



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2837 OF 2023**

Sagar @ Rupesh Sitaram Dalvi

R/o Krishna Vrindavan Society,

Room No. 102, Patilwadi,

Savarkar Nagar, Thane (W)

Dist. Thane

(At present: Yerawada Central

Prison, Pune)

...Petitioner

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

Yerwada Central Prison, Pune

....Respondents

Ms. Jayashree Tripathi for the Petitioner

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

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

DATE : 5th OCTOBER 2023

JUDGMENT: (PER: GAURI GODSE, J.)

1. This petition is filed to challenge the order dated 24th January

2023 passed by the respondent no. 1-Commissioner of Police, Thane in exercise of powers 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 of Essential Commodities Act, 1981 ("MPDA" Act) for detaining the petitioner.

2. Perusal of the detention order indicates that the detaining authority has relied upon one complaint registered against the petitioner vide CR No. 284 of 2022 registered with Vartaknagar Police Station for the offences punishable under Sections 307, 386, 504 read with 34 of the Indian Penal Code. The detaining authority has also relied upon in-camera statements of two witnesses recorded on 10th December 2022 referring to incidents that occurred in the second week of December 2022 and the third week of December 2022, respectively. Thus, by relying upon the aforesaid CR and the two in-camera statements, the detaining authority has recorded subjective satisfaction that it is necessary to detain the petitioner to prevent him from indulging in any prejudicial activities.

3. 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 succeed on the ground of challenge raised in clause (d) of paragraph no. 5 of the petition which reads as under:

“(d) The petitioner says and submits that the detaining authority has taken into consideration solitary offence vide C.R. No. 284/2022 dated 20.07.2023 along with in camera statements of witness A and B, to arrive at his subjective satisfaction and pass the order of detention. It is pertinent to note that the two relied on C.R.s taken into consideration are vague and concocted statements. Both the statements are recorded belatedly after a gap of more than four months of the registered crime, and is recorded after the petitioner was released on bail on the 15.11.2022. It is to be noted that both the in camera statements are do not disclose the date and place of the incident, even though they have been recorded within a span of maybe two or three days. In camera statement of witness A is recorded on 10.12.2022 for incident occurred in the 2nd week of December 2022, and In camera statement of witness B is recorded on

17.12.2022 for incident occurred in the 3rd week of December 2022. In the Marathi version of the statements of witness 'A' first three lines "you were standing on the side of the footpath with one of your associates" is completely missing in the English version of grounds of detention, similarly in the Marathi version of the statements of witness 'B' first three lines "you were standing in the dark with one of your associates" is completely missing in the English version of grounds of detention. Apart from the difference mentioned above, on a plain reading of both the statements, the entire narration is word to word similar. On a minute reading one can gauge that the statements are nothing but a "cut copy and paste" from one another as each and every detail given are identical with slight changes here and there. The officer verifying the said statements states that they have visited the place of incident, whereas there is no place as such mentioned by the witnesses in the statements. The said in camera statements are only recorded to fill up the gap and pass the detention order. Such vague statements cannot be taken into consideration for passing detention order. The order of detention is illegal and bad in law for consideration of vague statements, liable to be quashed and set aside."

4. Learned counsel for the petitioner submitted that there is variance in the gist of in-camera statements recorded in the Marathi version and the English version of the detention order. She submitted that in the Marathi version of the statement of witness 'A' first three lines indicating that the petitioner was standing on the side of the footpath with one of his associates is completely missing in the English version of the grounds of detention served upon the petitioner. Learned counsel further submitted that even in the Marathi version of the statement of witness 'B' first three lines indicating that the petitioner was standing in the dark with one of his associates is completely missing in the English version of the grounds of detention served upon the petitioner. Learned counsel further submitted that the entire narration of the incident of both the in-camera statements are word-to-word similar. She submitted that the minute reading of the gist of in-camera statements of both the witnesses reproduced in the detention order would show that it is actually "cut copy paste" from one statement to the other statement, with slight changes in the dates of incidents. Learned counsel, therefore, submitted that there is

complete non-application of mind by the detaining authority in arriving at the subjective satisfaction. Learned counsel further submitted that in view of the variance in both versions of the detention orders served upon the petitioner, he was left with a confused state of mind and, therefore, was unable to file effective representation. Learned counsel submitted that in view of the said variance in both versions of the detention order, the petitioner was deprived of making an effective representation, and thus, his right under Article 22(5) of the Constitution of India is infringed. Learned counsel, therefore, submitted that the detention order is therefore illegal and the continued detention of the petitioner is rendered illegal and impermissible. She, therefore, submitted that the detention order be quashed and set aside, and the petitioner be set free forthwith.

5. Learned APP supported the detention order by relying upon the respective affidavits filed on behalf of the detaining authority, jail authority and the State Government. Learned APP submitted that all the documents relied upon by the detaining authority were supplied to the petitioner. She submitted that the copies of the in-camera

statement in Marathi as well as in English were supplied to the petitioner at the time of execution of the detention order, and thus, the meaning and substance of the in-camera statements have been properly communicated to the petitioner. She, therefore, submitted that there is no substance in the ground of challenge raised by the petitioner.

6. We have considered the submissions made by both the parties. We have perused the record of the petitioner as well as the affidavits filed on behalf of the respondents.

7. Perusal of both versions of the detention order reveals that in the Marathi version of the detention order, the gist of in-camera statements of witness 'A' records that “तुम्ही तुमचे एका साथीदारासह रोडच्या बाजूच्या फुटपाथवर उभे होता”. In the Marathi version of the detention order, the gist of the in-camera statement of witness 'B' records that “तुम्ही तुमच्या साथीदारासोबत अंधारात उभे होतात”. A perusal of the English version of the detention order reveals that in the gist of the in-camera statement of witness 'A' and witness 'B', the aforesaid

sentences, as recorded in the Marathi version of the detention order are completely missing in the English version of the detention order.

8. Perusal of the affidavit-in-reply filed on behalf of the detaining authority is bereft of any explanation with respect to the aforesaid variance in both versions of the detention order. Thus, perusal of the gist of in-camera statements as reproduced in English and Marathi versions of the detention order reveals that there is variance in the gist of in-camera statements of both the witnesses reproduced in the order of detention.

9. The allegation against the petitioner in the in-camera statement of witness 'A' is that in the second week of December 2022, at around 9:30 p.m., the petitioner threatened the witness for extorting money. There is also an allegation that the petitioner assaulted the witness and forcibly took money from the pocket of the witness. The allegation against the petitioner in the in-camera statement of witness 'B' is that in the third week of December 2022, at around 10.15 p.m., the petitioner threatened and assaulted and extorted money from the

witness. Thus, the allegation in both the in-camera statements is with respect to the presence of the petitioner at a particular place and at a particular time. However, the narration of the incident, as reproduced in the Marathi and English versions as reproduced in the detention order, is different. The variance in the version of the incident of both the in-camera statements cannot be said to be a minor discrepancy. Considering the allegations in the in-camera statements, the variance in reproduction of the narration of the incidents of in-camera statements has deprived the petitioner of making an effective representation and, thus, has resulted in violating the petitioner's right under Article 22(5) of the Constitution of India. Thus, learned counsel for the petitioner is right in submitting that the variance, as stated above in both versions of the detention order, has deprived the petitioner of making an effective representation against his detention.

10. In view of the present case, it is necessary to refer to our decision (Coram: Revati Mohite Dere and Gauri Godse, JJ.) in the case of ***Vilas Ashok Aawale Vs. The State of Maharashtra and others***¹. In the said

1 Writ Petition ST No. 7369 of 2023 dated 15th June 2023

decision, we have relied upon the principles of law laid down by the Hon'ble Supreme Court in the case of *Vijay Kumar Dharna @ Koka Vs. Union of India and others*² and the decision of this Court in the case of *Pradeep Panchal Vs. The State of Maharashtra and others*³ and held that the satisfaction recorded in the English version of the grounds for issuing the detention order in the said case was not consistent with the grounds recorded in the Marathi version, which showed that the detenu was deprived of making an effective representation and thus, his right under Article 22(5) of the Constitution of India was violated thereby rendering his detention illegal.

11. In the case of *Pradeep Panchal*, the detaining authority had furnished a Hindi version of the detention order, as the detenu was not conversant with the English language. The ground of challenge to the detention order was that there were several discrepancies and variations in the English and Hindi version of the detention order.

This Court set aside the order of detention by holding in paragraph 15

² (1990) 1 SCC 606

³ 2014 ALL MR (Cri.) 2331

as under:

“As the law relating to prevention detention is visited with serious consequences, the question of 'prejudice', 'inadvertent mistakes' and 'typographical errors' have no place and no judicial protection can be afforded to such glaring mistakes that stare in the face of the detenu. In the light of the aforesaid, we hold that non-furnishing of accurate, true and faithful Hindi translation of the order of detention is a serious and glaring infirmity, which in the facts of the case, had the potential to mislead/confuse the detenu in making an effective representation. We therefore, have no hesitation in holding that because of the variance in the Hindi translation provided to the detenu, his right to make an effective representation under Article 22(5) of the Constitution of India was clearly impaired.....”

12. In similarly situated facts of the case of ***Vijay Kumar Dharna @ Koka Vs Union of India and others***, the Hon’ble Supreme Court has

held that because of variance in the Gurmukhi version of the detention order and the contents of the detention order, the detenu was unable to make an effective representation against his detention and was thereby denied his right under Article 22(5) of the Constitution.

13. The principles of law laid down by the Hon'ble Supreme Court in the case of *Vijay Kumar Dharna @ Koka*, as well as by this Court in the case of *Pradeep Panchal*, are squarely applicable to the facts of the present case. Thus, the law relating to preventive detention, being a drastic law affecting the personal liberty of a person, is required to be applied with utmost care and caution. Any kind of non-application of mind will vitiate the order of detention and also deprive the detenu of making an effective representation and render the continued detention illegal and impermissible.

14. On perusal of the facts of the present case, we are of the opinion that the satisfaction recorded by the detaining authority in the English version of the grounds of issuing detention order is not consistent with

the grounds recorded in the Marathi version as there is variance in reproducing the version of the incidents of two in-camera statements in Marathi and English version of the detention order. A perusal of both versions of the detention order shows that the presence of the petitioner and his associates, as narrated in the gist of in-camera statements reproduced in the Marathi version of the detention order, is completely missing in the reproduction of the gist of in-camera statements in the English version of the detention order. Thus, in view of the facts of the present case, the principles of law laid down in the aforesaid decisions are squarely applicable to the present case. Thus, in view of the aforesaid variance, the petitioner is deprived of making an effective representation, which amounts to violation of the petitioner's right under Article 22(5) of the Constitution of India, thereby rendering his detention illegal.

15. Thus, for the reasons recorded above, the petition is allowed by passing the following order:

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. TC/PD/DO/MPDA/02/2023, dated 24.01.2023 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 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.