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

CRIMINAL WRIT PETITION NO.738 OF 2022

PETITIONER	:	Ashokrao s/o Uttamrao Pawar Aged about 60 years, R/o. Vilas Nagar Lohar line, Amravati, Taluka and Dist - Amravati
DETENU	:	Umesh @ Bunty s/o Ashok Pawar Aged about 28 years, Occu : Labour R/o. Vilas Nagar Lohar line, Amravati, Taluka and Dist – Amravati
At Present	:	Lodged in Central Prison, Amravati
		..VERSUS..
RESPONDENTS	: 1	State of Maharashtra, Through, Home Department (Special), 2nd Floor, Mantralaya, Mumbai.
	2	Commissioner of Police, Amravati District- Amravati
	3	Dy. Commissioner of Police, Zone-I Amravati (City), Amravati
	4	Assistant Commissioner of Police, Gadge Nagar Division, Amravati

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Shri P. V. Navlani, Advocate for the Petitioner.
Shri S. S. Doifode, Additional Public Prosecutor for the Respondents.

CORAM	:	VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
RESERVED ON	:	30th JANUARY, 2023.
PRONOUNCED ON	:	8th FEBRUARY, 2023.

JUDGMENT : (PER : VALMIKI SA MENEZES, J.)

. **Rule**. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties

2. This is a petition which takes exception to the order bearing D.O.NO.CB/DET/MPDA/AMT/01/2022 dated 08.06.2022, passed by the Respondent No.2– Commissioner of Police, Amravati, ordering detention of the Detenu-Umesh @ Bunty s/o Ashok Pawar under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug offenders, Dangerous Persons and Video Pirates Act, 1981 ("MPDA Act"), and also the order bearing No. MPDA-0622/CR.188/Spl-3B dated 21.07.2022, passed by the Respondent No.1 i.e. Home Department (Special), confirming the Detenu's order of detention.

3. The main grounds for challenge, amongst various others, raised in the petition are ;

a) That the impugned orders are not based on the correct record, in that the subjective satisfaction arrived at by the Respondent No.2, whilst passing an order dated 08.06.2022 on the basis of order of externment bearing No.DCP/Zone-1/Externment/514/2018 dated 27.03.2018, passed by the Deputy Commissioner of Police, Zone-1, Amravati City, was without consideration of this Court's order dated 13.02.2019, passed in Criminal Writ Petition No.1092 of 2018, whereby the aforesaid order of externment was quashed and set aside; the impugned detention order was passed, without the order of this Court dated 13.02.2019, being placed before the Detaining Authority or the Authority considering the same;

b) That none of the incidents which formed the basis for passing of the detention order and recording the Authority's subjective satisfaction, can be considered as activities of the Detenu, that would amount to acts causing breach of "public order", but are at the most acts in breach of "law and order"; consequently, there would be no jurisdiction vested in the Authority under Section 3 of the MPDA Act, to

pass the impugned order;

c) That In-camera statements of two witnesses relied upon by the Authority to record its subjective satisfaction, were devoid of all elements, which would amount to a breach of public order; that there is nothing on record to establish that the Detaining Authority has conducted verification of the contents of the In-camera statements of two witnesses, more so verified the unwillingness of the witnesses to come forward and deposed in the matter, and since there is no communication of the material, which constituted such act of verification, to the Detenu, there is also a breach of the provisions of Article 22 (5) of the Constitution of India.

We have not adverted to any of the other grounds urged in this petition in this judgment, as we are of the opinion that on the basis of the aforementioned three grounds alone, the relief sought in this petition could be allowed.

4. We have heard Shri P. V. Navlani, learned Counsel for the Petitioner, Shri S. S. Doifode, learned Additional Public Prosecutor for the Respondents and with their able assistance, we have perused the record.

The Respondents have opposed the petition by filing an affidavit-in-reply dated 28.11.2022 through the Respondent No.2. In that affidavit, it is only contended that the file contains endorsements that statements of the two In-camera witnesses were verified by the Assistant Commissioner of Police by interacting with the witnesses and visiting the spot and by verifying the truthfulness of the statements by discussing the same with the concerned Assistant Commissioner of Police. The Respondents support the impugned orders.

5. Shri P. V. Navlani, learned Counsel appearing for the Petitioner would elaborate on the aforementioned three grounds by arguing that the impugned orders start by making reference to various alleged offences committed by the Detenu commencing from the year 2010 to the year 2021, all

of which criminal cases are pending before the concerned Magistrates. He further contends that the reference was also made to previous seven crimes registered against the Detenu including four offences from the year 2011 to 2022 involving the Detenu in crimes under the Arms Act, 1959 ("Arms Act"). He contends that none of these matters were ultimately relied upon by the Authority for recording its subjective satisfaction, while passing the impugned orders, but however, reliance was specifically placed on two crimes, the first crime bearing Crime No.83 of 2022 under Sections 4 and 25 of the Arms Act, in which the Detenu was arrested on 15.01.2022 and on being produced before the concerned Magistrate was granted bail on 16.01.2022 on a Personal Bond executed by the Detenu.

The second crime relied upon was under Crime No.458 of 2022 on a complaint made on 19.04.2022 under Sections 4 and 25 of the Arms Act, for which the Detenu was arrested on 20.04.2022 and on being produced before the concerned Magistrate was released on bail on the same day. It is his contention that in both these cases, a charge-sheet was

filed before the concerned Magistrate and the trial is underway; that in both these cases, the allegation was that the Detenu had brandished a knife at the respective complainants and extorted money from them, and neither of the complainants specified any detail to demonstrate that the act of the Detenu was in a public place, and in a manner that would cause terror amongst citizens who were witnesses to the incident.

6. Learned Counsel for the Petitioner further submits that in both these incidents, merely because the Detenu brandished a knife, that would by itself not be an act, which would in any manner be prejudicial to the maintenance of public order and the act could at the most be termed to be in breach of law and order, which could be dealt with under ordinary law by even approaching the concerned Magistrate, before whom the charge-sheets had been filed to cancel the Detenu's bail. Learned Counsel relies upon a judgment of this Court in ***Jay @ Nunya Rajesh Bhosale ..V/s.. The Commissioner of Police, Pune & Ors.,*** *reported in* ***2015 ALL MR (Cri) 4437***, to contend that merely being in possession

of a weapon would not lead to the disturbance of a public order to enable the Authority to invoke powers under Section 3 of the MPDA Act.

7. Learned Counsel for the Petitioner then contends that the Authority has relied upon an order of externment bearing No.DCP/Zone-1/Externment/514/2018 dated 27.03.2018, passed against the Detenu to form the basis for arriving at a subjective satisfaction by the Authority that the Detenu would likely commit further offences of the nature that would cause breach of public order. He argues that the order dated 27.03.2018 of externment was challenged before this Court, which by its judgment dated 13.02.2019, passed in Criminal Writ Petition No.1092 of 2018, quashed and set aside the order of externment. He contends that the order of this Court dated 13.02.2019 was never placed before the Detaining Authority, leading it to pass the impugned order on the basis of incorrect facts, thus vitiating the entire order. He relies upon a judgment of the Hon'ble Supreme Court in ***Khaja Bilal Ahmed ..V/s.. State of Telangana and others, reported in (2020) 13 SCC 632***, to submit that the Hon'ble

Supreme Court has held at para 23 of the said judgment, that when the satisfaction of the Detaining Authority is arrived at on the basis of irrelevant or invalid grounds and the detention order refers to non existent criminal activity, as stated in the ground contained in the impugned order referring to an externment order which was set aside, such an order is on the face of it unsustainable.

8. Shri Navlani, then contends that the reliance on two In-camera statements of witnesses, whose identity was not disclosed, are required to be discarded as there is no material on the record of the proceedings to demonstrate the verification of the content of the statements from the witnesses recorded by the Detaining Authority, nor is there anything on the record of the Detaining Authority to show that it verified the contents of the statements by directly interviewing the witnesses or even verifying the unwillingness of the In-camera witnesses to come forward and deposed against the Detenu out of fear. He further contends that even if this Court concludes that the exercise of verification was actually carried out by the Sub Divisional

Police Officer, there is no communication of such verification to the Detenu to enable him to raise any representation against the grounds, and the lack of communication to the Detenu of such verification itself is an infraction of the Detenu's fundamental rights under Article 22 (5) of the Constitution of India, thus vitiating the entire process of passing the impugned orders.

He relies upon two judgments of this Court, the first in ***Sourabh s/o. Sahebrao Rathod ..V/s.. State of Maharashtra & Ors.***, reported in ***2022 ALL MR (Cri) 2349*** and the other in ***Smt. Bismilah wd/o Sheikh Rahim ..V/s.. The State of Maharashtra and Anr.*** in Criminal Writ Petition No.73 of 2022 dated 21.10.2022. Sourabh s/o. Sahebrao Rathod (supra), was cited for the proposition is that proper verification was necessary by the Detaining Authority of the In-camera statements of witnesses both, as to their truthfulness and unwillingness of the witnesses to give statements out of fear for the Detenu, and Smt. Bismilah wd/o Sheikh Rahim (supra), was cited for the proposition that non communication to the Detenu of the material on

record to demonstrate that the Authority had indeed verified the statements would be in breach of the provisions of Article 22 (5) of the Constitution of India.

9. Per contra, Shri S. S. Doifode, learned Additional Public Prosecutor appearing for the Respondents took us through the affidavit-in-reply of the Respondent No.2 and contends that the affidavit bears out that the statements of the two In-camera witnesses were verified by the Assistant Commissioner of Police by interacting with the witnesses and visiting the spot. The affidavit then states that the Deputy Commissioner of Police also verified the statements by discussing the same with the Assistant Commissioner of Police and the Detaining Authority has verified the statements by discussing the same with the Assistant Commissioner of Police.

10. Before discussing the rival contentions of the parties, it would be advantageous for us to reproduce the provision of Section 3 of the MPDA Act. Section 3 of the MPDA Act, which reads as under :

*"**3.** Power to make orders detaining certain persons (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.*

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section :

***Provided** that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed 1 [six months] but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding 1 [six months] at any one time.*

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall 9 26-J-WP-484-22.doc forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."

11. The Authority would assume jurisdiction and would be authorised to issue a detention order under this

provision only if it comes to a subjective satisfaction on the material before it that the acts referred to in such material as alleged against the Detenu would be acts, which would be prejudicial to the maintenance of public order, and not otherwise. The expression "acting in any manner prejudicial to the maintenance of public order" under the MPDA Act, has been interpreted and dealt with by the Hon'ble Supreme Court in ***Hasan Khan Ibne Haider Khan ..V/s.. R. H. Mendnoca and Ors.***, reported in ***(2000) 3 SCC page 511***, as held at para 7 thereof.

> *"7. This Court in Amanulla Khan Kudeatalla Khan Pathan v. State of Gujarat MANU/SC/0396/1999 : 1999CriLJ3504 considered the expression "acting in any manner prejudicial to the maintenance of public order" and referring to earlier decision of this Court in Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police MANU/SC/0659/1995 : (1995) 3SCC237 held that the fallout and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him on to prevent his subversive activities affecting the community at large or a large section of society and it is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to breach of "public order"*

Every criminal act alleged against the Detenu would therefore not be such as to prejudice the maintenance of public order, until it is so demonstrated.

12. In Jay @ Nunya Rajesh Bhosale (supra), this Court at para 7 thereof has held as under :

> *"7. Thereafter, Mr. Tripathi submitted that as far as the second ground is concerned which relates to CR No. 3088 of 2015, the facts are that the police while on patrolling duty in the limits of Faraskhana police station found the detenu in possession of a koyta. As there was prohibitory order, said CR came to be registered against him under Section 37(1)(3) read with 135 of Maharashtra Police Act and under Section 4(25) of the Arms Act. Mr. Tripathi submitted that merely being in possession of a weapon would not lead to the disturbance of public order. Moreover, he submitted that it was a single case in which the detenu was found in possession of a weapon and hence, it cannot be said that the detenu is habitually committing such offence under the Arms Act. He further submitted that merely being in possession of a weapon is not sufficient to cause disturbance of public order. In support of this contention, he has placed reliance on the decision of this Court in the case of Sudarshan Tukaram Mhatre Vs. R.D.Tyagi, Commissioner of Police, Thane and others reported in 1990 Cri.L.J. 1964. In the said decision, it was held that merely carrying concealed firearm in a public place is not a menace to public order unless of course the person flourishes the weapon or by word or gesture indicates that the weapon is with him and he will not stop at using it. Looking to the fact that this CR is the only CR on which the detaining authority is relying upon in relation to possession of a weapon and the fact*

> *that the weapon was not brandished by the detenu and the fact that he did not indicate that he had a weapon and that he will not stop at using it, it could not be said that it affected the public order. This leaves us with only one CR i.e. CR No. 91 of 2015 of Faraskhana Police Station."*

Ratio of the above referred judgment clearly sets out that merely carrying a weapon or flourishing a weapon at a person without demonstrating that there were other citizens around, who would labour under the fear of its use or that the act of the Detenu would cause a fear in the hearts of the citizenry would not be a menace to public order.

13. In the present case, though the two In-camera statements refer to acts of the Detenu which might amount to extortion, there does not appear to be any detail of the fear psychosis that might have been created by those acts or that the same were committed at a public place.

In fact a reading of the affidavit on the question of verification of the In-camera statements itself would lead us to believe that the In-camera statements are unreliable and need to be discarded for the following reasons. Though there

is a reference to the Authority verifying the statements by discussing/interacting with the witnesses, and the concerned Assistant Commissioner of Police and Deputy Commissioner of Police, a perusal of the statements reveals that other than only endorsing that the Authority had done a verification, there is no reference that the content of the statements was verified by the Detaining Authority i.e. the District Magistrate or that the Detaining Authority has verified that the witnesses were unwilling out of fear of the Detenu to depose against him. It is evident that the subjective satisfaction of the Authority was arrived at without complying with verification as was required by law.

14. Further, on a perusal of the record, it is evident that even if, we were to conclude that the verification of the two anonymous statements were complied with, the material on the basis of which, the verification was done clearly has not been communicated to the Detenu.

This Court in Sourabh s/o. Sahebrao Rathod (supra), has considered the legal effect of non

communication of the material, which constituted the act of verification by the Authority, to the Detenu and has concluded that such non communication would amount to the breach of the provisions of Article 22 (5) of the Constitution of India. It has held thus :

> *"4. Firstly, the detention order refers to and relies on two in-camera statements at pages 446 and 447 of the paper book. On such statements for accompanying them, there is no reference to the verification of the contents of such statements by the concerned SDPO. There is also no endorsement that these two statements or its purported verification was ever verified by the detaining authority i.e. the District Magistrate. There is no dispute that such verification by the SDPO and the fact of verification by the detaining authority is a must in such matter.*
>
> *6. In this case, there was an assertion in the affidavit that verification was indeed undertaken by the SDPO and the detaining authority. Mr. Doifode showed us the original record which suggests that verification of the in-camera statements was undertaken by the SDPO. However, there is no contemporaneous record about this fact being verified by the detaining authority. Therefore, except for the assertion in the return, there is nothing in the record to establish such verification by the detaining authority. Be that as it may, we think that the verification by the SDPO and the alleged verification or the factum of alleged verification by the detaining authority ought to have been communicated to the detenue along with the detention order, so that the detenue could have at the earliest opportunity represented against the same. From the contention advanced before us as also the returns, there is an assertion that such verifications*

> *constituted both relevant and vital material in the context of the impugned detention order. Therefore, having regard to the provisions in Article 22 (5) of the Constitution of India, the communication of such material was necessary.*
>
> *7. Mr. Doifode, however, submitted that since the petitioner was able to raise the grounds based on the in-camera statements in this petition, no prejudice is discernible. Here, we are unable to agree with Mr. Doifode. The ground raised in this petition is that the non communication of this relevant and vital material constituted infringement of Article 22 (5) of the Constitution of India. The prejudice, in this case, is quite apparent because the petitioner was, at the earliest opportunity, deprived of his right to make an effective representation against the detention order ."*

15. We further note that this Court in Smt. Bismilah wd/o Sheikh Rahim (supra), has dealt with the very same argument of the Detenu, that failure to record subjective satisfaction that the witnesses, whose statements had been recorded In-camera, were not willing to testify against the Detenu out of fear would vitiate the entire process of arriving at its satisfaction and rendered the impugned order unsustainable. The following paragraphs are quoted from Smt. Bismilah wd/o Sheikh Rahim (supra), hereunder :

> *"4. The common thread of arguments is that the respondent-authorities, while passing the impugned detention orders have failed to record subjective*

satisfaction that the witnesses 'A' and 'B' whose statements have been recorded in-camera, were not willing to come forward and depose because of fear of the respective petitioners. The petitioners have relied upon the following judgments passed by the coordinate Benches of this Court.

i) 2017 (3) Mh.L.J. Cri.L.J. 475: {Rajkumar Jaiswal vs. State of Maharashtra and others;

ii) 2022 ALL MR (Cri) 2561 : {Sk. Yetal vs. State of Maharashtra and another}

iii) Sanjay Ramlal Sahu vs. State of Maharashtra & another (Cri.W.P. No. 768 /2015 decided on 1.2.2016).

5. The coordinate Benches of this Court in the above-referred petitions, have set aside the detention orders on the ground that the subjective satisfaction has not been recorded by the detaining authority, either of the correctness of verification exercise carried out by the Sub-divisional Police officer or of the unwillingness (out of fear of the respective petitioners) of the in-camera witnesses to come forward and depose.

5. The argument is that despite the aforesaid consistent view taken by this court, the detaining authority in the impugned orders have not recorded their subjective satisfaction on the above points.

6. We have gone through the impugned orders in the light of the aforesaid submissions canvassed before us, only to find that there is substance in the argument. Firstly, the concerned SDPO or the Assistant Commissioner of Police who have verified the correctness and truthfulness of the incident narrated by the in-camera witnesses, have not enquired and satisfied themselves on the point whether witnesses are unwilling to come forward and depose because of the fear of the petitioners. Secondly, the detaining authorities who have passed the impugned orders have not interacted with the verifying authority viz. the SDPO or the ACP for

recording their subjective satisfaction on the truthfulness or correctness of the incident stated by the witnesses so also of their unwillingness to come forward and depose because of the fear of the petitioners. The impugned orders, therefore, do not comply the dictum of the judgments passed by this Court."

16. Applying the ratio laid down in Sourabh s/o. Sahebrao Rathod (supra) and in Smt. Bismilah wd/o Sheikh Rahim (supra) to the facts of the present case, we have no doubt in our mind that there has been a total non compliance of the mandate of law as stated in these judgments, in that the Authority has neither recorded verification of the content and authenticity of the statements directly from the witnesses, nor has it recorded anywhere that it has verified that those witnesses were unwilling to give statements and testify against the Detenu out of fear. Further, none of this material, recording verification, was ever communicated to the Detenu to enable him to make a representation against it to the concerned Authority. We, therefore, record that the subjective satisfaction arrived at by the Authority on the basis of In-camera statements which are unreliable, unverified and not even communicated to the Detenu are unsustainable. We

also conclude that non communication of this material to the Detenu renders the entire process and the impugned orders to have been passed contrary to the provisions of Article 22(5) of the Constitution of India.

17. We now proceed to deal with the contentions of the Detenu that the subjective satisfaction arrived at by the Authority on the basis of the order of externment bearing No.bearing No.DCP/Zone-1/Externment/514/2018 dated 27.03.2018, was contrary to the record. This Court, in its order dated 13.02.2019, has specifically dealt with a challenge in Criminal Writ Petition No.1092 of 2018 to the very externment order dated 27.03.2018 relied upon by the Authority as material for arriving at its satisfaction, and has set aside that order with an elaborate judgment, which is part of this record. This Court has specifically concluded that the material which formed the basis of the externment order did not show any live link between the subjective satisfaction of the Detaining Authority and the alleged criminal activities of the Detenu. The judgment dated 13.02.2019 of this Court was not placed before the Detaining Authority, whilst

deciding the present matter; thus, clearly the Authority proceeded on the basis of an externment order, which had been quashed and set aside by this Court much before the impugned order was passed. The impugned order is therefore passed on the basis of wrong material and not on the basis of the correct record. Having not placed the order of this Court before the Authority, the impugned order is not based upon the correct material and on that count also, the impugned order is rendered unsustainable.

18. Before parting with this judgment, we make reference to a peculiar manner in which bail order dated 09.03.2011 was passed by the Judicial Magistrate First Class, Amravati, whilst granting bail application in Crime No.537 of 2011 (Exh-10) ; the copy of the bail application alongwith order dated 09.03.2011 passed by the concerned Magistrate at Amravati has been produced before us under pursis dated 01.02.2023.

We are particularly concerned with the fact that the bail order dated 09.03.2011 passed by the concerned

Magistrate is rendered on a rubber stamp with blank spaces, which are filled in by inserting the bond amount and no other details are contained on the rubber stamp. We note that there is no apparent authorization of the High Court for the use of such rubber stamps to enable a Magistrate to grant bail. Grant of bail is a matter of discretion to be exercised by the concerned Magistrate, who is expected to apply his mind after considering the material on record and is required to be granted or rejected by a speaking order. A Magistrate's order on a bail application certainly cannot be rendered on a rubber stamp as we note, has done in the present case. The bail order dated 09.03.2011 before us, which is in the form of rubber stamp does not contain any reasons for grant of bail.

19. We deprecate this practice, if it does exist in any of the Courts subordinate to this Court and deem it appropriate to circulate this judgment to all concerned District/Sessions Courts, which shall be sent by the concerned Registrar of this Court alongwith a copy of the bail order referred to by us in this judgment, with a specific directions that the subordinate Courts/Magistrates shall desist from making use of such

rubber stamps for deciding bail applications in future.

20. For the reasons stated above and based upon our conclusion recorded on the three grounds enumerated at para 3 hereinabove, we proceed to pass the following order :

ORDER

i) Criminal Writ Petition No.738 of 2022 is **allowed**.

ii) The impugned orders dated 08.06.2022, passed by the Respondent No.2– Commissioner of Police, Amravati and 21.07.2022, passed by the Respondent No.1 i.e. Home Department (Special), are hereby quashed and set aside.

iii) The Respondents are directed to release the Detenu from detention, unless required in any other case.

21. Rule is made absolute in above terms.

(VALMIKI SA MENEZES, J.) (VINAY JOSHI, J.)

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