



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No. 87 / 2024

Shahjadkhan @ Lalla Salim Khan

Age : 25 years,

R/o Katya File, Shani Peth Jalgaon,

Taluka & District Jalgaon.

...Petitioner

Versus

**1. District Magistrate,
Jalgaon.**

**2. State of Maharashtra
Through Deputy Secretary,
Home Department (Special),
Mantralaya, Mumbai.**

**3. The Superintendent,
Yerwada Central Prison, Pune.**

..Respondents

Advocate for the Petitioner : Mr. Rupesh A. Jaiswal

A.P.P. for Respondents /State : Mr. G.A. Kulkarni

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 28 MARCH 2024

PRONOUNCED ON : 4 APRIL 2024

JUDGMENT [Per Shailesh P. Brahme, J.] :

. Rule. Rule is made returnable forthwith. Heard the matter finally with the consent of both the parties.

2. Being aggrieved by the order of detention dated 27.10.2023 passed by the respondent no.1/Magistrate under Section 3(1) 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 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience), the petitioner has approached this Court. He is in imprisonment since 28.10.2023.

3. The respondent no.1/District Magistrate arrived at the subjective satisfaction considering three offences, in-camera statements and three preventive actions taken against the petitioner. The detaining authority has held the petitioner as dangerous person.

4. Learned Counsel for the petitioner tenders on record written submissions alongwith judgments and a compilation comprising of the documents served upon the petitioner. Following submissions are put-forth based on the grounds taken in the memo of writ petition :

- (i) Translation of documents was not furnished to the petitioner, causing prejudice to his right to make effective representation.
- (ii) An illegible document was supplied which is at page no.277 part of record of C.R. No.170/2023.
- (iii) Representation of the petitioner was not decided and communicated to him.

- (iv) In-camera statements are not reliable.
- (v) Bail orders are not considered.
- (vi) There is unexplained delay in securing approval of Section 3(3) of the Act.

5. Per contra, learned APP seeks to rely on affidavits-in-reply to support impugned order. All the submissions of the Counsel for the petitioner are contended to be meritless. It is being vehemently contended that the petitioner is involved in serious offences and has not even spared public servant. His criminal activities show incriminating trend of committing offence by forming unlawful assembly. The subjective satisfaction of the detaining authority is contended to be reasonable and plausible. Learned APP would submit that every precaution has been taken to adhere to the time line prescribed in the act.

6. We have considered rival submissions advanced across the bar. The petitioner also tenders additional affidavit/rejoinder. Following incriminating material alongwith in-camera statements is pitted against the petitioner :

DETAILS OF THE OFFENCES REGISTERED RECENTLY WITHIN SIX MONTHS				
Sr.No.	Police Station	C.R. Number	Date of Registration	Nature of Offence
1	Shani Peth.	145/2023	10.08.2023	Under Sections 143, 147, 148, 149, 336, 323, 504, 506 of I.P.C. read with Section 37(1)(3) for breach of Section 135 of Mumbai Police Act, 1951.
2	Shani Peth.	147/2023	10.08.2023	Under Sections 353, 332, 336, 337, 186, 143, 147, 148, 139 of I.P.C. read with Section 37(1)(3) for breach of Section 135 of Mumbai Police Act, 1951.
3	Shani Peth.	170/2023	12.09.2023	Under Sections 327, 341, 323, 504, 506 of I.P.C.

PREVENTIVE ACTION				
1	Shani Peth.	54/2023	21.08.2023	Under Section 110(e)(g) of the Criminal Procedure Code, 1973
2	Shani Peth.	02/2023	08.09.2023	Under Section 151 of the Criminal Procedure Code, 1973
3	Shani Peth.	13/2023	11.09.2023	Under Section 144(2) of the Criminal Procedure Code, 1973

7. Undisputedly petitioner is involved in above offences which are falling under Chapter XVI and XVII of IPC. He was actually detained on 28.10.2023. Order of detention was approved under Section 3(3) of the MPDA Act by the State Government on 06.11.2023. The Advisory Board recommended preventive action on 13.12.2023. The impugned order was confirmed on 28.12.2023. Petitioner made representation on 12.12.2023, which was ultimately rejected on 01.02.2024.

8. Learned Counsel for the petitioner refers to transfer certificate of the petitioner. It reveals that the petitioner had left school on 31.03.2007 when he was in 7th standard. He appears to be conversant with Marathi and Hindi. We are shown certain documents served upon the petitioner which are in English. Those are Injuries certificates, medical papers, memos, production order, applications for bail and orders thereon. Those are relevant documents of which translation has not been furnished. The petitioner was served with these documents when he was in jail. It was incumbent upon the detaining authority to supply translation to enable the petitioner to make representation.

9. Learned APP would submit that while serving the documents

alongwith grounds of objection in paragraph no.16, it was stated that any shortfall or flaws in the documents including legibility could be communicated to the detaining authority. Despite that, no communication was made by the petitioner. We are not ready to accept this submission because it has come on record that petitioner has no knowledge of English. He is educated up to 7th standard in Marathi medium. These facts have not been disputed by the respondents.

10. Learned Counsel for the petitioner relies upon the judgment of **Yogesh Nandu Pujari Vs. Commissioner of Police, Thande & Ors.**, 2013 ALL MR (Cri) 1779. We have considered relevant paragraph no.8 and 9. In that matter, the grievance was that vital documents were not supplied to the detainee. In the case in hand, we are dealing with grievance that the petitioner was not furnished with translated documents. Therefore, ratio laid down therein cannot be made applicable.

11. The petitioner relies on judgment of **Ketan Gorakh Darekar Vs. Commissioner of Police, Pune City & Ors.**, Criminal Writ Petition No.16438/2023 and **Hadibandhu Das Vs. District Magistrate, Cuttack**, 1968 CJ(SC) 114. It is laid down by the Supreme Court as follows :

“6. The grounds in support of the order served on the appellant ran into fourteen typed pages and referred to his activities over a period of thirteen years, beside referring to a large number of court proceedings concerning him and other persons who were alleged to be his associates. Mere oral explanation of a complicated order of the nature made against the appellant without supplying him

the translation in script and language which he understood would, in our judgment, amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order. The order made by the District Magistrate, Cuttack not having been followed up by service within five days as provided by Section 7(1) of the communication to him of the grounds on which the order was made must be deemed to have become invalid and any subsequent detention of the appellant was unauthorised.”

. We find merit in the submissions of the learned Counsel for the petitioner. Right to make effective representation has been infringed in the present matter.

12. Learned Counsel for the petitioner refers to a document which is part and parcel of C.R. No.170/2023, last offence pitted against petitioner. It is contended that the order passed by Tahasildar cum Executive Magistrate, Jalgaon is illegible. We are also unable to read the documents, but the purport of the documents has not been made clear by either of the parties. Pertinently, only one document is alleged to be illegible. It has not been demonstrated as to what prejudice has been caused to petitioner.

13. We have considered judgment in the matter of **Chandra Shekhar Ojha Vs. A.K. Karnik, Assistant Secretary, Home Department, Bombay and Others**, 1981 CJ (Bom) 40. In that matter number of documents were illegible and those were considered by the detaining authority while passing order of detention. No precaution was taken to supply legible copies to the detainee. In the present case, only one illegible document was supplied and detaining authority has not referred the document.

Therefore, the judgment cited may not enure to the benefit of the petitioner.

14. Further reliance is placed on the judgment in the matter of **Mrs. Jayshree Rajendra Waghmare Vs. Commissioner of Police, Pune City and Ors.**, Criminal Writ Petition Stamp No.10685/2023. In that matter also, number of documents were illegible. In the present matter, only one document which is not relied upon by the detaining authority, is illegible. Hence ratio of the judgment is not applicable. Same is the case with the next judgment rendered in the matter of **Manmoorat R. Pandey Vs. Commissioner of Police, Thane and Ors.**, Criminal Writ Petition Stamp No. 19927/2023. We are of the considered opinion that the judgment is distinguishable.

15. Order of detention was passed on 27.10.2023. Representation was made on 12.12.2023. We have gone through paragraph no.12 of affidavit-in-reply. It is stated that representation was received on 18.12.2023. Immediately, it was submitted to State Government. It was rejected on 01.02.2024. Another grievance of the petitioner is that rejection has not been communicated to him. Additional affidavit reiterates that the rejection has not been communicated, which is not controverted by respondents.

16. We find that the respondents/authorities have failed to explain delay in deciding the representation. Although representation was made on 18.12.2023, respondent no.2 was under obligation to decide it as early as possible. It is

incomprehensible as to why representation was kept pending, when Advisory Board recommended the detention on 13.12.2023 and when the State Government was seized of the matter on 28.12.2023. The representation should have been decided on or before 28.12.2023. Rejection of representation on 01.02.2024 would indicate want of promptitude. No endeavour has been made by the respondents to show that rejection has been duly communicated to the petitioner. We find substance in submission of learned Counsel for the petitioner.

17. Our attention is invited to in-camera statements recorded on 15.09.2023. In-camera statement of witness A has been assailed to show that the incident of 09.08.2023 narrated by the witness would constitute FIR of C.R. No.145/2023 and 147/2023. Both the witnesses would disclose habitual and criminal tendency of the petitioner. The statements are corroborative in nature. Both the statements indicate potential of the petitioner causing prejudice to the public order. We do not find any merit in the submissions that the statements are vague and unreliable.

18. Three offences were relied upon by the detaining authority. In C.R. No.145/2023, a notice under Section 41A was served upon the petitioner. In remaining both offences, he was released on bail by reasoned order. We have gone through the orders of bail. The grounds of objection only make mention of orders of bail and not beyond that. The reasons assigned by the regular Criminal Court enlarging the petitioner on bail, should have been considered by the detaining authority. It is non-application of mind to form

subjective satisfaction without considering reasons of bail.

19. In this regard, learned Counsel for the petitioner has rightly relied upon the judgments in the matter of **Digambar @ Digambar Vitthal Dagdade Vs. District Magistrate Latur & Ors.**, Criminal Writ Petition No. 1736/2023; **Nilesh Sunil Pendulkar Vs. District Magistrate, Ahmednagar & Ors.**, Criminal Writ Petition No.1820/2023 and **Sachin Abhaysingh Chavan Vs. District Magistrate, Jalgaon & Ors.**, Criminal Writ Petition No.1763/2023. We propose to follow the views taken in the judgments.

20. We have considered affidavit-in-reply dated 16.02.2024 to examine whether there is unexplained delay for seeking approval of Section 3(3) of the MPDA Act. It is stated in paragraph no.3 that approval was granted by the State Government on 06.11.2023. We are also shown paragraph no.8 of reply dated 05.02.2024. There is no reason to doubt the sequence of events narrated therein. We find no explanation is forthcoming for delay from 02.11.2023 to 06.11.2023. In our considered view unexplained delay vitiates impugned order. Learned Counsel for the petitioner has rightly referred to judgments of **Hetchin Haokip Vs. State of Manipur and Ors.** 2018 ALL SCR (Cri) 1240 and **Aatish s/o Ravindra Kharat Vs. State of Maharashtra and Ors.** Criminal Writ Petition No.1794/2023.

21. Net analysis of our discussion is that constitutional right of the petitioner for making effective presentation has been hampered. The subjective satisfaction is shrouded with doubt for

non-consideration of orders of bail. There is unexplained delay of four days in granting approval. The impugned order is not sustainable in law.

ORDER

- (i) The Criminal Writ Petition is allowed in prayer clause (b).
- (ii) Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE