
(2016) 03 BOM CK 0228

In the Bombay High Court

Case No : Criminal Writ Petition No. 175 of 2016.

Nathuram Gopal Padvekar

APPELLANT

Vs

The District Magistrate, Ratnagiri and Others

RESPONDENT

Date of Decision : 21-03-2016

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)

Citation : (2016) ALLMRCri 2210 : (2016) 6 MhLJCrI 376

Hon'ble Judges : V.K. Tahilramani;Anuja Prabhudessai, JJ.

Bench : Division Bench

Advocate : Udaynath Tripathi with Gayatri Shigwan, Advocate, for the Appellant; M.H. Mhatre, A.P.P, for the Respondent

Final Decision : Allowed

Judgement

V.K. Tahilramani, J.(Oral) - By this petition for seeking a writ of habeas corpus under Article 226 of the Constitution of India, the Petitioner, who is the detenu has taken exception to the order dated 27th November, 2015 passed by the first Respondent in exercise of powers under Section 3 (1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (hereinafter referred to as the "M.P.D.A. Act"). By the said order, the first Respondent directed that the Petitioner shall be detained by way of prevention in exercise of powers under the said Act.

2. Learned counsel appearing for the Petitioner has urged only one ground before us i.e. ground 5(a). The relevant portion of the ground is that the detaining authority has taken into consideration two in - camera statements of the witnesses "A" and "B". It is contended that the verification notes of the two incamera statements are not furnished to the detenu. Learned counsel appearing for the Petitioner pointed out the affidavit of the detaining authority in which it is stated that copies of in - camera statements were duly verified by the Sub -

Divisional Police Officer, Ratnagiri and copies of these statements are provided to the detenu. However, the affidavit is totally silent about furnishing of the copies of verification of the in - camera statement to the detenu.

3. We have given careful consideration to the submissions. Perusal of order of the detaining authority shows that reliance has been placed specifically on in - camera statements of the witnesses A and B. Copies of the in - camera statements of the witnesses A and B supplied to the Petitioner have been annexed to the Petition which do not contain verification. In paragraph 4 of the affidavit in reply filed by the detaining authority, it is stated that both the statements were duly verified by the Sub-Divisional Police Officer, City Division, Ratnagiri. The detaining authority has merely stated that copies of in-camera statements have been duly furnished to the Petitioner detenu. We may note here that in Ground (a), a specific stand has been taken that the copies of the verification statement have not been furnished to the Petitioner. Thus, it is undisputed position that there is a verification made of both the incamera statements and the copies of the verification have not been furnished to the Petitioner detenu.

4. Reliance has been placed by the learned counsel appearing for the Petitioner on a decision of the Division Bench of this Court in the case of Smt. Subhangi Thukaram Sawant v. R.H. Mendonca and Ors., (2001 ALL MR (Cri) (68). He has also placed reliance on another decision of a Division Bench of this Court in the case of Vijay Ramchandra Angre v. Shri S.M. Shangari and Ors., (2004 ALL MR (Cri.) 1974). The law consistently laid down in this behalf is that the failure to supply copies of in-camera statements to the detenu which do not contain verification made by the concerned superior officer results into violation of Article 22(5) of the Constitution of India which vitiates the order of detention. Thus, in the present case, the order of detention is vitiated on that ground.

5. The learned A.P.P. submitted that the order of detention is based on C.R. Nos. 15 of 2015, 23 of 2015 and 26 of 2015 and two in - camera statements. She submitted that thus the detention order was issued on five grounds i.e. three C.Rs. and two in-camera statements and if the incidents relating to the two in-camera statements are excluded from consideration, the detention order would still be valid on the basis of three C.Rs. i.e. C.R. Nos. 15 of 2015, 23 of 2015 and 26 of 2015. In support of her contention, she placed reliance on Section 5A of the MPDA Act. In view of the contention raised by the learned A.P.P., we have carefully perused the incidents relating to the three C.Rs. We find that the facts relating to three C.Rs. are not such that could be said to be affecting the maintenance of public order, hence, the incidents relating to these three C.Rs. cannot be taken into consideration and we would only have to rely on the incidents relating to the two in-camera statements. On going through the record we found that in fact no verification of in-camera statements has been furnished to the detenu. Hence, the incidents relating to the two in-camera statements also cannot be taken into consideration.

6. In view of the above, the petition must succeed. Hence, rule is made absolute in terms of prayer clause 10 (b).