



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. 585/2024

(SHEIKH SHAHRUKH @ MUKKA SHEIKH RIYAZ (IN JAIL) **VERSUS** STATE OF
MAHARASHTRA & ANOTHER)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri M.N. Ali, counsel for the petitioner.

Shri S.S. Doifode, Additional Public Prosecutor for the respondents.

CORAM : NITIN W. SAMBRE AND VRUSHALI V. JOSHI, JJ.

DATE : NOVEMBER 26, 2024

P. C.

Heard the learned counsel for the parties.

2. The challenge raised in this criminal writ petition is to the detention order dated December 17, 2023 whereby the petitioner came to be detained under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons engaged in Black-Marketing of Essential Commodities Act, 1981 (for short, 'the Act of 1981').

3. The foremost ground contended by the counsel for the petitioner so as to attack the order of detention is the failure of the Detaining Authority to verify the in-camera statements. To substantiate the aforesaid submission, the counsel for the petitioner has drawn support from the Division Bench judgment of this Court in *Adil Khan Nader Khan Pathan Versus State of Maharashtra &*

Others [2022 All MR (Cri.) 2718], and more particularly paragraph 16 of the same. Based on the finding recorded in the aforesaid judgment, it is claimed that the Detaining Authority has stated below the in-camera statement that a discussion was carried out and as such an inference was drawn that since the petitioner has instilled terror in the minds of people in the vicinity, no one is willing to come forward to lodge complaint against him.

4. As against above, the Additional Public Prosecutor would support the impugned order as according to him even if the contentions of the counsel for the petitioner are accepted, still the fact remains that two offences which are formed to be the basis are substantial enough to sustain the order impugned.

5. We have considered the rival submissions.

6. The particulars of the detention order are as under:-

Date	Particulars
27.11.23	Proposal sent by Police Inspector to Detaining Authority
17.12.23	Detention order passed by Detaining Authority
17.12.23	Grounds of Detention served to detenu
19.12.23	Case forwarded by detaining authority to State Government
27.12.23	Approval order passed by State Government
	Case forwarded by State Government to Advisory Board
19.1.24	Opinion of Advisory Board
29.1.24	Confirmation order passed by State Government

The detention order in categorical terms places reliance on two crimes. The details of which are as under:-

Sr	Date	Police Station	Crime Number	Under Section	Status
1	18.6.23	Tahsil	540/2023	326 r/w 34 IPC	Pending
2	30.8.23	GRP, Nagpur	1039/2023	394 IPC	Pending

The detention order also places reliance on the following in-camera statements:-

	Police Inspector	A.C.P	D.C.P	Detaining Authority
Witness A	19.11.23	28.11.23		17.12.23
Witness B	23.11.23	28.11.23		17.12.23

7. Aforesaid in-camera statements of two witnesses are relied on while passing the impugned order of detention. The first in-camera statement was recorded on November 19, 2023 by the Police Inspector, Railway Police which was verified by Sub-Divisional Police Officer, Railway Police on November 28, 2023. The endorsement by Shri Pandurang Sonwane, Sub-Divisional Police Officer, Railway, Nagpur in Hindi Language states that the discussion in relation to the said in-camera statement 'A' was carried out by him and as such satisfaction was recorded that the detenu has instilled terror in the minds of people. The translation which is made available to the petitioner of the said verification speaks of the discussion with Santosh Khandekar, Assistant Commissioner of Police, Jaripatka. The said translation is factually incorrect as could be seen from Page No.418 of the record. Such incorrect translation

of the in-camera statement, particularly about verification recorded by the Superintendent of Police, Railway, Nagpur on December 02, 2023 has resulted into causing prejudice to the petitioner as the respondents have not made him available the correct and true translation thereby adversely impacting his rights to make an effective representation.

In-Camera Statement 'B' also speaks of a similar blunder committed by the Detaining Authority, which is produced at Page No.420.

8. As a sequel of above, it has to be held that the translation provided to the detenu in vernacular was not a true translation and the respondent-Detaining Authority without verifying as to whether the translation provided to the petitioner is a correct one or not, has proceeded to pass the detention order. By providing the incorrect translation, the petitioner's fundamental rights are adversely affected as his right to make an effective representation has been denied. Even if it is presumed that the Detaining Authority while considering the in-camera statements has verified the same, what was expected from the said Authority was to apply its mind to the contemporaneous documents or material before it. As such the subjective satisfaction recorded by the Detaining Authority cannot be said to be justified. It can also be seen that the detention order is based on the stale offences of June and August-2023.

9. Not only the Detaining Authority has failed to record the subjective satisfaction but also it has failed to provide the correct and true translation to the detenu thereby jeopardising his right to make an effective representation. That being so, in our opinion, the impugned order cannot be sustained.

10. Consequently, the Criminal Writ Petition stands allowed in terms of Prayer Clause (i) and disposed of. Pending applications, if any, also stand disposed of.

(VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)