
(2017) 05 BOM CK 0164
In the Bombay High Court
Case No : 3825 of 2016

Bablu APPELLANT

Vs

Shri. Ranjit Kumar and Ors. RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

[Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981](#), [Section 3\(1\)](#) - Power to make orders detaining certain persons

Citation : (2017) 05 BOM CK 0164

Hon'ble Judges : V.K. Tahilramani, M.S. Karnik

Bench : DIVISION BENCH

Advocate : Santaram A. Tarale, M.H. Mhatre

Judgement

1. Heard both sides.
2. The petitioner/detenu - Bablu @ Pratik Hari Prakshale has preferred this petition questioning the preventive detention order passed against him on 30.6.2016 passed by Respondent No. 1 i.e Shri. Ranjit Kumar, District Magistrate, Solapur under Section 3(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 (hereinafter referred to as "MPDA Act") as the detenu is a dangerous person. The said detention order is based on three incamera statements.
3. Though a number of grounds have been raised in the present petition whereby the detention order has been assailed, however, the learned counsel appearing for the petitioner/detenu has pressed only two grounds before us. They are grounds (xiv) and (xviii)
4. The first ground of challenge which is raised is ground (xiv). In the said ground, the petitioner has set up a specific case that the incamera statements

are false. In this ground, it is stated that the detaining authority has taken into consideration statements of three incamera witnesses i.e "A", "B" and "C". These statements are relied upon by the detaining authority for arriving at his subjective satisfaction. In order to rely on the incamera statements, the detaining authority must be satisfied about truthfulness of statements made in incamera statements, however, neither in the detention order nor in the grounds of detention, the detaining authority has stated anything about being satisfied about the truthfulness of the statements made incamera. Hence, it is contended that the detaining order is vitiated. 4A. Mr. Tarale, the learned counsel for the petitioner submitted that if there is no subjective satisfaction expressed by the detaining authority in the grounds of detention regarding genuineness and truthfulness of the incamera statements, the detention order would be vitiated. In support of this contention, he has placed reliance on the judgment delivered by the Division Bench of this Court in the case of *Vijaya Raju Gupta v. Shri R.H. Mendonca & Ors.* 2001(1) Mh.L.J. 449. In that case also the order of detention was issued under the provisions of the MPDA Act. The detaining authority had based his satisfaction on the incamera statements to issue the detention order. Mr. Tarale stated that in the said case, it was observed that the detenu had taken a specific plea in the petition that the incamera statements are false and fabricated. It was further observed that there remains no doubt in the light of the law laid down by the Apex Court that incamera statement of person/witness can be utilized by the detaining authority for the purpose of arriving at subjective satisfaction for passing the order of detention. However, the Apex Court made it clear that the facts stated in the materials relied upon should be true and have a reasonable nexus with the purpose for which the order is passed. Necessary corollary, therefore is that the detaining authority must be satisfied about the truthfulness of the statements made in the incamera statements. Testing it from this touch stone, the Court found that neither in the detention order nor in the grounds of detention, the detaining authority has stated anything that he was satisfied about the truthfulness of the statements made in incamera statements. Mr. Tarale pointed out that after observing thus, the detention order was quashed.

5. Mr. Tarale urged that in the present case also just like in the case of *Vijaya Raju*, there is no statement in the grounds of detention that the detaining authority was subjectively satisfied that the contents of the incamera statements were true and genuine. He submitted that in such case, the decision in *Smt. Vijaya Raju's* case (supra) is squarely applicable to the facts of the present case and the detention order should be quashed.

6. As against this, Ms. Mhatre, the learned APP relied on the decision of this Court in the case of *Zebunnisa Abdul Majid v. M.N. Singh & Ors.* 2001 (3) Mh.L.J. 365. She pointed out that in the said case also, there was no averment in the grounds of detention that the detaining authority believed the incamera statements were true, however, the detaining authority in the affidavit had stated that he was subjectively satisfied that the incamera statements were true. Moreover, from the verification of the incamera statements by the ACP, it was

clear that after questioning the incamera witnesses, he was satisfied that the incident was true, hence, the detention order was upheld. Ms. Mhatre submitted that the judgment in Vijaya Raju's case (supra) can be distinguished as the facts in the present case are entirely different. She pointed out that in the case in hand, just like in the case of Zebunnisa, there is sufficient indication in the affidavit in reply filed by the detaining authority that he was personally satisfied about the truthfulness of the contents of the incamera statements. She further pointed out that the verification of the incamera statements by the SDPO who is equivalent to the rank of ACP shows that he has questioned the incamera witnesses and found the statement given by them to be true, hence, the decision in the case of Zebunnisa would squarely apply.

7. In the present case, the detaining authority in his affidavit while denying that the incamera statements were false and fabricated, has further stated that the incamera statements were verified by police officer of the rank of Sub-Divisional Police Officer, Mangalvedha Division, Solapur ("SDPO" for short) and in view of the verification of the in camera statements made by Senior Police Officer of the rank of SDPO, he was subjectively satisfied that the contents of the incamera statements were true and genuine. Learned APP pointed out that in paragraph 5 of the affidavit of the detaining authority, the detaining authority has stated that he was subjectively satisfied that all the materials on which he had placed reliance were true and genuine. The present detention order is only based on three incamera statements, therefore, the "material" referred to by the detaining authority is obviously the three incamera statements.

8. This Court had occasion to go through the decision in Vijaya Raju (supra) in the case of Zebunnisa Abdul Majid v. M.N. Singh. In Zebunnisa, reference was made to the decision of the Supreme Court in Smt. Phulwari Jagdambaprasad Pathak v. Shri. R.H. Mendonca & Ors. JT 2000 (8) SC 209 and it was observed that the decision in the case of Vijaya Raju (supra) is based on the peculiar facts of that case. The Division Bench in Zebunnisa observed that the Supreme Court in Phulwari Pathak (supra) had made it clear that the incamera statements can be relied upon to issue a detention order but the materials relied upon by the detaining authority should be true and have a reasonable nexus with the purpose for which the order is passed. Necessary corollary, therefore, is that the detaining authority must be satisfied about the truthfulness of the statements made in the incamera statements. The Division Bench in Vijaya Raju (supra) referred to the affidavit filed by the detaining authority wherein he had stated that the incamera statements were verified by the higher grade police officer of the rank of ACP and, therefore, he was satisfied that the contents of the said statements were true. The Court in case of Vijaya Raju referred to the translation of the verification made by the ACP below the incamera statements which read "my statement was translated to me in Hindi which is in accordance with what I stated". In the case of Vijaya Raju, the Court, therefore, concluded that the ACP had only verified that the statements made by the witnesses were recorded as per their say. The ACP had not verified the truthfulness of the contents of the

said statements. Therefore, the detaining authority could not have relied upon this verification. This was more so because there was no contemporaneous document or material in support of this verification. The Court further observed that no such statement was made in the grounds of detention that the statements made in the incamera statements were believed to be true. On these facts in the case of Vijaya Raju, it was concluded that it was difficult to hold that the detaining authority was in fact subjectively satisfied that the assertions made in the incamera statements were true. However, in the case of Zebunnisa though no subjective satisfaction was expressed in the grounds of detention about truthfulness of the incamera statements, such subjective satisfaction was expressed in the affidavit of the detaining authority. In Zebunnisa, it was observed that from the verification of the ACP, it is clear that after questioning the incamera witness, the ACP was satisfied that the incident narrated by the incamera witness was true, hence, the detention order was upheld.

9. In view of the above, we find no difficulty in rejecting Mr. Tarale's submission. It is true that in Smt. Phulwari's case (supra), the Supreme Court has observed that material relied upon by the detaining authority should be true and should have a reasonable nexus with the purpose for which the detention order is passed. It is, however, not laid down therein that the detaining authority should expressly state in the grounds of detention that he had verified the contents of incamera statements and found them to be true. Mr. Tarale made an effort to deduce this proposition from the observations of this Court in the judgment in Vijaya Raju's case that "on the basis of mere verification without there being something more by way of contemporaneous documents or material more over when no such statement is made in the grounds of detention that the statements made in camera were believed to be true, it is very difficult to hold that the detaining authority was in fact subjectively satisfied that the assertions made in the incamera statements were true". In our opinion, this observation of the Division Bench in Vijaya Raju is being torn out of context. In the facts of that case the detaining authority in his affidavit had stated that the in camera statements were verified by the higher grade police officer of the rank of ACP. In the subsequent affidavits, he had expressed his satisfaction that the contents of the in camera statements were true and genuine because they were verified by the ACP. However, the English translation of the verification made by the ACP below the incamera statements, made it amply clear that the ACP had not verified the truthfulness of the contents of the statements. He had merely verified that the statements of the witnesses were recorded according to their say. Obviously, therefore, it could not be said that the ACP had verified the truthfulness of the contents of the in camera statements.

10. If the ACP had himself not verified whether the contents of the incamera statements were true, the detaining authority could certainly not have recorded his satisfaction on the basis, thereof that the contents of the said statements were true. The observation of this Court in Vijaya Raju's case (supra) on which Mr. Tarale has placed reliance will have to be read against this background. No

conclusion can be drawn from it that in all cases the detaining authority must aver in the grounds of detention that he was subjectively satisfied about the truthfulness of the contents of the in camera statements. In fact in the decision of the Supreme Court in the case of *State of Gujarat v. Sunil Fulchand Shah & Anr.* AIR 1988 SC 723, the Supreme Court has stated that, it is not necessary for the detaining authority to mention in the grounds of detention his reaction in relation to every piece of evidence placed before him. Similar view has been taken by the Division Bench of this Court in Criminal Writ Petition No. 542 of 1995 delivered on 7th June, 1996/11.6.1996.

11. Besides, the affidavit filed in the case on hand is entirely different from the one which was filed in *Vijaya Raju's* case (*supra*). In the present case in the affidavit, the detaining authority has clearly stated that the SDPO had personally got it confirmed from the incamera witnesses that their statements were correctly recorded. The SDPO was satisfied after making enquiries with the incamera witnesses that the incidents mentioned by the witnesses were true. The detaining authority had relied upon this verification made by the SDPO. In the opening paragraphs of his affidavit, the detaining authority has specifically stated that he was further satisfied that all the material on which he placed reliance was true and genuine. The only material relied upon in the present case is three incamera statements, hence, obviously, the reference was made to the three incamera statements and it was stated that they were true and genuine. Thereafter, in paragraph 18 of the affidavit, the detaining authority has stated as under :- "..... I say that the incamera statements of witness A, B and C are true and genuine statements. I say that the incamera statements were recorded by the Sponsoring Authority and the same was verified by the Sub-Divisional Police Officer, Mangalvedha Division, Solapur, hence, the said incamera statements are true and genuine. I deny that the incamera statements are false, vague and baseless....." These averments made in the affidavit make it amply clear that verification done in the present case is about the truthfulness of the contents of the incamera statements.

12. That the SDPO had verified whether the contents of the incamera statements are true or not can be ascertained from the noting found at the end of the incamera statements. Noting found at the end of in camera statements of witnesses shows that the SDPO had verified the truthfulness of the said incamera statements and the contents thereof were found to be true.

13. As stated earlier the post of SDPO is equivalent to the post of ACP. From the above verification, it is clear that the SDPO after questioning the witnesses was satisfied about the fact that the incidents narrated by them were truthful. It is on this verification that the detaining authority has placed reliance and, we find nothing wrong with it. It is not even *Mr. Tarale's* case that the detaining authority should personally question the witnesses and satisfy himself about the truthfulness of the contents of the statements. In the nature of things, the detaining authority cannot undertake such exercise personally and has to place

reliance on a senior officer like the SDPO. In this case that is exactly what he has done. To us his subjective satisfaction based on SDPO.'s verification about the truthfulness of the contents of the in camera statements appears to be genuine.

14. This Court in the case of K.B. Babu Menon v. R.H. Mendonca & Ors. Criminal Writ Petition No. 109 of 2000 decided on 13.2.2001 had occasion to consider a case exactly similar to the present one. In that case, the affidavit of the detaining authority is on similar lines and the Court had come to the conclusion that the detaining authority was satisfied about the truthfulness of the incamera statements. The judgment in Vijaya Raju's case (supra) was distinguished by the Court by holding that the observations of the Court therein were confined to the facts with which it was concerned. We are in respectful agreement with this view. We have, therefore, no hesitation in observing that in the present case, the detaining authority was subjectively satisfied about the truthfulness of the contents of the incamera statements and hence reliance placed on them cannot be faulted on that count. We also hold that not expressing subjective satisfaction about the truthfulness of the statements of the incamera witness in the grounds of detention would not vitiate the detention order if the necessary subjective satisfaction is expressed in the affidavit of the detaining authority.

15. Thereafter, Mr. Tarale raised ground (xviii). In the said ground it is stated that the incident narrated in the incamera statement of witness B has taken place on 8.12.2015 and the incident in relation to incamera witness C has taken place on 9.11.2015, however, in the grounds of detention, the date of incident relating to incamera witness B is stated as 28.12.2015 and the date of incident relating to witness C is stated as 29.11.2015. In case of incamera witness "B" instead of "8", the date is mentioned as "28" and in case of incamera witness "C" instead of "9", the date is mentioned as "29". Thus, it is submitted that there is non application of mind on the part of the detaining authority and the detaining authority has made a faulty order, hence, detention order cannot be sustained.

16. The detaining authority in his affidavit denied that the detaining authority without application of mind, committed gross error in the grounds of detention by quoting wrong dates in respect of alleged incidents narrated by the witness B and C respectively. It is stated that witness B and C in their statements dated 10.6.2016 have narrated the incidents dated 8.12.2015 and 9.11.2015 respectively. But in the grounds of detention, same was quoted as 28.12.2015 and 29.11.2015 due to typographical mistake. The said minor typographical error does not amount to non-application of mind on his part. The detenu has been furnished the said incamera statements wherein the correct date of incidents have been stated.

17. Ms. Mhatre relied on the decision of this Court in the case of Ranjana w/o Ganesh Shripatre v. State of Maharashtra 2011 (6) Mh.L.J. 551. She placed reliance on paragraphs 14 and 15 therein. In the said case also, wrong date about the incident was mentioned and it was contended that on account of this wrong mentioning of date, detention order would be vitiated. In the case of

Ranjana Shripatre, the respondents in their affidavit in reply had explained that it was a typographical and inadvertent error in stating wrong date of incident. It was held in the case of Ranjana that this lapse would not ultimately vitiate the detention order.

18. Learned APP submitted that on account of this small typographical error, it cannot be said that there was non-application of mind on the part of the detaining authority and hence, the detention order would not be vitiated. As stated earlier the incamera statements of the incamera witnesses "B" & "C" have been furnished to the detenu. They give the same details as those given in the grounds of detention except for typographical error in relation to date. Thus, it seen that as far as the said incidents are concerned, all the basic facts have been communicated to the detenu, hence, the ground on which the detaining authority has relied upon, has been conveyed to the detenu. A minor discrepancy due to typographical error referred to above would not vitiate the order of detention.

19. After carefully considering the submissions advanced before us by the learned counsel for the parties, according to us, the detention order is not vitiated and consequently, there being no merit in the present petition, the same is dismissed. Rule is discharged. Petition dismissed.