

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.803 OF 2024

Nilesh Shivaji Tupe

Age – 32 years,

R/o. Survey No.89, Shivsena Chowk,

Malwadi, Hadapsar, Pune.

(Presently detained at Kolhapur

Central Prison, Kolhapur)

.... Petitioner

Versus

1 Commissioner of Police, Pune

2 The State of Maharashtra

(Through Addl. Chief Secretary to

The Government of Maharashtra,

Mantralaya, Home Department,

Mantralaya, Mumbai

3 The Superintendent,

Kolhapur Central Prison, Kolhapur

.... Respondents

.....
Ms.Jayshree Tripathi a/w.. Ms.Anjali Raut, Advocate for the
Petitioner.

Mr.J.P. Yagnik, APP for Respondent – State.

.....

***CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.***

DATED : 4th JULY 2024.

Judgment (Per : Manjusha Deshpande, J.) :

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of parties.

Rajeshri Aher

2. The petitioner herein is seeking directions to quash and set aside the order of detention dated 8th February, 2024, issued under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers [Drug-offenders, Dangerous persons and video pirates] Act, 1981 (“MPDA Act, for short), issued by respondent no.1, and to release the petitioner forthwith. The order of detention has been passed by respondent no.1-Commissioner of Police, Pune, on 8th February, 2024. Alongwith the said order of detention, copy of the order of committal and grounds of detention have been served on the petitioner.

On receiving the said papers, the petitioner has preferred a representation to the State Government on 21st February, 2024, through jail for consideration and revocation of the order of detention.

3. According to the petitioner, the order of detention has violated the fundamental rights of the petitioner guaranteed under Article 14, 21 and 22(5) of the Constitution of India. Hence, he is challenging the order of detention on the grounds mentioned in the memo of Writ Petition.

The first ground raised by the petitioner is that, the Detaining Authority has not complied with the requirements of law, by failing to forward the report to the State Government promptly and expeditiously, as required under Section 3(3) of the MPDA Act. It is contended by the petitioner that the Hon’ble Apex Court while interpreting the word, “forthwith”, used in

Section 3 has held that, meaning of the said word is, “immediately, without any loss of time, with a sense of urgency”.

4. The rest of the grounds raised in ground (e), (f), (g) and (h) in the memo of writ, are interlinked. The gist of the said grounds is that :-

The Detaining Authority has not furnished the true and correct translation of the order of detention, in Marathi language which is known to the petitioner, in order to enable the petitioner to make an effective representation. The English version of the grounds of detention has referred to the C.R. No.1663 of 2023, registered under Section 65(d) of the Maharashtra Prohibition Act dated 29th October, 2023, on which reliance is placed by the Detaining Authority. The Marathi translation supplied to the petitioner, contains the CR No.1643 of 2023, under Section 65(d) of the Maharashtra Prohibition Act, dated 27th October, 2023. If both the versions are compared, the translation does not appear to be true and correct translation. It cannot be ascertained as to which of the C.R. has been relied and taken into consideration, while passing the order of detention. The said discrepancy in the translated documents has left the petitioner in confusion and has deprived him of making an effective representation, against his order of detention.

5. The documents in support of C.R.No.1663 of 2023 under Section 65(d) of the Maharashtra Prohibition Act, have been furnished to the petitioner. From the said compilation of

documents served to the petitioner, it transpires that the First Information Report (FIR) No.1663 of 2023 has been registered under Section 65(e) and not (d) of the Maharashtra Prohibition Act.

6. It is the contention of the petitioner that the English version of the grounds of detention categorically states in paragraph nos.4, 5 and 9 that C.R.No.1663 of 2023, has been relied on by the Detaining Authority to arrive at subjective satisfaction and pass the order of detention. Whereas, in Marathi version, the C.R.No.1643 of 2023, has been relied on to pass the order of detention. Hence, the petitioner was confused as to which C.R. is considered while passing the order of detention.

7. We have heard the learned counsel for the petitioner as well as the learned APP. The petitioner has taken us through the documents annexed to the petition to demonstrate the discrepancy and infirmities in the documents supplied to the petitioner. On going through the said documents, there is no doubt that, in the grounds of detention, in the English version, the offence which is relied for passing detention order is registered at Hadapsar Police Station, being CR No.1663 of 2023, registered under Section 65(d) of the Maharashtra Prohibition Act, on 29th October, 2023. The Marathi translated version of the said grounds of detention is admittedly referring to C.R.No.1643 of 2023, registered under the Bombay Prohibition Act under Section 65(d) registered on 27th October, 2023. Therefore, not only the C.R. number in the translated

version differs, but even the date of registration of the offence is different in both the documents. The document which is supplied in support of the said C.R. mentioned in the ground of detention at page 100 of the Writ Petition, is the FIR No.1663 of 2024, registered under Section 65(e) of the Maharashtra Prohibition Act, and is registered on 30th October, 2023. Hence, so far as the C.R.No.1663 of 2023 is concerned, admittedly, there is a variance in date of registration of FIR, as well as the provisions under which the offence has been registered.

8. We have also heard the learned APP. The learned APP has taken us through the affidavits filed by the Superintendent, Central Prison, Kolhapur; the Joint Secretary, Home Department, Government of Maharashtra and the Commissioner of Police, Pune City, Pune. The Commissioner of Police, Pune, being the Detaining Authority, the affidavit of Commissioner of Pune would be relevant for considering the grounds raised by the petitioner.

As far as the first ground raised by the petitioner regarding failure to forward the report under Section 3(3) under the MPDA Act to the State Government is concerned, in reply to that, it is stated in the affidavit that, the Detaining Authority's report under Section 3(3) of the MPDA Act has been forthwith sent to the Government of Maharashtra, by E-mail on 8th February, 2024 itself, and, through a special messenger on 13th February, 2024. The State Government has communicated its approval to the order of detention on 16th February, 2024, and the order of detention is confirmed on 8th April, 2024.

9 The petitioner had raised objection to the contents of the said affidavit, and has raised doubts about communication of Email forwarded on 8th February, 2024. Taking into consideration the doubt raised regarding communication of the report under Section 3(3) of the MPDA Act, to the State Government, the learned APP was directed by us, to place on record a copy of the E-mail *vide* order dated 26th June, 2024. When the matter was listed thereafter on 4th July, 2024, the learned APP has placed on record the copy of E-mail dated 8th February, 2024, sent to the State Government alongwith the attachment. The hard copy of the said E-mail has been placed on record. Therefore, the said objection of the petitioner does not survive.

10 The petitioner has objected to the supply of incorrect translation, of the grounds of detention. Upon going through the documents, the English as well as the Marathi grounds of detention, which are already placed on record, there is no doubt that, there are infirmities in the said documents. The English version of the grounds of detention is the original order. It mentions C.R.No.1663 of 2023, under Section 65(d) of the Maharashtra Prohibition Act, registered on 29th October, 2023. Whereas, the Marathi translation of the grounds of detention, mentions the said offence as C.R.No.1643 of 2023 dated 27 October, 2023. Therefore, there is a variance in C.R. number, as well as the date of registration of the offence.

When the learned APP was called upon to explain

the said variance, he relied on the reply affidavit filed by the Commissioner of Police, Pune. The said Authority has explained the discrepancy stating that, it is a typographical mistake, in the English grounds of detention. Whereas in the Marathi translation C.R. No. 1643 of 2023, has been correctly mentioned. It is further contended in the affidavit that, considering that the language known to the detenu is Marathi, and the Marathi translation contains correct FIR number, the right of the detenu of making effective representation guaranteed under Article 22(5) of the Constitution of India is not violated.

11 We are not convinced with the said explanation, as it is neither justifiable and nor tenable. It is the right of the detenu to be furnished with proper and correct information in order to make him available all the material on which the detention order is passed. If the material and the grounds made available to the petitioner creates confusion, the same deprives the petitioner from making an effective representation against his detention. The detenu is taken in custody without trial under the Preventive Detention Laws. Therefore, the safeguards have been provided under Article 22(5) of the Constitution of India. It requires that the detenu is to provided the grounds of detention as soon as possible in order to afford him an opportunity to make representation against the said order of detention. Therefore, it becomes necessary to provide the exact and proper material which has been relied by the Detaining Authority.

12 In similar facts, the Apex Court had an occasion to deal with preventive detention order under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act), in *Vijay Kumar Dharna V/s. U.O.I. and Ors.*¹ where there was a variance in the English version of the detention order and the Gurumukhi version of the detention order. In the said matter, the Hon'ble Apex Court has observed that there is a considerable force in the contentions of the learned counsel that, on account of variance, the detenu was not able to effectively represent his case before the concerned Authorities. In fact, the appellant was confused whether he should make representation against his detention order on the grounds mentioned in English version or against the grounds on which satisfaction was recorded in Gurumukhi version. In view of the said confusion, the Hon'ble Supreme Court has observed that, because of variance, the detenu was unable to make effective representation against his detention, and was thereby denied his right guaranteed under Article 22(5) of the Constitution of India. As a result, the detention order was quashed and the detenu was set at liberty. The said law laid down by the Hon'ble Apex Court would be squarely applicable in the present case.

13 In the present case, the FIR on the basis of which the Detaining Authority has recorded his subjective satisfaction, is different in the English grounds of detention, from the Marathi translation supplied to the petitioner. The FIR registration number as well as date of registration are both different in

¹(1990) 1 SCC 606

English and Marathi versions. As a result of this variance, the petitioner has got confused, as to which offence, has been taken into consideration, and which offence is to be relied on while making a representation. In fact, both the offences have been registered against the petitioner. Had it been a case that there was a typographical mistake, it was understandable, but, both the CR's are registered against the petitioner. Therefore, he was not in a position to make an effective representation against his order of detention. Since he was not aware as to exactly which CR has been relied by the Detaining Authority for subjectively satisfying himself. Because of the said confusion, and non furnishing of true and correct translation of vital documents, the right guaranteed to the petitioner/detenu under Article 22(5) of the Constitution of India has been violated. Therefore, considering that the petitioner's right under Article 22(5) of the Constitution of India is violated, the impugned order gets vitiated and therefore the same is required to be quashed and set aside. As a result, the Writ Petition succeeds.

14. Hence, we pass the following order:

:: ORDER ::

- (i) The Writ Petition is allowed;
- (ii) The order of detention issued by Respondent No.1-The Commissioner of Police, Pune, dated 8th February, 2024, is quashed and set aside and the petitioner is directed to be released forthwith;

(iii) Rule is made absolute in the above terms.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)