuing the detention order, the detaining authority, in paragraph no. 4 of the detention order, has relied upon the same CR for recording subjective satisfaction for issuing the detention order against the petitioner. The learned counsel thus, submitted that the non-application of mind by the detaining authority vitiates the detention order.

9. Learned counsel, therefore, submitted that in view of the inconsistent grounds of detention, the petitioner was left in a confused state of mind and, hence, unable to make an effective

representation. Hence, the petitioner's right under Article 22(5) of the Constitution of India is violated, and the continued detention of the petitioner is rendered illegal and impermissible. Learned counsel, therefore, submitted that the detention order be quashed and set aside and the petitioner be released forthwith.

10. Learned APP relied upon the affidavit filed on behalf of the detaining authority and supported the detention order. Learned APP submitted that the petitioner has complete disregard for the prevailing laws and is continuously doing heinous crimes to create fear in the minds of the general public. Hence, the detaining authority has considered the offence registered against the petitioner for arriving at a subjective satisfaction for detaining the petitioner. Learned APP has thus relied upon paragraph 10 of the affidavit of the detaining authority in response to the ground of challenge raised by the petitioner in clause (C) of paragraph no. 5. Learned APP, by referring to the said paragraph submitted that there is no substance in the ground of challenge raised on behalf of the petitioner.

11. We have considered the submissions made by both parties. We have perused the petition and the affidavit relied upon by the learned APP. A perusal of the detention order clearly shows that the detaining authority has mentioned a list of five CRs registered against the petitioner in paragraph 3.1. The detaining authority has clearly stated that the offences, as mentioned in the chart in paragraph no.3.1, have not been relied upon while passing the order of detention, and the same are only referred to for showing that the petitioner is a habitual offender. The list in paragraph 3.1 of the detention order shows that CR No. 343 of 2022, dated 2nd December 2022, registered with Laxmipuri Police Station, is referred to as Serial No. 5 in the list of not relied-upon offences registered against the petitioner.

12. In paragraph 4 of the detention order, the detaining authority has stated that he has considered the offences mentioned in paragraph 5.1 along with two in-camera statements mentioned in paragraphs 6.1 and 6.2 for issuing the detention order. The CR mentioned in paragraph 5.1 is the same CR, i.e. CR No. 343 of

2022 dated 2nd December 2022, registered with Laxmipuri Police Station listed at Serial No. 5 in the list of offences stated to have been not relied upon for issuing the detention order.

13. Perusal of the affidavit of the detaining authority and, more particularly, paragraph 10 of the affidavit is bereft of any explanation with respect to the said inconsistency in recording the ground of detention by the detaining authority. It is not disputed that the CR stated to have been relied upon for issuing the detention order is also shown in the list of offences registered against the petitioner which are not relied upon for issuing the detention order.

14. In response to the ground raised by the petitioner in clause (C) of paragraph 5 of the petition, the detaining authority has responded in paragraph 10 of his affidavit. However, in paragraph 10 of the affidavit, it is contended that the petitioner is trying to mislead this court by trying to show that the offences shown in paragraph no. 3.1 of the detention order has been taken into consideration while passing the detention order.

15. The detaining authority has sought to rely upon provisions of Section 8 of the Indian Evidence Act for opposing the ground of challenge raised by the petitioner in clause (C) of paragraph 5 of the petition. We find that the explanation offered by the detaining authority in paragraph 10 of the affidavit is entirely irrelevant to the ground of challenge raised by the petitioner in clause (C) of paragraph 5 of the petition. We do not find any explanation with respect to the inconsistency in the detention order while recording ground of detention by relying upon a solitary CR registered against the petitioner which is specifically referred to in the list of not relied upon CRs for passing the detention order. Thus, the inconsistency in the grounds recorded by the detaining authority shows non-application of mind by the detaining authority, which vitiates the detention order. The learned counsel for the petitioner is right in submitting that the inconsistency in the grounds of detention has left the petitioner in a confused state of mind and deprived him of his right to file an effective representation. Thus, the petitioner's right under Article 22(5) of the Constitution of India is violated. Hence,

the continued detention of the petitioner is rendered illegal and impermissible

16. Hence, for the reasons recorded above, the petition is allowed by passing 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. Home/Pol/MPDA/SR/01/2023 dated 03.03.2023 issued under Section 3 of M.P. D.A Act 1981 by the Respondent No. 2 be quashed and set aside and on quashing the same the Petitioner be ordered to be released forthwith”.

(ii) The petitioner is set at liberty 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.