



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

Criminal Writ Petition No. 1736 / 2023

Digambar @ Digambar Vitthal Dagdade

Age : 25 years, R/o Koralwadi, Tal. Nilanga,
District Latur.

...Petitioner

Versus

1. The District Magistrate, Latur.

2. State of Maharashtra

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

3. The Superintendent,
Latur Central Prison, Latur.

..Respondents

— — —

Mr. Rupesh A. Jaiswal, Advocate for the Petitioner.

Mr. V.K. Kotecha, A.P.P. for Respondent /State.

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

RESERVED ON : 30 JANUARY 2024

PRONOUNCED ON : 8 FEBRUARY 2024

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

. Rule.

2. Rule is made returnable forthwith. With the
consent of the parties, heard learned Counsel for
the litigating sides, finally.

3. The petitioner is challenging order dated 08.08.2023 passed by the respondent no.1/ District Magistrate, Latur detaining him under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the MPDA Act for the sake of brevity).

4. The respondent no.1 has passed impugned order on the basis of antecedent of the petitioner in the form of offence bearing C.R. No.42/2023 under Sections 143, 147,148, 149, 323, 324, 504, 506 of the Indian Penal Code and Section 135 of the Maharashtra Police Act and in-camera statement of two witnesses. The petitioner is held to be a 'dangerous person' to deprive his liberty.

5. Learned Counsel for the petitioner has raised following grounds to challenge detention order :

(i) The representation dated 18.11.2023 submitted by the petitioner to the respondent no.2/State Government has not been considered, nor any decision has been conveyed to the petitioner. There is violation of article 22(5) of the Constitution of India.

(ii) In-camera statements of both the witnesses have not been verified by the competent authority and the copies supplied to the petitioner do not reflect the verification. The statements are stated to be vague and non-authentic, vitiating the impugned order.

(iii) An order of bail enlarging the petitioner was not considered by the detaining authority casting doubt on the subjective satisfaction.

(iv) There is delay of six months from the registration of last offence till passing of the order of detention which has not been explained. The live-link stands snapped.

6. Learned Counsel for the petitioner filed on record written submissions alongwith the judgments referred by him during the course of arguments. He referred to following judgments :

- a. Harish Pahwa Vs. State of U.P
reported in (1981) 2 SCC 710
- b. Mahesh Kumar alias Banti Vs. UOI & Ors.
reported in (1990) 3 SCC 148
- c. Rajamal vs. State of T.N
reported in 1999 (1) L J (SC) 265
- d. Akash Annasaheb Hodade Vs. District Magistrate
Latur in Criminal Writ Petition No.391/2023
- e. Jay @ Nunya Bhosale Vs. Comm... of Police Pune
reported in 2015 ALL MR (Cri.)4437

- f. Smt. Subhangi T. Sawant Vs. R.H. Mendonca & Ors.
2001 ALL MR (Cri.) 68
- g. Mrs. Zabin Salim Shaikh Vs. A.N. Roy & Ors.
reported in 2006 ALL MR (Cri) 3324
- h. Rushikesh Tanaji Bhoite Vs. State of Maharashtra
reported in 2012 CRI L.J 1334 SC
- i. Lakhan Rohidas Jagtap Vs. Comm of Police Pune
reported in 2019 ALL MR (Cri) 5261
- j. Abdul Sathar Ibrhim Manik Vs. UOI & Ors.
reported in 1991 CRI L.J 3291
- k. Vishal Waman Mhatre Vs. Comm of Police & Ors.
reported in 2013 ALL MR (Cri) 42
- l. Pradeep Nilkant Patrukar Vs. S.Rammurthi & Ors.
reported in AIR 1994 SCC 656
- m. Jaggu Sardar J.T Labana Vs. Comm of Police Thane
& ors. In Cri. W.P (S.T) No.15876/2023
- n. Austin Pinto Vs. Commissioner reported in 2005
All MR Cri.

7. To repel the submissions of the petitioner, learned APP placed on record affidavit-in-reply. Additionally, he would place on record photocopy of a communication dated 14.12.2023, rejecting the representation of the petitioner. Learned APP would submit that the representation made by the petitioner, is rejected and as such there is no violation of Article 22(5) of the Constitution of

India. In camera statements have been verified by the Sub-Divisional Police Officer and the grievance of the petitioner is meritless.

8. Learned APP submits that an order of bail passed in favour of the petitioner has been considered by the detaining authority. The respondent no.1 has arrived at subjective satisfaction considering the relevant record. There is no delay in passing the impugned order considering the events stated in paragraph no.6.

9. We have considered rival submissions of both the sides. With their assistance, we have gone through the relevant papers. Interestingly, respondent no.1/detaining authority has held petitioner as a dangerous person on the basis of only one offence that is C.R. No.42/2023 registered with Kasar Sirsi Police Station. Though the impugned order shows registration of four offences, those have not been considered to arrive at the subjective satisfaction. Additionally, in-camera statements of two witnesses have been considered.

10. The petitioner made representation on

18.11.2023. It appears to have been forwarded on the same date to the respondent no.2. It has not been denied by the respondent no.2. The affidavit-in-reply filed by the respondent no.1 is silent regarding the representation dated 18.11.2023. For the first time during the course of argument, learned APP has placed on record communication dated 14.12.2023 stating the rejection of the representation of the petitioner.

11. It has not been made clear by the respondents, the date on which the representation was rejected and whether the petitioner has been informed such a rejection. We are not inclined to accept the plea of the respondents that the representation was considered, it was rejected and it was properly conveyed to the petitioner. Had representation been rejected and conveyed, there would have been reference in the affidavit-in-reply.

12. We find merit in the submissions of the petitioner that there is a violation of Article 22(5) of the Constitution of India. He has rightly placed reliance upon the judgments rendered by the Supreme Court in the matter of Harish Pahwa vs.

State of U.P.; Maheshkumar Vs. UOI; Rajmal Vs. State of Tamil Nadu and Akash Annasaheb Hodade Vs. District Magistrate, Latur.

13. It is submitted by the petitioner that in-camera statements supplied to him do not reflect verification conducted by the competent higher authority and there is no authenticity of the statements as such. Our attention is invited to paragraph no.7 of the affidavit-in-reply. It refers to verification made by the Sub-Divisional Officer, Ausa on 25.07.2023. In-camera statements do not show that there has been verification by Sub-Divisional Police Officer. The judgments cited by the petitioner in the matter of Jai @ Nunya Vs. Commissioner of Police is not applicable. The judgment rendered in the matter of Smt. Shubhangi Tukaram Sawant Vs. Shri. R.H. Medonika & Others and the law laid down in the matter of Mrs. Zabin Salim Shaikh vs. A.N. Roy, is relevant. We prefer to reproduce paragraph no.8 as follows :

"8. We have verified from the original record as produced before us by Mrs.Pai, the learned APP that (a) the verification made by the Asst. Commissioner of Police and as reproduced hereinabove is the same as in the original statement, (b) the proposal submitted to the Detaining Authority was prepared and forwarded by the Deputy Commissioner of Police, (c) the said proposal was based on the two in-camera statements as well as the verification made by the Asst. Commissioner of Police and (d) the verification so made by the Asst. Commissioner of Police remained silent about the truthfulness of the incidents which are covered by

the said in-camera statements. The verification has dealt with the identification of the complainants, the contents therein having been written as disclosed by the complainants, the complainants' signatures, the complainants having understood the contents of the statement as recorded by the Police Inspector and the satisfaction of the Asst. Commissioner of Police that the complainants were not willing to disclose their identity and if they had disclosed it, there would be danger to their life. The verification required to be done by the Senior Police Officer of such in-camera statements requires an additional condition to be met viz. the satisfaction of the verifying officer regarding the truthfulness of the incident that was claimed to have occurred and as disclosed by the respective complainants i.e. Witness "A" and Witness "B" in the instant case. Such a verification ensures the Senior Police Officer's subjective satisfaction that the statement as recorded by the Police Inspector or Senior Police Inspector was genuine, the identity of the witness was established and the incidents disclosed were found to be truthful by the said Senior Police Officer in the course of verification. These are the built in measures provided by the law laid down in the case of Phulwari Pathak (Supra) so that the Detaining Authority has before it the material to come to the conclusion that the detenu is a dangerous person within the meaning of Section 2(b-1) of the MPDA Act. In Vijay Gupta's case (Supra) a Division Bench of this Court by referring to the judgment in the case of Phulwari Pathak (Supra) observed in para 6 as follows:

6. There remains no doubt in the light of the law laid down by the Apex Court that in camera statement of a person/witness can be utilised by the detaining authority for the purpose of arriving at subjective satisfaction for passing the order of detention. However, the Apex Court made it clear that the facts stated in the materials relied upon should be true and have a reasonable nexus with the purpose for which the order is passed. Necessary corollary, therefore is that the detaining authority must be satisfied about the truthfulness of the statements made in the in camera statements. Testing it from this touchstone, we find that neither in the detention order nor in the grounds of detention, the detaining authority has stated anything that he was satisfied about the truthfulness of the statements made in the in camera statements."

14. We find substance in the submission of learned Counsel for the petitioner that there is lack of verification meaning thereby lack of truthfulness of the incident quoted by the witnesses. The case in hand shows that only one criminal offence and two in-camera statements are pitted against the petitioner.

With this scanty material, the drastic action is initiated. Care should have been taken by the respondents to supply appropriate copies of statements to the petitioner containing verification.

15. Learned Counsel for the petitioner has drawn our attention to the grounds of detention especially paragraph no.5(a)(1). It refers to the offence C.R. No.42/2023 registered against the petitioner. It further only refers to an order of bail granted in favour of the petitioner. The grounds of detention do not reflect consideration of the reasons assigned by the Criminal Court for releasing the petitioner on bail. This exercise was imperative to arrive at subjective satisfaction. The petitioner has rightly relied upon the judgments rendered in the matter of Rushikesh Tanaji Gohite Vs. State of Maharashtra; Lakhan Vs. Commissioner of Police; Abdul Sattar Vs. UOI and Vishal Mathre Vs. Commissioner of Police.

16. Learned APP is unable to point out anything from affidavit-in-reply that order of bail was ever considered by the detaining authority.

17. It is the submission of learned Counsel for the

petitioner that offence bearing No.42/2023 was registered on or about 11.02.2023 with Kasar Sirsi Police Station. The impugned order was passed on 08.08.2023. Intervening period is of almost six months. This delay has not been explained by the respondents. The affidavit-in-reply is also silent. Hence, according to him there is no live link. Learned APP has invited our attention to paragraph no.6 and 8 of the reply to counter the submission of the petitioner.

18. We find that there is no explanation for the delay of six months. It is incomprehensible that a person who is held to be dangerous person under the Act, is being at large for six months. It shows fallacy of impugned action. We are inclined to rely on the judgment of Pradeep Vs. Ram Murti; Jaggu Sardar Vs. Commissioner of Police and Austin Pintu Vs. Commissioner to hold that live link would be snapped between the impugned order and proposed grounds of detention.

19. Considering our findings on the submission of non-consideration of representation dated 18.11.2023, non-consideration of order of bail, delay of about

six months, we are of the considered view that the impugned order is unsustainable. We have considered the impugned decision and material produced on record objectively keeping in mind the parameters laid down in paragraph no.28 of the latest decision of the Supreme Court in the matter of Amina Begum Vs. Telangana. We have no hesitation to conclude that the subjective satisfaction of the respondent no.1 is defective requiring interference of this Court. Even Section 5A of the Act would not deter us.

20. We, therefore, pass following order :

ORDER

- (i) Order dated 08.08.2023 passed by the respondent no.1 is quashed and set aside and the petitioner shall be released from the detention forthwith.
- (ii) Rule is absolutely made in the above terms. There shall be no order as to cost.

(SHAILESH P. BRAHME J.)

(MANGESH S. PATIL J.)