

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2875 OF 2024

Dnyandeo Baburao Kale

.. Petitioner

Versus

District Magistrate Pune and ors

.. Respondents

Adv. Jayshree Tripathi a/w Anjali Raut for the Petitioner.

Ms. M.M. Deshmukh, A.P.P. for the State/Respondent.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.

DATED : 26th AUGUST, 2024

P.C:-

1 Ms. Tripathi, appearing for the petitioner in assailing the order of detention dated 30/08/2023, passed by the District Magistrate, Pune has invoked ground (e) in her Petition, amongst the other grounds on which the detention order is assailed.

Ground (e) reads thus:-

“e. The petitioner says and submits that, after a perusal of the grounds of detention along with the compilation of documents running in more than 600 pages is furnished to the detenu, it is not understood as to what is the exact material taken into consideration by the detaining authority to arrive at his subjective satisfaction and pass the detention order, as the averments made by the detaining authority are contradictory, and nor clear. Firstly, detaining authority clearly states in para 1 of the grounds of detention that he has relied on Para 4, 4(b)(i) and 4(b)(ii) to arrive at his subjective satisfaction and pass the present detention order.

Thereafter, at para 5 the authority has narrated the gist of the past cases of the year 2019 till 2021, along with the entire documents of the said C.Rs, which are not relied upon for passing a detention order; again at para 5 (a) of the grounds of detention the authority has narrated old and stale registered cases and preventive actions of the detenu, and also states at para 5(a)..... It is clear from this..... and again at para 7 of the grounds of detention, the detaining authority states “ I have carefully gone through the material placed before me and..... (the entire compilation). The relied on C.R. starts from page No.509 onwards, all documents before that are extraneous material. The petitioner further submits that if the detaining authority had only relied on recent one registered C.R and two in camera statements, then there was no need and necessity to consider other material on record. The detaining authority has thereby considered extraneous material which includes old and stale cases. It is, also the satisfaction of the detaining authority is not clear/ambiguous on the material taken on record to pass detention order. The subjective satisfaction of the authority vitiates. This also shows non-application of mind of the detaining authority. The order of detention is illegal and bad in law liable to be quashed and set aside.”

2 The long and short of the submission of Ms. Tripathi is, in the grounds of detention, the detaining authority in paragraph no.5 has referred to 5 C.Rs registered in the year 2019, 2020 and 2021, with Shirur Police Station to reflect upon his past conduct and has recorded as under:

“7. I have carefully gone through the material placed before me and confidential statements recorded of A & B. I am personally confirmed that, you are doing things that disturb public order. I am aware that, you are now on bail in CR No.153/2023 u/s: 307, 452, 384, 386, 427, 323, 504, 506 and 34 of IPC Act at Shirur Police Station. Now you are free person. I am satisfied that, in view of your tendencies and inclinations reflected in the offences committed by you as stated above and said crimes. I am subjectively satisfied that you are acting in manner prejudicial to the maintenance of public order. I am further satisfied that you are again likely to revert to similar activities which are prejudicial to the

maintenance of public order in future and hence it is necessary to detain you under section 3 (1) of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug Offenders Dangerous Person, Video pirates sand smugglers and persons Engaged in Black-marketing of Essential Commodities Act 1981 (Amendment 2015) to prevent you from acting in such prejudicial manner in future.”

3 Responding to the said ground, the detaining authority has furnished the following explanation:-

“With reference to para 5 (e) of the ground, it is submitted that, the contentions therein are denied. I say that, I as the detaining authority has taken into consideration one CR and two in camera statement to arrive at subjective satisfaction and pass the detention order. Though action initiated against the Detenu and after arresting in the offences registered against him and after doing legal action, there is no any improvement in Detenu’s behaviour. Moreover after releasing on bail in many cases, the Detenu committed serious offences mentioned in the chapter XVI and XVII of IPC and chapter V of Indian Arms Act. The detaining authority carefully gone through one CR and two in camera statements, I subjectively satisfied that, the Detenu is acting in a manner prejudicial to the maintenance of public order and hence it is necessary to detain him under the said Act. I say that past history and earlier cases were referred by me to know past history of detenu. I relied upon only one CR and two in camera statements for my subjective satisfaction for passing detention order. Hence the order is legal and proper.”

4 The decision making process of the detaining authority, which require him to reach the subjective satisfaction that the detention of the person is necessary, he being a ‘dangerous person’ is according to the learned APP based only upon one offence and two in camera statements, however, we do not find it to be so as the detaining authority in paragraph 5 has referred to the 5 C.Rs and though the intention was to make a reference to the same reflecting upon his criminal tendencies in the past and to indicate that despite

necessary action under the said C.Rs and the preventive action, which was taken against him that was not sufficient to arrest his activities and he continued with his activities resulting into passing of the detention order.

5 When the detaining authority is expected to form subjective opinion, based on the material placed before him, and when the necessary material in relation to all the 5 C.Rs, which are referred to by the detaining authority, only restricting it for the purpose of reflecting upon his criminal tendencies is placed before him, it is difficult for him to segregate his opinion as in paragraph no.7, the detaining authority has categorically stated, that he has perused the entire material placed before him and based on it, he has formed a subjective satisfaction.

Since forming of a opinion is a mental process, which assimilates certain facts placed before a person and it is difficult to segregate it into two compartments as the facts not relied upon and the facts relied upon, and hence according to us, we find substance in submission of Ms. Tripathi, that the subjective satisfaction of the detaining authority is vitiated on account of the extraneous material being placed before him and he looking into the entire material in reaching the subjective satisfaction.

6 The Detention order based on the grounds of detention expressed by the detaining authority, we are of the considered view that it is the subjective satisfaction vitiated, as there is no segregation of the material, on which the detaining authority has formed the opinion.

For this reason, since we find the same to be vitiated, and the detention order cannot survive.

The Writ Petition deserve to be allowed by quashing and setting aside the detention order dated 30/08/2023.

By making the Rule absolute in the aforesaid terms, the petitioner is directed to set at liberty forthwith.

(MANJUSHA DESHPANDE,J.) (BHARATI DANGRE, J.)