

(2017) 04 BOM CK 0101
In the Bombay High Court
Case No : 999 of 2016

Rajkumar @ Anda s/o Jaglal Jaiswal

APPELLANT

Vs

State of Maharashtra, through Home Department (Special), &
Ors.

RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

Citation : (2017) 04 BOM CK 0101

Hon'ble Judges : B.P. Dharmadhikari, V.M. Deshpande

Bench : DIVISION BENCH

Advocate : A.M. Jaltare, A.S. Ashirgade

Final Decision : Allowed

Judgement

1. The petitioner a detenu assails order of detention dated 12.09.2016 passed by respondent No.2 under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, DrugOffenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons Engaged in BlackMarketing of Essential Commodities Act, 1981. (hereinafter referred to as 1981 Act). This Court had issued notice on 23.12.2016 for final disposal. It was made returnable on 19.01.2017.

2. On 29.03.2017 matter was listed before this Bench and perusal of original records was felt essential. Hence, matter came to be adjourned. It has been heard today finally. Accordingly, we issued Rule and made it returnable forthwith by consent of parties.

3. Advocate Jaltare, appearing for petitioner has in addition to other points, submits that out of total 28 cases mentioned in chart forming of proposal, petitioner has been acquitted from 22 cases. Only 4 cases out of remaining 6 pending were relevant and have been looked into by the authority, but then acquittal from 2 cases has been overlooked. He further submits that in offence mentioned at Sr. No.25 i.e. Crime No.0014/2013 of Police Station Deori,

petitioner had been granted bail by this Court in Criminal Application No.169 of 2014, after noticing that identity of present petitioner as Driver of the Car has not been established. This important observation has also been lost sight while passing the order of detention.

4. Inviting attention to incamera statement of witnessA dated 24.08.2016 and incamera statement of witnessB dated 25.08.2016, he urges that portion removed from it to suppress identity of the concerned witnesses in fact rendered entire document useless. According to him, content remaining therein do not make any sense and hence, an opportunity to effectively defend himself stands negated. He relied upon the decision of this Court in the case of Shri Abdul Rehman Abdul Wahid Vs. Shri D.N. Jadhav & Ors. reported in 2008 ALL MR (Cri) 2497, to buttress his submission that supply of such incomplete document tantamounts to nonsupply thereof and therefore, vitiates the order of detention. Lastly, the verification of incamera statements allegedly done by S.D.P.O. is shown to this Court in order to demonstrate that those incamera statements or then verification thereof by S.D.P.O. has not been scrutinized by the respondent No.2 Detaining Authority personally and there is no subjective satisfaction in that respect. Support is being taken of judgment dated 01.02.2016 delivered by this Bench in Criminal Writ Petition No.768 of 2015.

5. In addition he points out that petitioner has received two orders of detention signed in original and on same date. He states that there can be only one order of detention.

6. Learned APP has from records received by him, produced an envelope (seal) containing original incamera statements. He submits that perusal of order of detention reveals that in paragraph 4 (E) those statements are looked into then other material has also been considered and thereafter conclusions are recorded in paragraph 5. He invites attention of the Court to the fact that if, the portion removed from copies of incamera statement supplied to the petitioner are retained, identity of witness will be immediately known and purpose of recording those statements secretly therefore, will be defeated. He contends that documents supplied contained necessary details in order to enable petitioner to understand the purpose thereof and hence, opportunity to effectively defend has not been denied. He further contends that entire history has been looked into and in the light of incamera statements, the other material as mentioned in proposal, subjective satisfaction has been reached. The chart of previous police reports contained in proposal is pressed into service to urge that last of offence mentioned therein i.e. 0334 of 2016 is committed on 09.06.2016 and investigation therein is still pending. Incamera statements recorded bring on record subsequent events and hence live link is established. He therefore, argues that if total material on record is looked into, alleged omission to consider the observation of this Court while granting bail, not expressly mentioning the fact of acquittal from two cases or use of incamera cases do not in any way vitiate the impugned order. Order shows proper application of mind and it is neither

perverse nor erroneous. He therefore, requests the Court to dismiss the writ petition.

7. We have perused case papers with the assistance of both the counsels. Incamera statements served upon petitioner 24.08.2016 and 25.08.2016. The said statements in margin carry remark by S.D.P.O., which translated will read "verified, speaks correctly as written". The original produced before us carry signature of incamera witnesses obviously those signatures could not have been and are not communicated to petitioner. However, when original of incamera statement dated 24.08.2016 i.e. of witnessA was perused by us, it became clear that signature was placed on it leaving some space after statement and not put as per alignment of the page. Its orientation is not as is expected even after making allowance for the education of said person as disclosed. He was required to leave his education, but then unnecessary gap as blank space between statement and signature gives some other impression.

8. In insofar as statement of witnessB is concerned, orientation of his signature again gives similar impression. We are constrained to comment on this because original incamera statements do not carry any endorsement by Detaining Authority to show that it has perused the same. There is no mention that the Detaining Authority has personally discussed the position or statements with S.D.P.O. who has verified the same. As such material on record falls short to show application of mind by Detaining Authority to cardinal aspect necessitating recording of incamera statements.

9. Impugned order in paragraph 4 (E) only mentions incamera statements as a fact. The actual application of mind starts from paragraph 5 in order in English language. In that paragraph while recording subjective satisfaction, no observation on correctness of procedure followed by S.D.P.O appears. There is no observation that Detaining Authority was satisfied that witnessesA and B or witnesses in general were not willing to come forward and depose because of fear of petitioner. The Detaining Authority has not put any thing on record to enable us to gather that it was alive to the facet, mentioned, supra.

10. Perusal of incamera statement of witnessA reveals that detenu was in contact with this witness and had offered him some amount in consideration. This witness has not fallen prey to his threats. Statement of witnessB is again on same line. These witnesses do not speak of any specific incident or any event of any particular date. Thus, incamera statements are general in nature.

11. Advocate Jaltare has pointed out that in impugned order, there is a finding in paragraph 5 that petitioner has encouraged young illicit liquor seller to indulge themselves in illegal activities. This practice or attitude of the petitioner was not appearing in proposal. Line before it in the impugned order states that petitioner is fully engaged in transportation and selling illicit liquor. In view of contention that there is also an order in Marathi on record, the same was perused and in Marathi order, in paragraph 5 following lines appear. "VERNACULAR MATTER

OMITTED"

Thus, in Marathi order it is claimed that the petitioner has developed expertise in illegal transport and sale of liquor from districts adjacent to Wardha District and he has also pushed youth into it and in world of criminals.

12. We need not observe more in this connection. There can be only one original order and it can be either in English or Marathi and its translation thereafter can be certified as true translation.

13. In present matter, as we find that incamera statements have been mentioned in impugned order and on that basis an order of detention has been passed, in the absence of proper verification by Detaining Authority and subjective satisfaction by it in that respect, on all relevant facet, the order is unsustainable. There is no subjective satisfaction by Detaining Authority either on correctness of verification exercise carried out by S.D.P.O. or on fear in mind of incamera witnesses and the atmosphere of fear and terror. In view of this finding other contentions raised by Advocate Jaltare are kept open and will be looked into in more appropriate facts.

14. Accordingly, order of detention dated 12.09.2016 is hereby quashed and set aside. The detenu be set free immediately, if his custody is not required by police in any other matter. The criminal writ petition is allowed. Rule is made absolute in aforesaid terms with no order as to costs.