

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 116 OF 2024**

Jitendra @ Tiger Umaji Pawar,

Age 23 years,

R/o. Rahul Nagar, Pawar Chawl,

Tawdadi, Ambernath (E),

Thane, Dist. Thane

.....Petitioner

Vs.

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

Adv. Ms. Jayshree Tripathi a/w. Adv. Anjali Raut for the Petitioner.
Mr. S.V. Gavand APP, for the Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.
DATE : 20th MARCH, 2024.**

ORAL JUDGMENT (PER- A.S. GADKARI, J.):

1) Petitioner, a detainee under Section 3(2) of 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 (Maha. Act No.IV of 1981) (Amendment-1996) (Amendment-2009) (Amendment-2015) (*for short “MPDA Act”*), has impugned Order dated 30th June, 2023 issued by the Respondent No.1, directing the detention of the Petitioner under the said provision, by invoking jurisdiction of this Court under Article 226 of the Constitution of India.

2) Heard Ms. Tripathi, learned Advocate for the Petitioner and Mr. Gavand, learned APP for the Respondents. Perused entire record produced before us.

3) Record reveals that, along with the Order of detention the Order of Committal of Petitioner of even date was also issued by the Respondent No.1 and he was directed to be detained at Yerwada Central Prison, Pune. The Grounds of Detention dated 30th June, 2023 along with the documents mentioned in the index/list of documents are also served upon the Petitioner at the time of serving the Order of detention upon the Petitioner.

4.1) The Petitioner has raised various grounds in the Petition however, while assailing the Order of detention, learned Advocate for the Petitioner restricted her challenge to only one ground. She submitted that, though in paragraph No.12 of grounds of detention the Detaining Authority while recording its satisfaction that, the Petitioner is a '*Dangerous Person*' has referred to and relied upon a report submitted by the Assistant

Commissioner of Police, Ambernath Division and verification effected thereof, the said report is not mentioned in the list of documents and made as a part of the documents supplied to the Petitioner along with the Order of detention and therefore the right to make effective representation to the concerned Authority by the Petitioner, is impaired. She submitted that, due to non supply of the said vital document that is referred to and relied upon by the Detaining Authority while recording its subjective satisfaction, Petitioner's constitutional right as guaranteed under Article 22(5) of the Constitution of India has been materially affected and therefore the Order of detention needs to be quashed and set aside as the detention of the Petitioner cannot be supported in the eyes of law. She therefore prayed that, the Detention Order of the Petitioner may be quashed by allowing the Petition.

4.2) The relevant portion from paragraph No.12 of grounds of detention is reproduced herein below for the sake of brevity:-

“12. Asstt. Commissioner of Police, Ambernath Division has verified the witnesses “A” & “B” and submitted a report to me. In the said report Assistant Commissioner of Police, Ambernath Division, has mentioned that the facts given in the statements and apprehension entertained by the witnesses “A” & “B” are true and reasonable. After perusing the said report I am satisfied that the facts given in the statements and apprehension entertained by the witnesses “A” & “B” is true

and reasonable.”

4.3) It is thus clear that, the Detaining Authority while reaching to its subjective satisfaction has not only referred to but has credibly relied upon the said report submitted by the Assistant Commissioner of Police, Ambernath Division.

5) We have perused the original record of present case. The report dated 12th May, 2023 submitted by the Assistant Commissioner of Police Ambernath Division, Ambernath to the Commissioner of Police Thane city i.e. the Detaining Authority, Respondent No.1, is on record.

6) Admittedly, along with the grounds of detention, index of documents annexed thereof and/or list of documents annexed thereto, the reference of the said report does not form part of it, though it is mentioned in paragraph No.12 of grounds of detention.

7) The Hon'ble Supreme Court in the case of *Khudiram Das Vs. The State of West Bengal & Ors. reported in (1975) 2 SCC 81*, in paragraph No.6 has held as under:-

“6. The answer to these questions does not present any serious difficulty if only we consider the reason why the grounds are required to be communicated to the detenu 'as soon as may be' after the detention. Obviously the reason is two-fold. In the first place, the requirement of communication of grounds of detention acts as a check against arbitrary and capricious exercise of power. The detaining authority cannot whisk away a person and put him

*behind bars at its own sweet will. It must have grounds for doing so and those grounds must be communicated to the detenu, so that, not only the detenu may know what are the facts and materials before the detaining authority on the basis of which he is being deprived of his personal liberty, but he can also invoke the power of judicial review, howsoever limited and peripheral it may be. Secondly, the detenu has to be afforded an opportunity of making a representation against the order of detention. But if the grounds of detention are not communicated to him, how can he make an effective representation? The opportunity of making a representation would be rendered illusory. The communication of the grounds of detention is, therefore, also intended to subserve the purpose of enabling the detenu to make an effective representation. If this be the true reason for providing that the grounds of which the order of detention is made should be communicated to the detenu, it is obvious that the 'grounds' mean all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention and on which, therefore, the order of detention is based. To quote the words of one of us (Sarkaria, J.) in *Golam @ Golam Mallick v. The State of W. B.* (1975 (2) SCC 4):-*

“... in the context, 'grounds' does not merely mean a recital or reproduction of a ground of satisfaction of the authority in the language of Section 3 of the Act; nor is its connotation restricted to a bare statement of conclusions of fact. It means something more. That 'something' is the factual constituent of the 'grounds' on which the subjective satisfaction of the authority is based. The basic facts and material particulars, therefore, which are the foundation of the order of detention, will also be covered by 'grounds' within the

contemplation of Article 22(5) and Section 8, and are required to be communicated to the detenu unless their disclosure is considered by the authority to be against the public interest."

This has always been the view consistently taken by this Court in a series of decisions. It is not necessary to burden this judgment with citation of all these decisions. It would be sufficient if we quote the following observations of Patanjali Sastri, C.J., in Ram Krishan Bhardwaj v. State of Delhi , reported in AIR 1953 SC 318-:

"...the petitioner has the right under Article 22(5), as interpreted by this Court by a majority, to be furnished with particulars of the grounds of his detention 'sufficient to enable him to make a representation which on being considered may give relief to him'. We are of opinion that this constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained."

Venkatarama Ayyar, J., also pointed out in Shamrao Vishnu Parulekar v. District Magistrate, Thana reported in AIR 1957 SC 23 that construing the words 'grounds on which the order has been made' in their natural and ordinary sense, "they would include any information or material on which the order was based. The Oxford Concise Dictionary gives the following meanings to the word 'ground': 'Base, foundation, motive, valid reason'. On this definition, the materials on which the District Magistrate considered that an order of detention should be made could properly be described as grounds therefor". (emphasis supplied).

It is, therefore, clear that nothing less than all the basic facts and materials which influenced the detaining authority in making the order of detention must be communicated to the detenu. That is

the plain requirement of the first safeguard in Article 22(5). The second safeguard in Article 22(5) requires that the detenu shall be afforded the earliest opportunity of making a representation against the order of detention. No avoidable delay, no shortfall in the materials communicated shall stand in the way of the detenu in making an early, yet comprehensive and effective, representation in regard to all basic facts and material which may have influenced the detaining authority in making the order of detention depriving him of his freedom. These are the legal bulwarks enacted by the Constitution-makers against arbitrary or improper exercise of the vast powers of preventive detention which may be vested in the executive by a law of preventive detention such as the Maintenance of Internal Security Act, 1971.”

8) The view expressed by the Hon’ble Supreme Court in the case of *Khudiram Das (Supra)* is subsequently followed by it, in the cases of *Smt. Icchu Devi Choraria Vs. Union of India & Ors. reported in AIR 1980 SC 1983* and *Kamla Kanhaiyalal Khushalani Vs. State of Maharashtra & Anr. reported in AIR 1981 SC 814*.

9) It is thus, the settled position of law that, the documents and materials relied upon in the order of detention forms an integral part of the grounds and must be supplied to the detenu *pari passu* the grounds of detention. If the documents and materials relied upon by the Detaining Authority is either supplied later or not supplied at all then the detenu is deprived of an opportunity of making an effective representation against

the order of detention.

9.1) The Hon'ble Supreme Court in a catena of decisions has held that, before an order of detention can be supported, the constitutional safeguards must be strictly observed. That, if the detainee is not to be so informed with the necessary and relevant documents on which the Detaining Authority has placed reliance while recording its subjective satisfaction, the opportunity so solemnly guaranteed by Article 22(5) of the Constitution, becomes reduced to an exercise in futility.

9.2) The Hon'ble Supreme Court in the case of *Kamla Kanhaiyalal Khushalani (supra)* by referring to and relying upon the case of *Smt. Shalini Soni Vs. Union of India reported in AIR 1981 SC 431* has observed that, whatever angle from which the question is looked at, it is clear that 'grounds' in Article 22 (5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The 'grounds' must be self-sufficient and self-explanatory. The Supreme Court has expressed its view that, the copies of documents to which reference is made in the 'grounds' must be supplied to the detainee as part of the 'grounds'.

10) The facts recorded hereinabove makes it clear that, the Detaining Authority has not supplied the said report of the Assistant Commissioner of Police dated 12th May, 2023 to the Petitioner with the

documents annexed to the Grounds of Detention. Thus, the Petitioner's right under Article 22(5) of the Constitution of India of making an effective representation against the Order of detention is violated. The further detention of the Petitioner in pursuance of impugned Order of Detention cannot be sustained in the eyes of law and therefore the Order of Detention is quashed and set aside.

11) For the reasons recorded hereinabove, the following Order is passed:-

ORDER

- a) Detention Order dated 30th June, 2023, bearing No./TC/PD/DO/MPDA/11/2023, passed by Respondent No.1, is quashed and set aside.
- b) Petition is allowed in terms of prayer clause (b).
- c) Petitioner is directed to be released from Jail forthwith, if not required in any other case/cases, on production of an authenticated copy of this Order.
- d) Rule is made absolute in the aforesaid terms.
- e) All the concerned to act on the basis of an authenticated copy of this Order.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)