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

CRIMINAL WRIT PETITION NO. 3316 OF 2023

Mr. Vivek Bablu Yadav

R/at. Nande Patil Wasti, Loni Kalbhor,

Tahsil Haveli, Pune.

At present at Nagpur Central Jail.

... Petitioner

vs.

1. The Commissioner of Police, Pune.

2. The State of Maharashtra

(Through Addl. Chief Secretary of
Government of Maharashtra Mantralaya,
Home Department, Mantralaya Mumbai)

3. The Superintendent,
Nagpur Central Prison, Nagpur.

... Respondents

Mr. Hemant Bhand a/w. Mr. Raj Kapadia for the Petitioner.

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

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
DATED: 9th NOVEMBER 2023.**

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

1. This petition is filed challenging the order dated 9th June 2023, passed by respondent no. 1-Commissioner of Police, Pune City, 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. A perusal of the detention order indicates that the detaining authority has relied upon the complaint registered against the petitioner vide CR No. 38 of 2023 dated 7th February 2023 under section 65(b)(f)(e) of the Maharashtra Prohibition Act, 1949. The allegations in the said CR are that the petitioner is involved in producing and selling illicit liquor. It is stated that in the raid conducted by the police, certain material was seized from the petitioner, and samples were sent for chemical analysis. The detaining authority further referred to the chemical examination report, which stated that the seized sample contained certain percentage of ethyl alcohol. The detention order further indicates that the petitioner was arrested on 8th February 2023 in connection with the said CR and was subsequently released on bail on the same day.

3. The detaining authority has also relied upon two in-camera

statements. The in-camera statements contain similar allegations against the petitioner regarding producing and selling liquor. Witness 'A' of the in-camera statement stated that the petitioner is involved in the production and sale of illicit liquor and that he abused and assaulted him and threatened him for extorting money. Witness 'B' of the in-camera statement also made allegations against the petitioner that he is producing and selling country-made liquor. Even witness 'B' has stated that the petitioner has assaulted and abused the witness and threatened him from making a complaint against the petitioner. Thus, the detaining authority, by relying upon the aforesaid CR and two in-camera statements, has recorded subjective satisfaction that the petitioner is involved in the production and sale of illicit liquor, and thus, he is a bootlegger under section 2(b) of the said Act.

4. The detaining authority has, thus, recorded that the petitioner is acting in a manner dangerous to the health and life of the public, which is prejudicial to the maintenance of public law and order and thus, the petitioner is required to be detained for preventing him from indulging in prejudicial activity in

future.

5. The learned counsel for the petitioner has raised various grounds to challenge the detention order. However, has pressed into service ground raised in clause (d) of paragraph 10 of the petition, which reads as under:

“D) The copy of the detention order is in English and Marathi language. On the contrary, the detenu does not understand either Marathi or English language. The detenu only understands Hindi language. Translated copy of the said order has not been supplied to the detenu in the language known to him. Due to which the detenu could not represent himself before advisory board. On the letter and order dated 20/06/2023 given to the detenu by Respondent No.2, the detenu has endorsed in Hindi language which says that, “Received Copy and explained in Hindi”. Such an endorsement by the detenu speaks volume that, he understands only Hindi language. Therefore, the detention order passed is absolute in contravention of Article 22(5) of Constitution of India.”

6. The learned counsel for the petitioner submitted that the detention order served upon the petitioner was in English and Marathi language. However, the petitioner does not understand Marathi or the English language. He submitted that the

petitioner understands only the Hindi language.

7. Learned counsel further submitted that though the petitioner understood only Hindi language, translation of the detention order and relied upon documents were not served upon the petitioner, and hence, the petitioner was deprived of making any effective representation. He, thus, submitted that the petitioner's right under Article 22(5) of the Constitution of India is violated.

8. Learned counsel relied upon the letter dated 20th June 2023 annexed on page 48 at Exhibit D2 of the petition. Learned counsel further submitted that by the said letter, the petitioner was served with the order dated 20th June 2023 passed by the State Government approving the detention order. Learned counsel submitted that the said order was explained to the petitioner in Hindi, and accordingly, he endorsed the said letter in Hindi. Learned counsel submitted that though the authorities were aware that only Hindi language was known to the petitioner, the translation of the detention order and the relied-upon documents were not served upon the petitioner. 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. Hence, the detention order be quashed and set aside, and the petitioner be released forthwith.

9. Learned APP supported the detention order by relying upon the affidavits of the detaining authority and the State Government. Learned APP submitted that there is no substance in the petitioner's contention that only Hindi language is known to him. The learned APP submitted that the petitioner has been staying in the State of Maharashtra since 2014, and he is well-versed in the Marathi language and can understand, read, and write correctly. Learned APP stated that the petitioner's children were studying in a Marathi medium school, and thus, it is not proper to say that the petitioner does not understand Marathi language. Learned APP further submits that while serving the grounds of detention, all the grounds were explained to the petitioner in Marathi language, and the petitioner never raised objections with respect to the same. Learned APP thus submitted

that there is no substance in the grounds of challenge raised on behalf of the petitioner.

10. We have considered the submissions of both the parties. We have perused the record of the petition as well as the affidavits relied upon by the learned APP. For verifying the petitioner's contention that only Hindi language is known to him, we called upon learned APP to produce on record the original file containing the form of information of the petitioner. Learned APP on instructions submitted the original file does not contain any form of information with respect to the particulars of the petitioner. The endorsement in Hindi language relied upon by the learned counsel for the petitioner on page 48, Exhibit- D2 of the petition shows that the order dated 20th June 2023 passed by the State Government under section 3(3) of the MPDA Act was explained to the petitioner in Hindi language. The respondents do not dispute the said endorsement. In the affidavit filed by the detaining authority, except for saying that the petitioner is well-versed in the Marathi language, nothing is shown to support the said contention. The explanation given by the detaining authority

that since the petitioner is residing in the State of Maharashtra, he has knowledge of Marathi language, and he can write and understand Marathi is wholly misconceived. The further explanation given by the detaining authority that the petitioner's children are studying in a Marathi medium school and, hence, the petitioner understands Marathi language is equally irrelevant and misconceived.

11. The contention that while serving the grounds of detention, the grounds were explained to the petitioner in Marathi language is not sufficient to say that the petitioner has the knowledge to read and understand Marathi language. Another circumstance relied upon by the detaining authority is that the signature of the petitioner stating only his name written in the vernacular language would not show that the petitioner is well versed only with Hindi language. The said contention is also baseless in as much as the signature in vernacular language, which may not indicate whether the same is in Hindi or Marathi, and cannot be the basis to contend that the petitioner has the knowledge to read and understand Marathi language. The

grounds raised by the detaining authority to show that the petitioner has knowledge of Marathi language is not acceptable by any stretch of the imagination. The petitioner's reliance on page 48 at Exhibit-D2 of the petition has substance. The respondents do not dispute the endorsement made by the petitioner on the said letter in Hindi and thus is sufficient to accept the petitioner's contention that he understands only Hindi.

12. Learned APP could not produce on record the information form of the petitioner containing the details about the detenu. Thus, in view of the aforesaid, we are of the opinion that the detaining authority has failed to prove that the petitioner was well versed in the Marathi language and hence, the detaining authority explained the grounds of detention in the Marathi language to the petitioner. It is obligatory on the part of the detaining authority to supply the grounds of detention and supporting documents in the languages known to the detenu. If the grounds of detention and documents relied upon by the detaining authority are not supplied to the detenu in the

language known to him, the detenu is deprived of making an effective representation. In the present case, it is not disputed that the petitioner is not supplied with any translation in Hindi language. Hence, the petitioner was unable to file an effective representation. Thus, the petitioner's right under Article 22(5) of the Constitution of India is violated.

13. It is a well-settled principle of law that the detaining authority must supply the grounds of detention and the relied-upon documents in the language known to the detenu. It is also a well-settled principle of law that non-supply of the translation of the grounds of detention and relied upon documents to the detenu in the language known to the detenu amounts to non-supply of grounds of detention and relied upon documents, depriving the detenu of making an effective representation, which is in contravention to Article 22(5) of the Constitution of India. In the present case, the petitioner is not supplied with the grounds of detention relied upon documents in the language known to him. Hence, the petitioner is deprived of making effective representation, and hence, his right under Article 22(5)

of the Constitution of India is violated, rendering his continued detention illegal and impermissible.

14. Hence, for the reasons recorded above, the following order is passed:

ORDER

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

“(b) This Hon’ble Court may kindly pass appropriate writ/order/directions and quash and set aside the detention order bearing no. OW.NO/CRIMEPCB/DET/LONIKALBHOR/YADAV /202/2023 dated 09/06/2023 passed by the Commissioner of Police, Pune.”

ii) The petitioner is set at liberty forthwith, if not required in any other case.

All concerned to act on the authenticated copy of the order.

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)