



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

Criminal Writ Petition No.622 of 2024

Rutik S/o Ramesh Ingle (In Jail),
Aged about 22 years,
Occupation – Labour,
R/o Kothari Fail, Khamgaon,
Tah. Khamgaon, District Buldhana.

... **Petitioner**

Versus

- 1. State of Maharashtra,**
through its Home Department,
2nd Floor, Mantralaya,
Mumbai – 400 032.
- 2. District Magistrate, Buldhana,**
Tah. and District Buldhana.
- 3. Sub Divisional Police Officer,**
Khamgaon, Tah. Khamgaon,
District Buldhana.
- 4. Police Inspector,**
Police Station Khamgaon (City),
Tah. Khamgaon,
District Buldhana.

... **Respondents**

Shri N.R. Tekade with Shri J.B. Gandhi, Counsel for Petitioner.

Shri S.S. Doifode, Additional Public Prosecutor for Respondents.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
DATE : DECEMBER 05, 2024

ORAL JUDGMENT (PER NITIN W. SAMBRE, J.) :

1. The challenge in this petition is to the order of detention dated January 24, 2024 passed by the respondent No.2-District Magistrate, Buldhana, whereby the petitioner, pursuant to the provision of Section 2(b-1) 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 has been detained.

2. The order of detention dated January 24, 2024, which was confirmed by the State Government on March 19, 2024, is based on the proposal dated December 27, 2023. The order of detention is questioned on the ground that though the proposal with relevant documents was supplied to the petitioner on January 24, 2024, the grounds of detention were not supplied to the petitioner. That being so, petitioner's right to prefer the effective representation and assail the order of detention is denied, as the same results in violation of his fundamental rights. According to the counsel for the petitioner, even the in-camera statements are stale, as the same are recorded in May, 2023, and are not verified by the Detaining Authority.

3. As against above submissions, Shri Doifode, learned Additional Public Prosecutor for the respondents, on perusal of the original record of the Detaining Authority, would claim that the grounds of detention

dated January 24, 2024 were duly supplied to the petitioner. According to him, in the margin of the grounds of detention, the petitioner, who is an illiterate person, has acknowledged the same by putting a thumb impression. The learned Additional Public Prosecutor would strenuously urge that the acknowledgement of the grounds of detention is witnessed by the Senior Jail Officer on January 24, 2024 and as such it has to be inferred that the grounds of detention were served on the petitioner.

4. The learned Additional Public Prosecutor would submit that in the circumstances, which led to passing of the order of detention, the petitioner being a dangerous person, the in-camera statements cannot be said to be stale in nature, even though same were recorded in May, 2023. He would claim that the in-camera statements in fact speak of the serious criminal activities and background of the petitioner which led to deterring the members of general public, who ultimately lodged the complaints against the petitioner. As such, he has sought the dismissal of the petition.

5. We have considered the aforesaid submissions.

6. The Apex Court in the matter of *Mallada K Sri Ram Vs. The State of Telangana and others* [2022 LiveLaw (SC) 358], had an occasion to consider the effect of deprivation of personal liberty of an accused at the behest of the Detaining Authority, wherein the approach of the Detaining Authority was lethargic and there was a delay on the part of the Detaining

Authority to take efficient steps in passing the order of detention but also of communication of the same to the accused.

7. The fact remains that in the case in hand, the learned Additional Public Prosecutor has urged that the grounds of detention were served on the petitioner on January 24, 2024, the date on which the order of detention was passed.

8. The left side margin of the grounds of detention reflects a thumb impression which is claimed to be that of the petitioner. There is no endorsement below it by any of the Public Authority including that of the Police Authority, Jail Authority or the Detaining Authority certifying that the thumb impression is that of the petitioner-detenu. Even if we consider the contention canvassed by the learned Additional Public Prosecutor that the thumb impression was obtained in the presence of the Senior Prison Officer, the said thumb impression is at the bottom of the last page of the order of detention. There is a reason to believe that the thumb impression was taken on a blank page over which either the grounds of detention were drawn or the thumb impression is not that of the detenu. Even otherwise the endorsement of Prison Officer is much above, that too on the blank space of the last page of the grounds of detention. The least that was expected of the Detaining Authority or that of the Prison Authority, while serving the grounds of detention, was to certify that the

thumb impression is that of the detenu, which is conspicuously absent in this case.

9. The effect of grounds being not served on the petitioner amounts to the denial of the right to make effective representation which is the Constitutional right guaranteed under Article 22(5) of the Constitution of India. The Apex Court had an occasion to consider the issue of non-furnishing of the material which could have formed the basis for recording subjective satisfaction in *Sophia Gulam Mohd. Bham Versus State of Maharashtra & Others* [AIR 1999 SC 3051]. The Apex Court in paragraphs 14 and 15 has observed as under :-

“14. The above will show that when a person is detained in pursuance of an order made for preventive detention, he has to be provided the grounds on which the order was made. He has also to be afforded the earliest opportunity of making a representation against that order. Both the requirements have to be complied with by the authorities making the order of detention. These are the rights guaranteed to the person detained by this clause of Article 22 and if any of the rights is violated, in the sense that either the grounds are not communicated or opportunity of making a representation is not afforded at the earliest, the detention order would become bad. The use of the words “as soon as may be” indicate a positive action on the part of the Detaining Authority in supplying the grounds of detention. There should not be any delay in supplying the grounds on which the order of detention was based to the detenu. The use of the words “earliest opportunity” also carry the same philosophy that there should not be any delay in affording

an adequate opportunity to the detenu of making a representation against the order of detention. The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language.”

15. The words “grounds” used in clause (5) of Article 22 means not only the narration or conclusions of facts, but also all materials on which those facts or conclusions which constitute “grounds” are based. In Prakash Chandra Mehta v. Commissioner and Secretary, Govt. Of Kerala, AIR 1986 SC 687 : (1985) Supp SCC 144 : (1985) 3 SCR 697 : (1986 Cri LJ 786), in which an order of detention was passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, this Court, while examining the concept of “grounds” used in Article 22(5), observed that the word “grounds” has to receive an interpretation which would keep it meaningfully in tune with the contemporary notions. It was explained that the expression “grounds” includes not only conclusions of facts but also all the “basic facts” on which those conclusions were founded. The “basic facts” are different from subsidiary facts or further particulars”

In this background, it has to be held that the communication of the grounds of detention is the basic material which should have been made

available to the petitioner-detenu on which the Detaining Authority has based the order of detention. Non-supply of such documents has resulted into denial of the right to make the effective representation against the order of detention and as a sequel of which there is violation of the fundamental rights guaranteed under Article 22(5) of the Constitution of India.

10. Apart from above, there is no material on record to infer that the grounds of detention were duly served on the petitioner-detenu, but for the claim in the affidavit that the grounds of detention carry the thumb impression of the petitioner-detenu. That being so, the contention canvassed by the learned Additional Public Prosecutor that the grounds of detention were duly served along with the detention order on the petitioner cannot be accepted, as there is no sufficient material to infer the service of such grounds along with the detention order or immediately thereafter on the petitioner-detenu.

11. Rightly so, the counsel for the petitioner has drawn support from the judgment of the Apex Court in *Mallada's* case, cited supra, so as to claim that the Detaining Authority, without adhering to the constitutional principles, cannot curtail the liberty of an individual, like the petitioner, thereby not making him available the grounds of detention, which has resulted into depriving the petitioner of not only making the timely effective representation about his detention, but also he was not in a

position to canvass his case for assailing the order of detention effectively. In that view of the matter, it has to be held that the order of detention on this count vitiates and as such is not sustainable in law.

12. This Court is required to be sensitive to the fact that the order of detention can be read as a punishment without trial. In case if such preventive detention order is passed without examining the live and proximate link between the occurrence of an incident and the detention. The detention order which is based on the stray incident needs to be regarded as an order of punishment for a crime and that too without making the detenu face the trial. The object of detention is not to punish the person for something which he has done but for preventing him from doing an act which may disturb the public order.

13. It could be gathered from the record that the in-camera statement was recorded in May, 2023, whereas the order of detention was passed on January 24, 2023, i.e. almost after a lapse of more than six months' period. The stale in-camera statement is sought to be relied upon by the Detaining Authority for sustaining the detention of the petitioner.

14. The in-camera statements referred above are relied on for the purpose of justifying the detention order. It is necessary that such in-camera statements should not only be read by the Detaining Authority but such Authority must verify its contents from the Officer who has recorded the same or the other Officer who has verified the recording of such

statement by his subordinate. In the case in hand, the perusal of the original in-camera statement would reflect that the Detaining Authority has not verified the in-camera statement as there is no material to that effect to record a satisfaction. In that view of the matter, the claim of the Detaining Authority that the in-camera statements were considered for ordering the preventive detention cannot be accepted.

15. We are fortified in our view by the Division Bench judgments of this Court in the matter of *Smt. Vijaya Raju Gupta Vs. Shri R.H. Mendonca and others* [2001 ALL MR (Cri) 48], so also in the matter of *Mohamad Ishaq Mohamad Ismail Shaikh Vs. Shri Sanjay Barve and others* [2020 ALL MR (Cri) 1930].

16. In the aforesaid background, the order of detention, in our opinion, is not sustainable in law and the same is liable to be quashed and set aside. That being so, the petition stands allowed in terms of Prayer Clause (ii). We direct that the petitioner be set at liberty forthwith, if not required in any other offence.

17. The petition stands disposed of in the aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)