



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2526 OF 2023

Mangesh Mahadeo Bhale

Aged : 32 years, Occ. Agriculture,
resident of Kharochi, Tal. Indapur
District Pune.

Petitioner

Versus

- 1 The State of Maharashtra
(Through the Secretary to the
Govt. of Maharashtra (Preventive
Detention, Home Department
(Special), Mantralaya,
Mumbai-400 032
- 2 The Office of Collector & District
Magistrate, Pune,
Having address at New Collector
Office Building, Station Road,
Opp. Sassoon Hospital, Pune-01
- 3 The Superintendent
Yerwada Central Prison
Yerwada, District Pune.

Respondents

Ms. Ganesh Bhujbal for the Petitioner.

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

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

DATE : 5th SEPTEMBER 2023

JUDGMENT (Per : Gauri Godse, J.) :

1. By this petition, the petitioner challenges the order of detention bearing No.PGM/MPDA/SR/01/01/2023, dated 16th February 2023, issued by the Respondent No. 2-District Magistrate, Pune, in the exercise of the powers conferred by sub-section (3) of section 3 read with the order dated 23rd March 2023 bearing No. MPDA-0223/CR-57/Spl-3B issued by the Section Officer, Home Department (Spl), Government of Maharashtra for confirmation of the detention order, in the exercise of the powers conferred by sub-section (1) of section 12 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 petitioner’s brother Raju @ Rajendra Mahadev Bhale.

2. A perusal of the detention order indicates that the detaining authority has relied upon CR No. 983/2022, registered on 22nd November 2022, on a complaint filed by Manoj Kalbhor, as stated in paragraph 4 of the detention order. The allegation against the detenu in the said CR is that the detenu, along with his associates, threatened, abused and assaulted the complainant by using weapons and extorted money from him. The detaining authority has further relied upon two in-camera statements recorded on 14th January 2023 and 16th January 2023. The allegation against the detenu in the in-camera statements is that he, along with his associates, are committing activities of theft, robbery, dacoity, assault and collection of hafta. Witnesses of the in-camera statements have stated that the detenu has created terror in the village by creating fear in the people's minds. Witness no. A of the in-camera statement alleged that the detenu and his associates had gone to the garage of the witness and threatened him for extortion of money. Witness B of the in-camera statement has also made similar allegations against the detenu of threatening the witness and assaulting him for extortion of money.

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

(iii) The Petitioner submits that on 7th January, 2023 the Detenue was released on bail in C.R. No. 983/2022 registered with Indapur Police Station. The Petitioner says and submits that there after for the purpose of putting the Detenue under the MPDA Act; the in-camera statements were recorded by the Sponsoring Authority. Statement-1 of Witness-A is dated 14.01.2023 and 2nd statement of Witness-B is also dated 16.01.2023. The Petitioner says and submits that the above referred two in-camera statements are false and fabricated by the Sponsoring authority only to put the Petitioner under the MPDA Act. The Petitioner submits that the detaining authority has also failed to provide the Time, date and year and place where the reference made in the statement of witnesses the incident took place. The subjective satisfaction of the Detaining Authority based on such a false and fabricated documents is sham and unreal. The non-providing of the particulars i.e. place where exactly the

incident took place as referred in In-Camera statements itself shows that the said statements were falsely recorded and non-providing the said particulars to the Detenue denies the opportunity to make representation in proper perspective and to defend himself. In the circumstances the impugned order of detention is malafide, null and void.

4. Learned counsel for the petitioner submitted that perusal of the in-camera statements as reproduced in the detention order reveals that there is no clarity with respect to the place, time, date and year regarding occurrences of the incident as referred to in the in-camera statements.

5. Learned counsel for the petitioner specifically referred to the gist of the in-camera statement of witness B as reproduced in the detention order and submitted that the incident referred to therein is said to have occurred on one day in the last week of the month of December. He submitted that there is no mention of any specific year as to in which year of the month of December the incident has occurred. Learned counsel submitted that, thus, the subjective

satisfaction recorded by the detaining authority is based on a false and fabricated in-camera statement.

6. Learned counsel submitted that not providing particulars, i.e. the exact place and specific date of the incident, has left the detenu confused and deprived him of making an effective representation. Learned counsel, therefore, submitted that the same has violated the detenu's rights under Article 22(5) of the Constitution of India. Learned counsel thus submitted that in such circumstances, the continued detention of the petitioner's brother is illegal and impermissible. Hence, the detention order be set aside and the petitioner's brother be released forthwith.

7. Learned APP supported the detention order by relying upon the affidavit dated 28th August 2023 of Dr. Rajesh Bhagwatrao Deshmukh, District Magistrate, Pune, affidavit dated 28th August 2023 of Dilip S. Pawar, Senior Inspector of Police and the affidavit dated 30th August 2023 of Mr. Gajanan Bhimrao Gurav, Deputy

Secretary, Government of Maharashtra, Home Department (Special),
Mantralaya, Mumbai.

8. Learned APP, by referring to the aforesaid affidavits submitted, that the in-camera statements are duly scrutinised and verified by the concerned officer; hence, it cannot be said that the same are false and fabricated. Learned APP, with reference to the aforesaid ground of challenge raised by the petitioner in the aforesaid clause, denied that the particulars with respect to the place and date of incidents of the in-camera statements are falsely recorded.

9. Learned APP contended that the Sub-divisional Officer verified the in-camera statements and the same are true and genuine. She submitted that in-camera statements are confidential in nature, and hence, their names and identity particulars are not disclosed. Learned APP thus submitted that there is no substance in the ground raised on behalf of the detenu.

10. We have considered the submissions made by both parties. We have perused the record. The gist of in-camera statements reproduced in the detention order indicates that the in-camera statement of witness A was recorded on 14th January 2023, and the incident is said to have occurred two days ago, around 10.00 am in the morning. Though the gist of the in-camera statement reproduced in the detention order shows that the incident is claimed to have occurred two days ago, there is no clarity as to exactly on which date and in which place the incident occurred. So far as the in-camera statement of witness B is concerned, the same was recorded on 16th January 2023, referring to an incident claimed to have occurred one day in the last week of the month of December around 8.00 pm in the evening.

11. It is not disputed by the learned APP that there is no specific year mentioned as to which year of the month of December the incident occurred. The gist of the in-camera statement of both witnesses does not disclose the particulars of the exact date of the incident.

12. The allegation by both the witness against the detenu is with respect to threatening the witness on a particular day. Thus, the nature of the allegation against the detenu has relevance with the particular place, date and time of the incident in as much as it has relevance to the detenu's presence at the time of the incident. In absence of providing the said particulars, it will definitely leave the detenu confused with respect to the allegation against him. Hence, for want of material particulars, the detenu is left in a confused state of mind, depriving him of making effective representation.

13. Perusal of the affidavit filed on behalf of the detaining authority is bereft of any explanation as to why the particulars with respect to the alleged incidents of in-camera statements are not provided. It is well settled principle of law that not providing the particulars to the detenu would deprive the detenu of making an effective representation, which amounts to a violation of the detenu's right under Article 22(5) of the Constitution of India. In the present case, not providing vital particulars of the alleged incident of the in-

camera statements left the detenu in a confused state of mind, depriving him of making an effective representation. We do not find any satisfactory explanation on behalf of the detaining authority with respect to the ground of challenge raised on behalf of the detenu.

14. Hence, for the reasons stated above, the detenu is deprived of his right to make an effective representation, which has violated his constitutional right under Article 22 (5) of the Constitution, rendering his detention illegal and impermissible.

15. As a result we pass the following order :

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

(a) This Hon'ble Court be pleased to issue appropriate writ, order of direction to quash and set aside the impugned Order dated 16th February, 2023 passed by the Ld. District Magistrate, Pune bearing No. PGM/MPDA/SR/01/01/2023 and Order dated 23rd March, 2023 bearing No. MPDA-0223/CR-57/Spl-3B passed by the Section Officer,

Home Department (Spl), Government of Maharashtra against the Detenue.”

- (ii) The detenue-Raju @ Rajendra Mahadev Bhale 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.