



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

CRIMINAL WRIT PETITION NO.30 OF 2024

1. Sunita Nandkishor Katre, Aged about 34 years, Occup.Household, R/o Fattepur, Post Dhakni, Tq. and Dist. Gondia **Petitioner**

2. Nandkishor Suraj Katre, Aged about 31 years, Occup.Labour, R/o Fattepur, Tq. and Dist.Gondia, At Present, lodged in Bhandara Central Prison, Bhandara. **Detenue**

**-Versus-**

1. State of Maharashtra, through it's Home Department (Special), 2<sup>nd</sup> Floor, Mantralaya, Mumbai.

2. District Magistrate, District Gondia.

3. Sub-Divisional Police Officer, Sub-Division Gondia, Tq.and Dist. Gondia.

4. Police Inspector, Police Station, Gangazari, Dist. Gondia. **Respondents**

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Mr.N.R.Tekade, Advocate for the petitioner.  
Mr.S.A.Ashirgade, APP for the respondents.  
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**CORAM : VINAY JOSHI AND  
MRS.VRUSHALI V. JOSHI, JJ.**

**Reserved on:02.05.2024**

**Pronounced on: 07.05.2024**

**JUDGMENT (Per : Vrushali V.Joshi, J.)**

Heard.

2. Rule. Rule made returnable forthwith. The Writ Petition is heard finally with the consent of the learned counsel for the parties.

3. By the instant petition, the petitioner, who is the wife of detinue has challenged the order dated 20.09.2023 passed by the respondent No.2, District Magistrate, Gondia in exercise of powers conferred on him by Sub-Section 1 and 2 of the Maharashtra, Home Department, (Special) in Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous persons and Video Pirates Act 1981 (herein after referred to as the “Act of 1981”), which has been confirmed by the respondent No.1 State of Maharashtra on 31.10.2023 in terms of the Section 12 of the Act of 1981.

4. The impugned order was passed after taking into consideration previous seven crimes, three were non-cognizable crimes and four were preventive action. The crimes registered against the detinue are in respect of Maharashtra Prohibition Act. No public nuisance or law and order situation is accorded by any of the crime registered against the said detinue.

5. Two crimes i.e. Crime No.184 of 2023 and Crime No. 390 of 2023 are considered for issuing the detention order. Out of said crime, Crime No.184 of 2023 is registered under the Maharashtra Prohibition Act and another Crime No.390 of 2023 is registered on the complaint of Mr.Pralhad Ramchandra Neware, who is well acquainted with the detainee and the said crime is also in respect of the stolen liquor (ketal of liquor) Karachi. Both the crimes are not at all in respect of disturbing the public peace and there is a delay of almost three and half months which has not been explained by the authority before taking the action under the dangerous activities act. Therefore, on this ground alone, the impugned order is vitiated.

6. The detainee raised a specific ground about in-camera statement recorded by respondent authority of the witness. It was also pleaded that in-camera statements are not verified by the Sub-Divisional Officer, Gondia i.e. respondent No.3 personally. In presence of it detaining authority, respondent No.2 has also not verified the said statements personally. While arguing the matter, the learned counsel appearing for the petitioner took us through

the record and brought to our notice the copies of confidential statements provided to the detainee. It is brought to the notice that the copies at page 288 and 289 of the record are totally black and not a single word is readable. The legible copies were not provided to the petitioner-detainee and therefore, he could not represent on said statement. The contents in it are not verified by the authority, is the main ground raised by the learned counsel appearing for the petitioner.

7. The learned APP filed reply and relied on the contents of the order passed by detaining authority.

8. Heard both the learned counsel and perused the record. The specific argument is made by the petitioner about copies of confidential statements provided to the detainee. We have verified the record. The document-confidential statements of the witnesses 'A' and 'B' are not the legible copies. Totally black pages are given to the detainee. The opportunity was not given to the detainee to represent before the authority. Article 22(5) of the Constitution of India provides as under:-

“22(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order”.

9. It is observed by the Hon’ble Apex Court in the case of **State of Manipur and others Vs. Buyamayum Abdul Hanan @ Anand and anr** reported in (2022) SCC OnLine SC 1455 in paragraph No. 8 and 22 of the said judgment as under:-

“8. The main thrust on which the writ petition was filed under Article 226 of the Constitution assailing the order of detention was that respondent no.1 was not supplied with legible copies of the documents relied upon by the detaining authority while passing the order of detention and that has taken away the valuable right of respondent no.1 in making an effective representation. The right to make a representation is a fundamental right and nonsupply of the legible copies of the documents relied upon by the authorities in passing the order of detention is in violation of Article 22(5) of the Constitution and placed reliance on the judgments of this Court in *Smt. Dharmista Bhagat V. State of Karnataka*<sup>1</sup>, *Manjit Singh Grewal @ Gogi V. Union of India*<sup>2</sup>, *Mehrunissa V. State of Maharashtra*<sup>3</sup> and *Bhupinder Singh V. Union of India*<sup>4</sup>

1. 1989 Supp (2) SCC 155

2. 1990 Supp SCC 59

3. (1981) 2 SCC 709

4. (1987) 2 SCC 234

“22. It is the admitted case of the parties that respondent no.1 has failed to question before the detaining authority that illegible or blurred copies were supplied to him which were relied upon while passing the order of detention, but the right to make representation being a fundamental right under Article 22(5) of the Constitution in order to make effective representation, the detenu is always entitled to be supplied with the legible copies of the documents relied upon by the detaining authority and such information made in the grounds of detention enables him to make an effective representation”.

10. In view of the aforesaid observations, it is necessary to give the opportunity to represent. On perusal of documents, we found that the detenue had not got the opportunity to represent as the copies of confidential statements were not legible. On this ground only, the order is vitiated.

11. Though, seven crimes are considered and the Nandkishor Suraj Katre-detenu was on bail, the bail orders were not placed before the detaining authority. On considering the original confidential statements, it clearly shows that the detaining authority

has not verified the statements, it directly vitiates the process of arriving at subjective satisfaction. The detaining authority has not satisfied himself. In the statements, the incident mentioned is of February-March 2022, which is before one and half year from the date of detention order. The another statement is also of very vague nature. Therefore, the detention cannot be sustained on said two statements and the offences considered by the detaining authority.

12. As the proper opportunity was not given to the Nandkishor Suraj Katre, detenue to represent on the basis of the confidential statements of the witnesses and the bail orders are not placed before the detaining authority, thus vitiating the process of arriving at its subjective satisfaction.

13. For the reasons stated above, in our view, the detention order dated 20.09.2023 and confirmation order dated 31.10.2023 cannot be sustained. Hence, the orders dated 20.09.2023 and 31.10.2023 passed by the respondent No.2 require to be quashed and set aside as per prayer clause 'A' to 'B' which reads as under.

A. Allow the present petition, writ order or direction and further be pleased to call for record of

order bearing No. Detention Order No/AK.Home/399/2023 Dt.20/09/2023 passed by the respondent No.2 (Annexure P1), District Magistrate, Gondia and also order bearing No.MPDA-092-CR.476/SPL-3B passed by the respondent No.1 i.e. Home Department dated 31.10.2023.

B. Upon perusal of the same, quashed and set aside the order bearing No. Detention Order No./A.K.Home/399/2023 Dt.20/09/2023 passed by the respondent No.2 (Annexure P1), District Magistrate, Gondia and also order bearing No.MPDA-092-CR.476/SPL-3B passed by the respondent No.1 i.e. Home Department dated 31.10.2023, in the interest of justice.

14. We, hereby direct to release the detenue-Nandkishor Surajlal Katare lodged in Bhandara, Central Prison Bhandara forthwith, if not required in any other crime.

15. In view of above, the writ petition is allowed and disposed of.

16. Rule is made absolute in the above terms. No costs.

(MRS.VRUSHALI V. JOSHI, J)

(VINAY JOSHI, J)