

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 757 OF 2024

Abhijeet Kisan @ Revan Bandgar
Age : 29 Years,
R/o.: Kranti Nagar, Aavase Vasti, Aamrai,
Solapur.

Presently detained at Yerawada Central
Prison, Pune)

.. Petitioner

Versus

1. Commissioner Of Police, Solapur.
2. The State of Maharashtra
(Through Addl. Chief Secretary to
Government of Maharashtra,
Mantralaya, Home Department,
Mumbai.
3. The Superintendent,
Yerawada Central Prison, Pune. .. Respondents

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Ms. Jayshree Tripathi, for the Petitioner.

Mr. J. P. Yagnik, A.P.P. for the State/Respondent.

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CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 27th JUNE, 2024

JUDGMENT (PER MANJUSHA DESHPANDE, J.) :-

1. The Petitioner herein is challenging the Order of Detention dated 22.12.2023, passed by the Respondent No.1

i.e. the Commissioner of Police, Solapur. The Petitioner has been served with the Committal Order and the Grounds of Detention alongwith the compilation of documents. The Petitioner on receiving the said documents, addressed a representation to the State Government on 05.03.2024, through the Jail Authorities, for consideration and revocation of the Order of Detention.

2. The Petitioner herein is seeking directions to quash and set aside the Order of Detention dated 22.12.2023, issued under 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 Of Essential Commodities Act, 1981. ("the MPDA Act"), issued by the Respondent No.1 and to release him forthwith. The Petitioner has raised grounds of challenge in Ground Nos. 'a' to 'g' in the memo of the Petition.

3. In response to the Petition, the State authorities i.e. the Commissioner of Police, Solapur and the Superintendent, Yerawada Central Prison, Pune, have filed their respective affidavits.

4. The Petitioner while making submissions has placed reliance on the grounds raised in the memo of the Writ Petition, from Ground Nos. 'a' to 'g', however, she has mainly relied on Ground Nos. 'b', 'd', 'e' and 'f'.

The first ground contested by the Petitioner is, Section 3(3) of the MPDA Act contemplates that, the Detaining Authority has to forthwith forward report to the State Government, together with the grounds on which the order has been made with such other particulars, having bearing on the matter. In the present case the Detaining Authority failed to send the report forthwith.

According to the Petitioner there are judicial pronouncements of the Hon'ble Apex Court interpreting the word 'forthwith' as 'immediately without any loss of time and with a sense of urgency'. The said mandate of law has not been followed in the present case therefore, the said Order of Detention vitiates. On this ground, the Order of Detention is required to be declared as illegal and bad in law.

5. The Respondent No.1 has filed his comprehensive affidavit opposing the present petition. In the said affidavit, opposing the grounds raised by the Petitioner. The Commissioner of Police has stated that, the Order of Detention alongwith compilation of documents i.e. Grounds of Detention, Committal Order and the documents relied on, were sent to the State Government through e-mail on the same date i.e. 22.12.2023 at 7.48 p.m. as well as through special messenger on 25.12.2023. They were received by the State Government on 26.12.2023, as it was Saturday and Sunday on 23.12.2023 and 24.12.2023 respectively. The State Government has approved the said Detention Order on 01.01.2024, which was

served on the Petitioner. Therefore, there is no substance in the ground raised by the Petitioner.

6. Having considered the affidavit of the Commissioner of Police, it is clear that there is no delay on the part of the Detaining Authority, in forwarding the report to the State Government as contemplated under Section 3(3) of the MPDA Act. The very object behind the said provision as we can gather is that, the Order of Detention is required to be approved by the State Government within 12 days of its coming into force. In order to enable the State Government to approve the said order, within a period of 12 days the said provision has been made. If the said order is not approved by the State Government within prescribed period of 12 days, in such contingency the order gets vitiated. In the present case even otherwise the Commissioner of Police has already forwarded the report immediately to the State Government, both through e-mail as well as the Special Messenger, therefore the said ground raised by the Petitioner do not deserve consideration.

7. The other challenge is that Detaining Authority has taken into consideration solitary C.R. No. 625 of 2023, dated 24.10.2023, registered under Section 307, 323, 504, 506 read with Section 34 of the IPC. According to the Petitioner, the said C.R. is still under investigation and the Petitioner has already been granted bail by the learned Sessions Judge, Solapur, on 09.11.2023, therefore solely on the basis of one of the crime, Petitioner can not be detained for the same ground. The

Petitioner has also raised objection that the said ground which is relied on, is purely dispute between two individuals and therefore, it can not be said that the public order was disturbed due to the said incident.

We have gone through the Grounds of Detention, in order to ascertain the submissions of the learned counsel for the Petitioner under the caption of Item No.5, the details of the C.R. No. 625 of 2023 dated 24.10.2023 have been given. In the details given below the table under Item No.5-1, it is evident that when the complainant was on his way to his house, the Petitioner and Revan Bandagar were standing near the Trimurti Pan Shop. When the complainant came near the said shop, the Petitioner started beating the complainant, questioning him, why he was staring at him. The complainant was assaulted with bamboo and stones, as a result he sustained injuries on his leg, head and forehead. While the Petitioner was assaulting the complainant, somebody informed the complainant's son about the incident and he immediately came on the spot and intervened. Even his son was assaulted, the Petitioner threatened the complainant and his son. The said incident has taken place in a public place near a pan shop. Even the son of the Petitioner, who was not present there, was summoned by a person who was observing him and, on his arrival he was also assaulted. Therefore, the contention of the Petitioner that it was purely an incident between two persons and it does not contain element of a public order or cause any disturbance to the public order, does not hold good.

8. The Detaining Authority in his affidavit has placed reliance on C.R. No. 625 of 2023 so also in-camera statements 'A' and 'B'. According to the statement of witness 'A', the Petitioner lends money to the people and the traders in the locality, with the interest at the rate of 30% to 40%, and also takes plots, shops, valuable ornaments etc. as guarantee against the money lend by him. He refers to an incident of third week of October 2023, wherein the Petitioner has visited the shop of the said witness and threatened him with knife and also assaulted him. The passers by come to rescue the witness but the Petitioner and his associates assaulted the people who have gathered there with hockey sticks, pelted stones on the gathered people and neighbouring houses. As a result, the people who gathered there started running helter-skelter. Some of the people even got injured due stone pelting.

9. The witness 'B' also in his statement has narrated that in the third week of October, 2023, the Petitioner and unknown five to six associates entered in his hotel, armed with iron pipe, hockey stick and lathis, demanding Rs.10,000/- from the said witness, for some function which was to be organized in the near future. When the said witness expressed his inability, the Petitioner had threatened and assaulted with *gupti*, which the witness evaded, at that time even neighboring shop-keepers closed their shops and residents also closed their doors and windows of their houses. There was fear and terror created by the Petitioner and his associates.

These two witnesses have narrated the incidents

which were verified by the Detaining Authority and thereafter has come to the conclusion that the Petitioner has tendency and inclination towards the criminality. His activities are prejudicial to the maintenance of public order. The consistency of the criminal activities of the Petitioner proves that he is a 'Dangerous Person' within the meaning of Section 2(b-1) of the MPDA Act.

10. Hence, having considered the affidavit of the Commissioner of Police and on going through the contents of Grounds of Detention, we do not find that there is a substance in this ground, raised by the Petitioner. Even otherwise, the provisions of MPDA Act does not contemplate that the Detaining Authority should refer more than one crime while passing the Order of Detention. Therefore, there can be no interference in the Order of Detention, on these grounds raised by the Petitioner.

11. The next ground raised by the Petitioner is that, the Petitioner has completed his education in Marathi medium and can read and write only in Marathi. Though the Detaining Authority has furnished translated copies of all English documents to the Petitioner but the translation of injury certificate in the compilation of documents alongwith the Grounds of Detention, is not true and fair translation of its English counterpart. According to the Petitioner, the injury mentioned in the injury certificate is CLW is 2 x 0.5 x 0.5 cm, whereas the Marathi version in the injury certificate in its translated copy shows the injury as 2 x 05 x 05 cm. As a result, of the said error in translation, the entire dimension of

the injury has been changed. Thus, due to such wrong translation of injury certificate, confusion has been created and he was unable to make effective representation, thereby his Right as guaranteed under Article 22(5) of the Constitution of India, is violated.

So far as this ground is concerned, the Petitioner has taken his two copies of both the certificates i.e. English version as well as Marathi version of the injury certificate, which are at page No.107 and 108 of the memo of the Petition respectively. While dealing with the said ground, the Detaining Authority has mentioned in his affidavit that it is nothing but a typographical mistake.

We have gone through those certificates. Admittedly, the size of the injury has given in the English version of the certificate is 2 x 0.5 x 0.5 cm and the Marathi version is 2 x 05 x 05 cm.. Though there is variance in both these certificates, the fact remains that the nature of injury mentioned in the column of injury remains to be a simple injury. There is no variance in the said nature of injury, it does not change the nature of charge on the Petitioner. We can not agree with the Petitioner that on account of the typographical mistake in the translation, the right of the Petitioner to make effective representation has been violated.

12. In our opinion, the object behind making all the documents available to the detenu is that he should be able to make effective representation against the Order of Detention,

as the Order of Detention is issued without any trial or opportunity of being heard. It is only after satisfaction of the Detaining Authority about the person being a dangerous person, causing disturbance to the public order, the detention order is passed by the Detaining Authority. Therefore, the said certificate in no way would make any difference for the grounds of detention.

13. The Petitioner has relied on the Judgment of this Court delivered in *Writ Petition No. 2100 of 2018, in Pankaj @ Pankya Gorakh Waghmare V/s. Commissioner of Police, Pune City and others, decided on 12.07.2018.* In the said matter the Detention Order was quashed and set aside and a short ground of non-furnishing of true and fair translation of a vital document.

We have gone through the said order. In the said order, this Court has after going through the Marathi translation of the English version of the injury certificate has found that there was a variance in both the certificates and more glaringly the original English certificate contained an endorsement that certificate is issued on the request of Hadapsar Police Station. The said endorsement made on the said certificate was conspicuously absent from the Marathi translation. It is on this context, the Hon'ble Court has come to the conclusion that the said translation supplied to the Petitioner is not a true and fair translation. Even there was a difference in the figures mentioned in both the certificates, therefore observing the same, the Hon'ble Court has been

pleased to hold that the said certificate being incorrect translation, it is required to hold that the rights of the detenu to make effective representation have been affected.

So far as the present case is concerned, it is clear that it does not in any way alter the nature of injury as well as the fact that the figure '05 x 05' would always means '0.5' cm and not '5' cm. The figure '5' is never used by using '0' as a prefix. The said case law therefore would not be applicable to the case of the Petitioner.

14. The Petitioner has further taken a ground that the Detaining Authority has referred to the statement of complainant recorded under Section 164 of the Cr.P.C., which was recorded before the Judicial Magistrate First Class, Court No.3, Solapur on 02.11.2023. It is the contention of the Petitioner that no such statement has been furnished to the Petitioner, in the compilation of documents. According to the Petitioner, had such statement being recorded on 02.11.2023, it would have been enclosed with the compilation served to the Petitioner. Non placement of vital document such as a statement under Section 164 of the Cr.P.C., has deprived the Petitioner, from making effective representation. Therefore, on this ground the Order of Detention is liable to be quashed and set aside.

During the course of the submission, the Petitioner himself has placed on record the documents which according to him were not made available to him in the compilation. The

said statement under Section 164 of the Cr.P.C. has been communicated to the Advocate for the Petitioner vide covering letter dated 11/03/2024. Therefore the said ground of the Petitioner would not subsist.

15. So far as the ground raised by the Petitioner that he has not been communicated about decision on his representation by the Government is concerned, the Superintendent of Prisons, Yerawada Central Prison, while dealing with the said ground in his affidavit has stated that, the representation of the Petitioner has been decided by the Additional Chief Secretary, Home Department (Special), Special Branch, Government of Maharashtra, which was received through e-mail on 23.03.2024 and communicated to the Petitioner on 24.03.2024. Hence, none of the grounds raised by the Petitioner have any force and are capable of being entertained for quashing and setting aside of the Order of Detention.

16. The Petitioner has placed reliance on the following reported Judgments on the issue of incorrect translation.

- (i) *Sandip Suresh Ghag V/s. The Commissioner of Poilce, Mumbai & Ors., reported in 2014 ALL MR (Cri) 707.*
- (ii) *Pankaj @ Pankya Gorakh Waghmare V/s. Commissioner of Police, Pune City and others, in Writ Petition No. 2100 of 2018.*

- (iii) Vijay Kumar Dharna Alias Koka V/s. Union of India and Others, reported in (1990) 1 Supreme Court Cases 606.
- (iv) Mohammed Rafique Abdul Majid V/s. Shri. R. H. Mendonca & Ors., in the case of 1999 ALL Mr (Cri) 1633.
- (v) Ammena Begum V/s The State of Telangana & Ors., reported in 2023 Live Law (SC) 743.
- (vi) Ajay Dixit V/s. State of U.P. And Others, reported in (1984) 4 Supreme Court Cases 400.
- (vii) Shubham Rajendra Hingade V/s. State of Maharashtra And Ors., in Criminal Writ Petition No. 559 of 2021.
- (viii) Mustakmiya Jabbarmiya Shaikh V/s. M. M. Mehta, Commissioner of Police And Others, reported in (1995) 3 Supreme Court Cases 237.

17. In the case of Sandip Suresh Ghag V/s. The Commissioner of Poilce, Mumbai & Ors. (Supra) there was omission in mentioning the size of injury in the translated version. Even in the remark about injury column, the remarks were not found in the Marathi translated report. The said translation suffered from various discrepancies regarding nature of injury. It was therefore observed in the said case that, variance in the Marathi translation of original injury report with regard to size of injury which was 'blank' in the remark column impinges the right of the Petitioner to make effective representation. The said case is

different from the present case, as the complete translation of the documents was not given, therefore, it was held that since the detenu is deprived of the said complete documents, he is deprived of his Right of making effective representation.

18. The Petitioner has relied on **Vijay Kumar Dharna Alias Koka V/s. Union of India and Others** (Supra), which is based on the vernacular translation of the Grounds of Detention, which are translated in Gurmukhi version. There was a variance in the English and the Gurmukhi version. In the said Judgment, the issue raised was based on the translated version of the grounds of Detention communicated to the detenu, therefore considering the variance in the translation of the Grounds of Detention, the detenu was confused. Therefore, the said Detention Order has been quashed on that ground. Therefore, the said Judgment is also not applicable to the present case.

19. The Petitioner has also relied on **Ammena Begum V/s The State of Telangana & Ors.** (Supra) in order to support his case. The Judgment referred by the Petitioner is totally based on the maintenance of public order and difference between 'Law and Order' and 'Public Order'.

As we have already observed that the people had gathered during the said incident and they had rescued the complainant and his son from the detenu. The said

statement has been recorded under Section 164 of the Cr.P.C., therefore it is more than clear that the complainant has been assaulted in public place which has created terror in the mind of the people who have gathered. Therefore, the said Judgment is also not applicable to the facts of the present case.

20. The case of *Ajay Dixit V/s. State of U.P. And Others* (Supra), is cited in order to demonstrate that there has to be effect on maintenance of public order, on account of the conduct of the detenu. Facts of the this case being different from the present case, hence the said case law would not be applicable to the present case.

In the said matter the record was contrary to the Grounds of Detention, therefore the said order was set aside on the ground of misconstruction of material placed before the Detaining Authority and consequent non application of mind.

21. The Petitioner has further relied on *Mustakmiya Jabbarmiya Shaikh V/s. M. M. Mehta, Commissioner of Police And Others* (supra) more particularly in para No.9 of the said Judgment, again the same refers to the maintenance of public order. The said Judgment also refers to the distinction between 'Public Order' and 'Law and Order'. Based on the facts of that case the order of Detention has been set aside.

22. So far as the present matter is concerned, considering the facts and the Grounds of Detention alongwith the material relied upon by the Detaining Authority, which is communicated to the detenu, in accordance with the provisions of law, against which the Petitioner has already made a representation and has been rejected by the State Government, we do find that any of the grounds raised by the Petitioner, are capable of convincing us, to invoke our powers to quash and set aside the Order of Detention.

We do not find any merit in the case for showing interference with the Detention Order, hence the Writ Petition deserves to be dismissed and is accordingly dismissed. No order as to costs.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

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signed by
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ASHOK
JADHAV
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