

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1465 OF 2024

Omkar Mangesh Ubhe	]	..	Petitioner
vs.			
State of Maharashtra & Ors.	]	..	Respondents

Mr.Shahilesh Kharat for the Petitioner.

Mr.Ajay Patil, APP for the State.

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

DATE : 1st AUGUST, 2024.

P.C.

1] Though we have expressed to Mr. Kharat that we are not satisfied with the ground 'C' which he has pressed into service in assailing the order of detention dated 15.01.2024, as he has argued before us that the injury certificates of the complainant and other injured persons were not placed before the Detaining Authority, nor are they furnished to the detenu and medico legal documents are important and vital documents and, hence, it vitiates the subjective satisfaction of the Detaining Authority.

He has placed reliance upon the decision of this Court in the case of **Monty Bahadur Karotiya vs. Commissioner of Police and Others, 2022 SCC OnLine Bom 5854.**

2] We have noted that in the said case, the learned APP had produced before the Court the medical certificate of the complainant Laxmi Walmiki and it was noted that he had not sustained any injury and the the learned APP also fairly conceded that as far as other injured are concerned, the medical certificates were not obtained by the Police Officer and even not placed before the Detaining Authority.

It is on this concession, the detention order was quashed and set aside.

3] However, in the present case, it is to be noted that the medical certificates were not placed before the Detaining Authority, and, therefore the subjective satisfaction is not based upon the injury certificates.

What he has only considered is registration of a CR which has invoked Section 323, 324, 504, 34 of the PC alongwith the provisions of Arms Act and he has referred to the complaint that the Petitioner/Detenu alongwith his accomplices abused and started beating the complainant with kicks and fist, belt and stones and he sustained injuries.

The complainant and one of the injured, thereafter, went to Sasoon Hospital and after getting treatment the complaint was lodged.

Since the subjective satisfaction of the Detaining Authority is not based upon these medical certificates and unless it is established by the Petitioner as to how its non supply has materially affected his right to make an effective representation as contemplated in Article 22 of the Constitution of India, we are not satisfied with the said ground.

4] Another ground which Mr. Kharat has pressed into service is about delay as set out in clause (e) of the Petition.

While perusing the response of the Detaining Authority, we have taken note of the following Paragraph :-

“It is submitted that thereafter, the Sponsoring Authority carefully went through all the material they had collected. It is further submitted that they then prepared the necessary sets of documents by getting them typed, xeroxed etc. It is submitted that after the necessary sets of documents were ready, they submitted the same along with the proposal for the detention of the detenu on 23.12.2023.”

5] We specifically confronted the learned APP Mr. Patil with the same and found it to be contradictory since as per the grounds of detention the in-camera statements of witness A and B were recorded on 18.12.2023 and 23.12.2023 respectively and both the statements have been verified on 26.12.2023.

According to the learned APP, the date mentioned in the above Para is a typographical error.

For the said purpose, we deem it appropriate to direct that the record, which was passed on to the Detaining Authority from the Sponsoring Authority, be placed before us.

Re-notify to 08.08.2024, High on Board.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]