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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1029 OF 2023

Harvinder @ Chinku Ajaysingh Labana

Age 26 years, R/o Barrack No. 1132,

Imlipada, Fawrar Lane, Ulhasnagar No. 3,

...Petitioner

Dist. Thane.

Versus

1. Commissioner of Police, Thane.

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

3. The Superintendent, Nashik

Road Central Prison, Nashik.

...Respondents

Ms. Jayshree Tripathi for the Petitioner.

Ms. M. H. Mhatre, APP for the State.

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 12th JUNE 2023

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JUDGMENT: (PER: GAURI GODSE, J.)

1. This petition is filed challenging the order of Detention bearing No. TC/PD/DO/MPDA/20/2022, dated 8th December 2022, issued by Commissioner of Police, Thane – Respondent No. 1, 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 MPDA Act”).

2. The Detaining Authority in the said order has referred to the details of the criminal cases in which the petitioner is involved during the period from the year 2018 to 2021. A perusal of the detention order shows that C.R. No. 406 of 2022 registered for the offences punishable under Sections 324, 323, 327, 143, 147 and 149 of the Indian Penal Code and two in-camera statements are relied upon by the Detaining Authority. The detention order

further refers to the particulars of the in-camera statement recorded of the two witnesses.

3. The petitioner had filed representation dated 14th March 2023 before the jail authorities, which was forwarded to the State Government through the Superintendent, Nashik Road, Central Prison. The representation filed by the petitioner is rejected by the respondent no. 2.

4. The petition raises various grounds to challenge the order of detention; however, the learned counsel for the petitioner has pressed into service grounds (d) and (e) of paragraph 5 of the petition, which read as under :

(d) The petitioner says and submits that in the compilation of documents given to the petitioner, there is a Proposal forwarded by the sponsoring authority to the detaining authority dated 27.10.2022, in the said proposal, there is a gist of narration of the in-camera statements of witness A and B. The petitioner says and submits that there are major variance/discrepancy the gist of the in-camera statements given in the proposal as compared with the statement of in-camera witness A and

B. The proposal forwarded to the detaining authority must be in consonance with the actual documents placed on record. It is pertinent to note that in the proposal confidential statement of witness 'A' the witness narrates the incident as "two months prior, he does not remember the exact date at about 10.30 p.m....." when compared with the actual in camera statement, witness A states "in the month of September 2022, in the second week at about 8.30 p.m." (date of recording of the said in camera statement is given as 21.10.2022) hence the discrepancy throws doubt on the genuineness and the authenticity of the said in camera statement. Likewise in the proposal confidential statement of witness 'B' the witness narrates the incident occurred "about one to one and a half months prior, he does not remember the exact date at about 10.00 p.m. he was travelling from Ulhasnagar station he was going to his home...." when compared with the actual in camera statement witness B states "in the month of September (year and week or date not disclosed)....." (date of recording of the said in camera statement is given as 22.10.2022) Both the incidents if calculated from the dates mentioned in the proposal ought to have occurred in the month of July or August., and if in camera statements are to be considered plainly then the question about the dates given in the proposal are under a shadow of doubt. Also, both the statement if minutely read seems to be copied from one another, reason being the activities, modus operandi etc. is exactly

the same, only changes are made in the time and place of the incident. Hence the statements are not true and genuine, such vague statements cannot be taken into consideration to pass a detention order. The petitioner further submits that due to the variance the petitioner was deprived of making any effective representation. The order of detention is illegal and bad in law liable to be quashed and set aside.

(e) The petitioner says and submits that the detaining authority categorically states in the grounds of detention that the present order of detention is passed on the basis of one C.R. at Para 4(a), and two in camera statements at para 5(a) and 5(b) and the past history of the petitioner at para 3 are not relied upon while passing the detention order. Hence, if for the above-mentioned lacunas in para 'D' about the two in camera statements, if the said two in camera statements are excluded from consideration, then remains single solitary offence i.e. C.R. No. 406/2022, the order of detention cannot be sustained on solitary incident, as it does not constitute as habitual offender and or Dangerous Person as per the definition of dangerous person at Section. 2(b-1) of MPDA Act. Hence the order of detention cannot be sustained, the order vitiates. The order of detention is therefore illegal and bad in law, liable to be quashed and set aside."

5. Learned counsel for the petitioner submitted that though the detention order refers to the criminal case against the petitioner as relied upon document along with the two in-camera statements, the affidavit of respondent no. 1 refers to the proposal of the sponsoring authority pursuant to which the order of detention is passed. Learned counsel thus submitted that the detention order is not in consonance with the proposal received from the sponsoring authority.

6. Learned counsel for the petitioner in support of her submission relied upon the decision of the Supreme Court in the case of *Vijay Kumar Dharna Alias Koka Vs. Union of India and Others*¹ and the decisions of this Court in the case *Sandip Suresh Ghag Vs. The Commissioner of Police, Mumbai and Others*² and *Jay @ Nunya Rajesh Bhosale Vs. The Commissioner of Police, Pune and Others*.³

1 (1990) 1 SCC 606

2 2014 ALL MR (Cri) 707

3 2015 ALL MR (Cri) 4437

7. The learned counsel for the petitioner, by relying upon the said decisions, submitted that the Detaining Authority is required to form subjective satisfaction before passing an order of detention. She thus submitted that the affidavit filed on behalf of the respondents did not show that any subjective satisfaction was arrived at by the Detaining Authority before passing the order of detention. She further submitted that though the detention order refers to various cases registered against the petitioner, the order relies upon only one FIR. She thus submitted that a solitary act would not constitute a habit, and it cannot be said that the detenu habitually commits or attempts to commit or abets the commission of any offence punishable under Section 2(b-1) of the MPDA Act.

8. The learned counsel for the Petitioner submitted that there is variance in the statement of both the witnesses with respect to the time and date of the incident referred by both witnesses, as recorded in the original Marathi language, typed version and English translation of the in-camera statements of both witnesses.

She submitted that thus, the petitioner was deprived of making an effective representation. She, therefore, submitted that the order of detention is illegal and thus be quashed and set aside.

9. Learned APP relied upon an affidavit dated 11th April 2023 filed by Jai Jeet Singh on behalf of Respondent No. 1. Learned APP submitted that the affidavit clearly sets out the reasons for passing the order of detention, which shows that the Detaining Authority had arrived at a subjective satisfaction by relying upon the case registered against the petitioner as well as the in-camera statements recorded of the two witnesses. She further submitted that the history of the petitioner shows that a total of nine serious nature of cases are registered against the petitioner, and the record further shows that preventive action was necessary against the petitioner. So far as the submission on behalf of the Petitioner regarding variance in the Marathi and English version of the in-camera statements is concerned, the learned APP submits that the in-camera statements were recorded after conducting a confidential inquiry on the activities of the detenu, and further,

the genuineness and truthfulness of the same was verified by the Assistant Commissioner of Police who is the sponsoring authority.

10. Learned APP also relied upon an affidavit dated 24th April 2023 filed by Anil Eknath Kulkarni, Joint Secretary, Government of Maharashtra, Home Department, Mantralaya, Mumbai. Learned APP relied upon the contents of the said affidavit to support the rejection of the representation of the petitioner. She submitted that the representation of the petitioner was signed by the petitioner before the jail officer on 16th March 2023 and was received via email on 16th March 2023. Thereafter remarks from the Detaining Authority were received on 20th March 2023. She submitted that the Section Officer had endorsed receipt of the said remarks on 21st March 2023 and forwarded it to the Joint Secretary on the same day. However, 22nd March 2023 being a holiday, the Joint Secretary endorsed the same on 23rd March 2023 and forwarded it to the Additional Chief Secretary (Home) on the same day. She thus submitted that the Additional Chief Secretary (Home) considered the remarks of the Detaining

Authority and rejected the representation on 24th March 2023. She thus submitted that no fault could be found in the order of detention and the petition be dismissed.

11. We have considered the submissions made on behalf of the petitioner as well as the submissions made by the learned APP. The detention order refers to two in-camera statements. We have perused the in-camera statements recorded in Marathi language, typed versions in the report of the sponsoring authority, as well as the English translation reproduced in the detention order.

12. So far as the in-camera statement of witness No. 'A' recorded on 21st October 2022 in Marathi is concerned; the witness refers to an incident that occurred in 2nd week of the month of September 2022 at 8.30 p.m. The English translation of the said statement, as reproduced in the detention order records that the witness has referred to an incident that occurred in 2nd week of September 2022 at around 8.30 p.m. However, the typed version of the in-camera statement of witness No. 'A' as

reproduced in report dated 27th October 2022 of the sponsoring authority records that, the witness has stated that he does not recollect the exact date, however, the witness refers to an incident that occurred prior to two months in the night at 10.30 p.m. So far as the in-camera statement of witness 'B' recorded on 22nd October 2022 is concerned, perusal of the original statement recorded in Marathi language is concerned, it records that the witness has referred to an incident occurred in 2nd week of September in the night at 10.00 p.m. The English translation of the statement of the witness 'B' as reproduced in the detention order records that the witness has referred to an incident occurred in the last week of September 2022 at around 10.00 p.m. However, the typed version of the in-camera statement of witness 'B' as reproduced in report dated 27th October 2022 submitted by the sponsoring authority is concerned, the same records that said witness has referred to the incident occurred prior to around one to one and half months at around 10.00 p.m. in the night.

13. Perusal of the record of the in-camera statements of both the witnesses as recorded in Marathi language, the typed version, as well as English translation shows that there is variance in the statement of both the witnesses with respect to the time and date of the incident referred by both witnesses. Thus, a perusal of the detention order, as well as the record, shows that there is variance in the in-camera statements of both witnesses in referring to the incident.

14. A perusal of the detention order further shows that though there are nine registered cases against the petitioner as referred to in the order of detention during the period from the year 2018 to 2021, the said cases are not relied upon by the Detaining Authority. Order further records that the Detaining Authority has relied upon only one C.R. registered against the petitioner on 11th September 2022 for the alleged offences punishable under sections 324, 323, 327, 143, 147, and 149 of the Indian Penal Code.

15. This court, in the case of *Sandip Suresh Ghag*, has held as under:

“7.It is pertinent to note that the Apex Court has expounded the meaning of the expression “grounds”, within the expansive meaning of the expression “grounds of detention”, in the case of ***Khudiram Das vs. The State of West Bengal & Ors., (1975) 2 SCC 81.*** It was held in the said case that the expression ‘grounds’ means all the basic facts and “materials which have been taken into account” by the Detaining Authority in making the order of detention and on which the detention order is based. We are therefore of the opinion, that the variance in the Marathi translation of the original injury report which is in English, with regard to the size of the injuries and the blanks in the remarks column, impinges the right of the petitioner/detenu to make an effective representation under Article 22(5) of the Constitution of India. In cases relative to preventive detention, the question of ‘prejudice’ does not arise, inasmuch as the law relating to preventive detention is visited with stringent consequences and more particularly when the documents are relied upon by the Detaining Authority for forming its subjective satisfaction.”

16. This Court, in the said decision, has thus held that variance in the Marathi translation of the original injury report impinges the right of the detenu to make an effective representation under Article 22(5) of the Constitution of India.

17. This Court, in the case of *Jay @ Nunya Rajesh Bhosale* has held that on the basis of a solitary act, it cannot be said that a detenu habitually commits or attempts to commit or abets the commission of any offence under Section 2(b-1) of the M.P.D.A. Act.

18. The Honorable Supreme Court, in the case of *Vijay Kumar Dharna Alias Koka*, has held that on account of variance in the recording of the statement of the witness, the detenu was not able to represent his case before the concerned authority effectively. The Honorable Supreme Court has thus held that because of the variance in the recording of the statements, the detenu was unable to make a representation against his detention effectively and was thereby denied his right under Article 22(5) of the

Constitution of India.

19. Perusal of the record of the present case shows that the order of detention is passed relying upon the the two in-camera statements and the solitary case registered against the petitioner. There is variance in the version of the in-camera statements as originally recorded in the Marathi language, the typed version referred to in the report of sponsoring authority, as well as in the English translation reproduced in the order of detention. Thus, considering the facts of the present case with respect to the variance in the recording of the in-camera statement of the witness and a solitary case relied upon by the Detaining Authority, the law laid down by this Court as well as the Honorable Supreme Court in the aforesaid decisions is squarely applicable in the present case.

20. On perusal of the aforesaid facts of the present case, in our opinion, in view of the variance in the in-camera statement of both the witnesses, the solitary case relied upon by the Detaining

Authority is not sufficient to hold the petitioner as a habitual offender. In our view, the variance in recording the in-camera statement of the witness has deprived the petitioner of making effective representation and has thus resulted in the rejection of the representation filed by the petitioner, which ultimately amounts to violating the petitioner's right under Article 22(5) of the Constitution of India. As a result, the petition is allowed by passing the following order :

(i) Rule is made absolute in terms of prayer clause (b) which reads as under :

(b) The order of Detention bearing No. TC/PD/DO/MPDA/20/2022, dated 8.12.2022 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) Petitioner be set at liberty forthwith, if not required in

any other case.

Petition is accordingly disposed of.

All parties to act on an authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.