

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 726 OF 2024

Ekta Rajesh Marwadi Kumbhar
@Binnavat@Binavat

.. Petitioner

Versus

Commissioner of Police and anr

.. Respondents

...

Ms Jayshree Tripathi a/w Anjali Raut for the petitioner.
Mr. S.V. Gavand, APP for the State.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 9th JULY, 2024

P.C:-

1 Rule. Rule is made returnable forthwith.

Heard finally by consent of parties.

2 The impugned order of detention passed by the Commissioner of Police, Pune on 16/12/2023, in exercise of power conferred under sub-section (2) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, (MPDA), 1981, with a view to prevent her from acting in a manner prejudicial to the maintenance of public order, being required to be detained as a 'bootlegger' is challenged in the present petition.

Ms. Tripathi, representing the petitioner has pressed into service ground no.(e) to be read with ground no.(d) and the two grounds are worded as below:-

“(e) The petitioner says and submits that the Detaining Authority has furnished to the petitioner translations of, the order of detention and all other documents in Marathi language to enable the petitioner to make an effective representation. The Detaining Authority clarifies in para 5 of the grounds of detention that he has taken into consideration solitary C.R. No.261/2023 at para 5.1 along with in camera statements at para 6.1 & 6.2 to arrive at his subjective satisfaction and pass the detention order. It is to be noted that para 9 of the grounds of detention, is the most important paragraph, where the Detaining Authority records his subjective satisfaction is not in consonance with its translation. It is to be noted that para 9 of the English version of the grounds of detention when compared with the Marathi version of the grounds of detention is not a true and faithful translation. Para 9 of the English version of the grounds of detention states that “Presently you are released on bail by the concerned Hon’ble Court, Pune in the offence registered at (1) State Excise Dept, in C.R. No. 117/2023, u/Sec. (b) (e) (f) of the Bombay Prohibition Act 1949, whereas the Marathi version of the grounds of detention reads thus, “Presently, Sahakarnagar Police Station C.R. No. 261/2023 Maharashtra Prohibition Act 1949 Sec 65 (e) in this C.R. you are arrested and the concerned Hon’ble Court, Pune has released you on bail. The said variance and discrepancy in the grounds of detention has mis led the petitioner to make an effective representation. Thereby her rights to make representation guaranteed in Article 22(5) of the Constitution of India is violated. The order of detention is illegal and bad in law liable to be quashed and set aside.

(d) The petitioner says and submits that a representation of the petitioner dated 21.02.2024 was sent to the Superintendent Kolhapur Central Prison, Kolhapur for further forwarding the same to the State Government, wherein there was a dual prayer of revocation and supply of certain information about the averment made in the representation at para C. The petitioner says and submits that in spite of specific request/demand made in the representation no information/document is supplied to the petitioner till today, thereby such a long delay has caused to deprive the petitioner to make any effective representation. As such petitioner’s right guaranteed under Article 22(5) is violated. The order of detention is illegal and bad in law liable to be quashed and set

aside.”

3 We have perused the response of the Detaining Authority as regards the said grounds and in paragraph no.11 of the affidavit, it is specifically stated as under:-

“It is submitted that as per the prayer of supply of certain information about the averment made in the representation at para C, it is submitted that, the order of detention, committal order are originally in the English language and its translation is furnished in Marathi language. Only the grounds of detention are originally in the Marathi language and its translation is furnished in English language. So that to enable the petitioner to make an effective representation and not to misled her. And all the copies of documents placed before the then Detaining Authority were served upon the petitioner except the identifying particulars of the in camera Witnesses. I say that the representation of the Petitioner was drafted by her Advocate and by other letter dated 21.02.2024. the same was forwarded to Jail Authorities with request to take signature of detenu and forward the same to Competent Authority (Page 47 of the Petition) and hence there is no substance in the ground taken by the Petitioner.”

4 In light of this stand adopted, when we have perused the grounds of detention in Marathi, which according to the Detaining Authority is the original version, in paragraph no.9, the Detaining Authority has expressed that on careful scrutiny of the documents placed before him, he has reached a subjective satisfaction that the detenu is acting in a manner dangerous to health and life of the people and hence, prejudicial to the maintenance of public order.

This satisfaction is reached, in the wake of the release of the detenu on bail in connection with C.R. No. 261 of 2023, registered with Sahakarnagar Police Station invoking Section 65(e) of the Maharashtra Prohibition Act, 1949 and upon her release, the likelihood of she indulging into criminal activities on account of her

past conduct, which is likely to pose danger to the life of the citizens and their health, creating a law and order situation.

Thus, the subjective satisfaction of the Detaining Authority is formed on the basis of the release of the detenu on bail in connection with the C.R. registered with Sahakarnagar Police Station.

In fact, since it was the specific case of the detenu that she understand Marathi language, there was no requirement of furnishing the translation of the grounds of detention to her. However, in undue haste, since the translation of the committal order and the detention order, which were originally in English was furnished in Marathi language to the detenu, the translation of grounds of detention was also supplied.

Now in the translated document in form of grounds of detention, there is a reference of an offence registered at State Excise Department, vide C.R. No. 117 of 2023 invoking Section 65 (b) (e) (f) of the Bombay Prohibition Act, 1949 and the Detaining Authority expressed satisfaction that on being released on bail in this C.R., the detenu has again reverted back to similar activities, which are dangerous to health and life of people and hence prejudicial to maintenance of public order.

5 Ms. Tripathi has specifically urged before us and we find substance in her submission, that the incorrect translation created a confusion in the mind of detenu and to find out which of the version is correct, in her representation preferred to the Home Department, in paragraph (c) she specifically highlighted her fear as the detenu was

not in a position to effectively make a representation, unsure of what went into the mind of Detaining Authority and which C.R., was taken into consideration. Admittedly, the State government did not bother to offer any clarification at that relevant time, and if, it had done so at the relevant time, within the timelines available, the detenu would have been in a position to exercise her right of making representation, guaranteed under Article 22(5) of the Constitution of India.

6 A flaw in communicating the grounds of detention and now an explanation offered that Marathi version of the grounds of detention is the correct version and some typographical error has crept in the English translation, is not an acceptable justification, as the Detaining Authority as well as the State Government has to keep in mind that the strict compliance of the safeguards are to be ensured, while detaining a person without trial, and this included communication of the grounds of preventive detention.

Any doubt in the mind of a detenu, which would hamper his right to make an effective representation based on the ground that have been communicated to him, has always been looked at as a serious infirmity affecting his valuable right.

In this case also, the Detaining Authority has carelessly supplied the translation of the grounds of detention leading to a confusion in the minds of detenu, which has definitely impacted his right to make an effective representation and therefore, the impugned detention order suffers from vice of arbitrariness and cannot be sustained as for the specific grounds stated in paragraph (d) and (e) of the Petition.

For the above reasons, Rule is made absolute. The Detention Order dated 16/12/2023, along with the Committal Order are quashed and set aside, and the petitioner is entitled to be released from detention forthwith.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)