



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1712 OF 2023

Umesh Namdev Rathod
R/o Mulegaon Tanda, Solapur
(At present Yerwada Central Prison, Pune)

... Petitioner

vs.

1. Commissioner of Police, Solapur.
2. The State of Maharashtra
(Through Addl. Chief Secretary to
Government of Maharashtra,
Mantalaya, Home Department,
Mantralaya, Mumbai.
3. The Superintendent,
Yerwada Central Prison, Pune.

... Respondents

Mr Ninad Muzumdar a/w Ms. Radhika Mundada, for the
Petitioner.

Mrs. M.H. Mhatre, A.P.P for the State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 3rd AUGUST, 2023

JUDGMENT (PER: GAURI GODSE, J.) :-

1. This petition is filed for challenging the detention order

dated 10th March 2023 passed by respondent No.1- the Commissioner of Police, Solapur, in exercise of the power conferred under sub-section 2 of section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing Essential Commodities Act, 1981 ('MPDA Act') for detaining the petitioner.

2. Perusal of the order of detention indicates that the detaining authority has relied upon four CRs registered against the petitioner vide CR No. 407/2022 dated 19th August 2022, CR No. 409/2022 dated 21st August 2022, CR No. 436/2022 dated 27th August 2022 and CR No. 448/2022 dated 1st September 2022. All four CRs are registered for the alleged offences punishable under sections 65(e) and 81 of the Maharashtra Prohibition Act, 1949. In all the said CRs, the allegations against the petitioner are that he is supplying country-made hath-bhatti liquor for sale. The detention order indicates that the chemical analysis report showed the percentage of V/V

of Ethyl alcohol in water. The investigation in the said CRs is completed, and the chargesheet is filed.

3. The detaining authority has relied upon two in-camera statements. The in-camera statements referred to the incidents of the fourth week of January 2022 and the first week of February 2023. The gist of in-camera statements reproduced in the order of detention reveals that similar allegations are made against the petitioner that the petitioner is supplying country made hathbhatti liquor for sale. The in-camera statements further reveal that the witnesses have complained against the petitioner that he and his associates threatened the witness with weapons (Sura and Sticks) and started beating the witness. The gist of the in-camera statements further reveals that in view of the terror created by the petitioner and his associates in a public place, the shopkeepers ran away from the area helter-skelter by shutting down the shops and the residents closed doors and windows of their house. Thus, the in-camera statements reproduced in the detention order reveal that it is alleged that the petitioner owns illicit dens, and he and his associates are creating terror amongst

the public. Thus, by relying upon the said CRs registered against the petitioner and two in-camera statements, the detaining authority recorded subjective satisfaction that the petitioner is a Bootlegger within the meaning of section 2(b) of the MPDA Act.

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

e. The petitioner says and submits that the detaining authority has relied on two in camera statements of witness A and B recorded on 07.02.2023 and 11.02.2023 for incidents occurred in the 4th week of January 2023 & 1st week of February respectively. Both the statements are vague as they do not disclose the exact date of occurrence of the incident even though the incident is recorded in a span of 8 to 10 days. It is pertinent to note that in the statement of witness A the witness says in the statements that the incident occurred in the evening, whereas in the grounds of detention the incident is said to have occurred in the Morning. No specific details about day, date, time, place is given, thereby the petitioner is deprived of making any effective representation. Also, On a minute reading of both the in-camera statements where the petitioner and his associates had

verbal altercation and threats, assaults etc. such incidents cannot be taken into consideration to pass an order designating the petitioner as a bootlegger, such activities fall under the category of a dangerous person and cannot be taken into consideration to pass an order designating the petitioner as a bootlegger. If the in-camera statements are relied on as “grounds of passing order” then they ought to be within the definition and activities covered by Sec. 2(b-1) of the MPDA Act. The order of detention is illegal and bad in law for consideration of extraneous material, liable to be quashed and set aside.”

5. Learned counsel for the petitioner submitted that there is variance in the English version of the in-camera statement and the Marathi version of the same. Learned counsel for the petitioner pointed out that paragraph 5.7 of the English version of the detention order reveals that the allegation against the Petitioner is regarding the incident that occurred on ‘**One morning** in the fourth week of January 2023’. The learned counsel for the petitioner further pointed out the Marathi version of the detention order which records in paragraph 5.7 that ‘माहे जानेवारी, २०२३ या महिन्याच्या चौथ्या आठवड्यातील एका संध्याकाळी’.

6. Learned counsel for the petitioner thus, by referring to the aforesaid versions of the detention order, submitted that the gist of the in-camera statement of witness 'A' as reproduced in the detention order, refers to the alleged incident of the morning in the fourth week of January 2023. However, in the English version of the detention order, the gist of the in-camera statement of witness A refers to an alleged incident that occurred on the evening of the fourth week of January 2023. Learned counsel further submitted that in view of the variance of both versions of the detention order, the petitioner was confused with respect to the allegations against him and thus was unable to file an effective representation. Learned counsel submitted that the English version shows that the alleged incident occurred in the morning; however, the Marathi version shows that the same incident occurred in the evening on the same day.

7. Learned counsel further submitted that the allegation in the in-camera statement against the petitioner is that the petitioner and his associates had a verbal altercation, and they had threatened and assaulted the witness. Learned counsel, thus, by referring to the allegations made by the witness of the in-camera statement, submitted that the time of the alleged incident differed in both

versions of the detention order. He, thus, submitted that in view of the said variance, the petitioner was left confused and, thus, was deprived of making effective representation, which ultimately amounts to a violation of the petitioner's right under Article 22(5) of the Constitution of India.

8. Learned counsel for the petitioner in support of his submissions relied upon the decisions in the cases of *1) Harvinder@ Chinku Ajaysingh Labanav Commissioner of Police, Thane and Anr*¹ *2) Vijay Kumar Dharna v Union of India(UOI) and Ors*² *3) Pradeep Panchal v the State of Maharashtra and Anr*³ *4) Sandip Suresh Ghag v The Commissioner of Police and Anr*⁴.

Learned counsel for the petitioner, by relying upon the said decisions, submitted that the detaining authority is required to record subjective satisfaction before passing the order of detention. He submitted that there is no explanation given in the affidavits filed on behalf of the respondents with respect to variance in both versions of the detention order. He, therefore,

1 Criminal WP No. 1029 of 2023

2 AIR 1990 SC 1184

3 Criminal WP No. 3235 of 2013 with Criminal Application No. 383 of 2013

4 Criminal WP No. 3231 of 2013

submitted that the petitioner was deprived of making effective representation in view of variance in both versions of the detention order. He, thus, submitted that the order of detention is, therefore, illegal and thus be quashed and set aside, and the petitioner be released forthwith.

9. Learned APP supported the order of detention by relying upon the affidavit dated 30th May 2023 of Dr. Rajendra Mane, Commissioner of Police, Solapur City and the affidavit dated 13th June 2023 of Mr Anil Eknath Kulkarni, Joint Secretary, Government of Maharashtra, Home Department(Special), Mantralaya, Mumbai. Learned APP submitted that variance in both versions of the order of detention, as alleged by the petitioner, is not a significant variance and that it is only a typographical error.

10. Learned APP thus, by relying upon the explanation given in the affidavit of the detaining authority, submitted that the ACP of the concerned division verified the in-camera statements and that the superior officer also verified the spot and the particulars of the incident. She further submitted that the difference in the

time of the incident occurred is only a typographical mistake while translating, and the same being a minor mistake would not affect the right of the petitioner to make an effective representation. The learned APP submitted that while translating the grounds of detention in English, which was originally recorded in Marathi, there is a mistake which is a typographical error. She, therefore, submitted that the same would not vitiate the order of detention.

11. In support of her submissions, the learned APP relied upon the decisions of this Court in the case of *Prakash Chainshing Navale v. the State of Maharashtra and Ors*⁵ and in the case of *Ganpat Pandurang Panchal v. The State of Maharashtra and Ors*⁶ and the decision of the Hon'ble Supreme Court in case of *Sudhir Chandra Singh v. the District Magistrate, Malda and others*⁷. Thus, by relying upon the aforesaid decisions, learned APP submitted that the perusal of the gist of the in-camera statements in English as well as the Marathi version of the detention order would show that the infirmity in the translation is not sufficient

5 Criminal WP No. 2633 of 2022

6 2002 ALL MR (Cri) 492

7 AIR 1975 Supreme Court 732

to vitiate the detention order on account that petitioner's fundamental right of making effective representation was impaired. She submitted that in the aforesaid decisions, it is held that the said minor discrepancy would not vitiate the order of detention.

12. We have considered the submissions made by both parties. A perusal of the English as well as Marathi versions of the detention order would show that the English version records that the incident alleged by witness 'A' occurred in the morning in the fourth week of January 2023, whereas the Marathi version shows that the incident has occurred in the evening. The allegations made by witness 'A' of the in-camera statement is that the petitioner and his accomplices were present at the petitioner's den when the witness went there to complain that, people after consuming liquor at the petitioner's den, had started creating chaos and vomited there, leaving a stench, the petitioner and his associates threatened the witness by using weapons (Sura and Sticks) and started beating the witness. The gist of the in-camera statement indicates that due to the terror created by the

petitioner, the people ran helter-skelter, and the shopkeepers shut their shops while the residents closed the doors and windows of their houses.

13. It is pertinent to note that the nature of allegations made by witness 'A' has relevance to the time of the incident in as much as the alleged incident refers to the petitioner being present at the spot and the situation with respect to the shops being closed or open would also depend upon the time. Thus, the variance in the version of the Marathi, as well as the English version of the detention order, cannot be said to be minor or insignificant in nature, in as much as the genuineness and authenticity of the allegations would depend upon as it relates to the presence of the Petitioner at the particular place.

14. Perusal of the Marathi, as well as English versions of the detention order, does not specify as to which of the order is original and which is a translation. However, paragraph 12 of the affidavit filed on behalf of the detaining authority indicates that the original detention order is in Marathi, and the English version is a translation. Thus, according to the detaining

authority, there is a typographical error while translating the original order, which was recorded in Marathi. Both versions of the detention order are supplied to the petitioner. As stated hereinabove, we do not find that the difference of time shown as reflected in the Marathi and English version of the detention order is a minor mistake in as much as the particular timing of the alleged incident is significant as the same would make all the difference with reference to the allegations made against the petitioner. Hence, such variance would place the petitioner in a confused state of mind and deprive him of making an effective representation.

15. The decisions of the Hon'ble Supreme Court as well as this Court in the cases referred to and relied upon by the learned counsel for the petitioner, has taken the view that variance in two versions of detention orders would leave the detenu in a confused state of mind and deprive the detenu of making an effective representation resulting in violating the detenu's right under Article 22(5) of the Constitution of India. In the case of ***Harvinder Labana***, there was variance in the Marathi version of

the gist of the in-camera statement reproduced in the detention order while referring to the period of the alleged incident. In the case of *Vijaykumar Dharna* also, there was variance in the grounds of detention in the original order of detention and the Gurmukhi version of the detention order supplied to the detenu. In the case of *Pradeep Panchal*, the discrepancy in the detention order in English and Hindi version of the same order was in referring to the different number of the detention order in both the version, as well as there was a discrepancy with respect to the narration of the allegations made against the detenu. In the case of Sandip Ghag, there was variance in the English version of the detention order and its Marathi translation while referring to the nature of injury while reproducing the gist of the in-camera statements. Thus, in all the aforesaid decisions, the discrepancy in the original detention order and its translated version is accepted as a significant variance, which left the detenu in a confused state of mind and deprived him of his right to make an effective representation.

16. So far as the decision of this Court as well as the Hon'ble

Supreme Court relied upon by the learned APP is concerned, the same is of no assistance to support the detention order, in view of the different facts of those cases. In the case of ***Ganpat Panchal***, there was a minor typing error in referring to the amount allegedly demanded by the detenu. In the case of ***Sudhir Chandra***, the discrepancy was with respect to the date of the second incident in the grounds served upon the detenu and those appended with the counter affidavit filed by the District Magistrate. Thus, the facts of the said cases are completely different. So far as the case of ***Prakash Chainsingh Navle*** is concerned, a discrepancy between the original order of detention and English translated copy was with respect to the typographical error in translating the allegations of the witness. Thus, in the said decision relied upon by the learned APP, minor typographical errors were not accepted as any major faults for rendering the detenu in a confused state of mind that would deprive the detenu of making any effective representation. Hence, in view of different facts, the said decisions relied upon by the learned APP are not applicable in the present case.

17. Thus, considering the nature of variance of the Marathi version of the detention order as well as the English version supplied to the petitioner with reference to referring to the time of the alleged incident amounts to a major discrepancy which left the petitioner in a confused state of mind depriving him of making an effective representation.

18. Thus, the principles of law laid down in the aforesaid decisions relied upon by the learned counsel for the petitioner, squarely apply to the present case. On perusal of the aforesaid facts of the present case, in our view, the variance in in-camera statements referred to in the Marathi version of the order of detention as well as the English version of the same order, left the Petitioner in a confused state of mind depriving him of making an effective representation, which ultimately results in violation of petitioner's right under Article 22(5) of the Constitution of India.

19. As a result petition is allowed and Rule is made absolute, by passing the following order:-

OPERATIVE ORDER

- i) The petition is allowed;
- ii) The detention order dated 10th March 2023 passed by respondent No.1- the Commissioner of Police, Solapur in exercise of power conferred under sub-section 2 of section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing Essential Commodities Act, 1981 is quashed and set aside;
- iii) The petitioner 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.)