

(2016) 03 BOM CK 0045

In the Bombay High Court

Case No : Criminal Writ Petition No. 4510 of 2015.

Santosh Kashinath Kamble

APPELLANT

Vs

State of Maharashtra and other

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

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

Citation : (2016) 2 AIRBomRCri 243 : (2016) ALLMRCri 3601 : (2016) 4 BomCR(Cri) 733

Hon'ble Judges : S.C. Dharmadhikari;G.S. Patel, JJ.

Bench : Division Bench

Advocate : Udaynath Tripathi, Advocate, for the Appellant; J.P. Yagnik, APP, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J. (Oral) - By this petition under Article 226 of the Constitution of India, the petitioner challenges the order of detention dated 7th August, 2015, issued by the Commissioner of Police, Pune City, under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slum Lords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (for short "MPDA Act").

2. The petition proceeds to state that the petitioner is the brother of the detainee. Detainee is one Dipak alias D. Baba Kashinath Kamble. The petitioner states that the detention order is vitiated on two counts. The first pertains to the legality and validity of the detention order. It is submitted that the detention order is founded on two C.Rs and two in camera statements. In regard to this, it is submitted by Mr. V.N. Tripathi, learned advocate appearing for the petitioner that these two in camera statements have not been verified. If there is no verification of the in camera statements, then, the same cannot form part of the subjective

satisfaction simply because the detaining authority has no material to confirm the incidents that are narrated by such witnesses. The truthfulness can be gathered provided there is a verification of these statements and that statement certifies that the incidents, as narrated, have indeed taken place. In the present case, no such satisfaction has been recorded inasmuch as the two in camera statements, copies of which have been supplied, have not been verified. If they are omitted from consideration, then, what remains as the basis of the subjective satisfaction are the two CRs. In relation to those, Mr. Tripathi would submit that one CR No.3098 of 2015 refers to section 37(1) read with 135 of the Maharashtra Police Act, 1951, and section 7(25) of the Arms Act. The details of the incident resulting in recording of the same are narrated in paragraph 4.1 in the grounds of detention. The argument is that on a plain reading of the F.I.R., it will not be held by any man of prudence that by mere possession of one sharp koyta, the public order is disturbed. Thus, mere possession of any arms without any use and overt act cannot be the basis for a subjective satisfaction that public order is disturbed. If public order is not disturbed, provisions of MPDA Act are not attracted. The petitioner then submits that if the CR No.3098 of 2015 is thus excluded then remains only one CR being CR No.392 of 2015. That single or solitary CR and the incident referred therein would not lead to the conclusion that the petitioner is a dangerous person within the meaning of section 2(b-1) of the MPDA. Mr. Tripathi would submit that a single solitary incident of the nature referred to will not enable the detaining authority to conclude that a person either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI and XVII of the Indian Penal Code, 1860 or any of the offences punishable under Chapter V of the Arms Act, 1959.

3. Mr. Tripathi would submit that Article 22(5) of the Constitution of India guarantees the detainee a right to make an effective representation. A right to make representation means making an effective representation. For a representation to be effective, the petitioner/detainee must be supplied and furnished not only the grounds of detention, but all the documents that are referred to and relied upon in support of the conclusion as above. In the present case, there is a reference and reliance on the two in camera statements. Copies of the in camera statements as verified have not been furnished to the detainee. Such statements, without verification, are not authentic and cannot be relied upon. This could have been pointed out provided they were furnished. In such circumstances, the right to make an effective representation guaranteed to the petitioner under Article 22(5) of the Constitution of India is violated.

4. Mr. Tripathi has placed reliance upon number of judgments and forming part of two compilations. They are as under :

(1) Jay @ Nunya Rajesh Bhosale v. The Commissioner of Police, Pune and Ors., 2015 ALL MR (Cri) 4437.

(2) Rohidas @ Pintya Laxman Gupta v. The Commissioner of Police, Pune, Order

dated 17th April, 2015, passed in Criminal Writ Petition No. 395 OF 2015.

(3) Phulwari Jagdambaprasad Pathak v. R.H. Mendonca and Ors., (2000) 6 SCC (Cri) 751.

(4) Vijay Raju Gupta v. R.H. Mendonca and Ors., 2001 ALL MR (Cri) 48.

(5) Swapnil Sanjay Tahsildar v. The District Magistrate and Ors., Order dated 17th October, 2012 in Cri. W.P. No. 2174 of 2012.

(6) Shri Vijay Ramchandra Angre v. Shri S.M. Shangari and Ors. 2004 ALL MR (Cri) 1974.

(7) Smt. Subhangi Tukaram Sawant v. Shri R.H. Mendonca and Ors. 2001 ALL MR (Cri) 68.

(8) Vijay Narain Singh v. State of Bihar and Ors., (1984) 3 SCC 14.

(9) Mustakmiya Jabbarmiya Shaikh v. N.M. Mehta, Commissioner of Police and Ors., (1995) 3 SCC 237.

(10) Ayub alias Pappukhan Nawabkhan Pathan v. S.N. Sinha and Anr. (1990) 4 SCC 552.

(11) Dinesh Vithal Patil and Anr. v. State of Maharashtra and Ors. 2012 ALL MR (Cri) 3582.

(12) Shri Mehmood Shahjab Khan @ Pathan v. The State of Maharashtra and Anr. 2012 ALL MR (Cri) 3349.

(13) Mrs. Tsering Dolkar v. The Administrator, Union Territory Delhi and Ors., AIR 1987 SC 1192.

(14) Mrs. Saraswathi Seshagiri v. State of Kerala and Anr. AIR 1982 SC 1165.

5. Mr. Tripathi has, during the course of his arguments, handed over to us another judgment of a Division Bench of this Court rendered in the case of Mohammed S. Khan @ Pathan v. State of Maharashtra and Anr., WP No. 3906 of 2012 decided on 8th May, 2013 = 2013 ALL MR (Cri) 3349.

6. On the other hand, Mr. Yagnik, learned APP appearing on behalf of the respondents would submit that there is no substance in the Writ Petition and it deserves to be dismissed. He would rely upon the affidavit-in-reply filed by the Detaining Authority. He would submit that the sufficiency of the grounds or material on which the detaining authority was satisfied that it was necessary to detain the detainee with a view to prevent him from acting in a prejudicial manner and as contemplated by the statute, cannot be examined in Writ jurisdiction. The detaining authority has placed before this Court materials to show that he was subjectively satisfied that the detainee is acting in a manner prejudicial to the maintenance of public order. Mr. Yagnik would submit that strict rules of evidence do not bind the detaining authority for these are not proceedings before a court

of law. The detaining authority can act and will be required to act not only on the facts which are strictly of evidence, but on other materials as well. All these materials have been carefully perused and considered by the detaining authority. They have not been accepted for what they are. The detaining authority satisfied itself that since 2010, the detainee is engaged in criminal activities. He has been habitually committing offences and which come within the purview of Chapter XVI and XVII of the Indian Penal Code. Thus, he is a dangerous person. The criminal activities within the jurisdiction of Bhosari, Hinjewadi and Pimpri Police Stations in Pune city are prejudicial to the maintenance of public order. In order to curb the criminal activities of the detainee, preventive actions have been taken against him from time to time. In that regard, Mr. Yagnik would invite our attention to the chart which is referred to in the affidavit of the detaining authority. Mr. Yagnik then submits that though this detainee was externed for a period of one year from Pune District vide order No.26 of 2014 dated 3rd December, 2014, that order of externment was stayed by this Court. After this order, the petitioner continued committing serious offences and those were, according to Mr. Yagnik, extensively referred to in the detention order. Thus, whenever there were any criminal complaints registered, the detainee was arrested. He was released on bail and after such release, he again committed serious offences. There is a reign of terror and created by the detainee. The even tempo of life is disrupted and disturbed. It is in these circumstances that the senior Inspector of Police, Pimpri Police Station, Pune, sent a proposal dated 24th July, 2015 for the detention of the detainee under MPDA. This was forwarded through proper channel.

7. Mr. Yagnik then stated that the Assistant Commissioner of Police, Pimpri Division, Pune, received the proposal along with the relevant documents on 24th July, 2015. Thereafter, he scrutinised the papers. On 27th July, 2015, he had verified the two in camera statement of witnesses. Then, he submitted a proposal along with the certificate of verification and relevant documents to the Deputy Commissioner of Police, Zone-3, Pune, on 27th July, 2015. That proposal was received along with relevant documents and after perusal of the same, it was noticed that the petitioner was released on bail in C.R.No. 392 2015 alleging offences punishable under sections 143, 147, 148, 149, 504, 506, 427 IPC r/w section 7 of the Criminal Amendment Act, r/w section 37(1), 135 of the Maharashtra Police Act and r/w section 4 and 25 of the Arms Act of Pimpri Police Station, Pune. Hence that Police Station, through its senior Police Inspector, sent a report to the Deputy Commissioner of Police, Zone-3, on 1st August, 2015, regarding petitioner's bail. The Deputy Commissioner of Police, Zone-3 perused that proposal and all documents and thereafter the proposal was forwarded on 3rd August, 2015. The proposal was also placed before the Additional Chief Commissioner of Police, Crime, Pune, on 3rd August, 2015, and thereafter he forwarded it to the Joint Commissioner of Police, Pune, on 4th August, 2015. He perused all the documents and applying his mind to the materials before him, he forwarded the proposal to the detaining authority on 5th August, 2015. The

detaining authority received the proposal comprising of 226 pages of relevant documents on 5th August, 2015, and he perused it from 5th to 7th August, 2015. That is how the affidavit proceeds to state that the detaining authority was subjectively satisfied that the detainee is a weapon wielding dangerous desperado of violent character and on the basis of the two offences i.e. C.R. No.3098 of 2015 and C.R. No.392 of 2015, so also two in camera statements, he reached the conclusion that the detainee is a dangerous person within the meaning of section 2(b-1) of the MPDA Act.

8. Mr. Yagnik then read out the detention order and specifically the subjective satisfaction recorded therein to the above effect. He would submit that the detaining authority was satisfied that the detainee unleashed a reign of terror, became perpetual danger to the society at large in the area of Bhosari, Hinjewadi and Pimpri Police Stations. The people are afraid and a sense of insecurity and constant fear on account of the presence of the detainee, therefore, enables the detaining authority to detain him under section 3(2) of MPDA Act. Mr. Yagnik was at pains to point out that C.R. Nos.178/2010, 269/2011 and 198/2012 are mentioned along with the other CRs only to indicate the past of the detainee. The detaining authority did not rely on anything except the two offences, namely, the CRs referred above along with the in camera statements. They are thus enough to record the subjective satisfaction. Mr. Yagnik was at pains to point out from the grounds in the petition that there is a fundamental distinction between the order of detention being vitiated for want of subjective satisfaction or the subjective satisfaction being vitiated by non application of mind and the continued detention of the detainee is vitiated for non compliance with Article 22(5) of the Constitution of India. Mr. Yagnik submits that the emphasis is on the right of the effective representation being denied, but even that is not denied because the petitioner was supplied all the documents, copies of the in camera statements as well as copy of the verification report. The in camera statements cannot be excluded from consideration simply because as Mr. Tripathi contends, the verification does not appear on the face of the same nor the verification report, copy of which is supplied to the detainee, sets out the verification as desired and in the language of the petitioner's counsel. Mr. Yagnik would submit that none of the decisions, therefore, can have any bearing on the controversy in this petition and they are distinguishable on facts. For these reasons, Mr. Yagnik would submit that the petition be dismissed.

9. Reliance is placed by Mr. Yagnik on the following decisions:

- (1) Phulwari Jagdambaprasad Pathak v. R.H. Mendonca and Ors., (2000) SCC (Cri) 1263.
- (2) Usha Agarwal v. Union of India and Ors. (2007) 1 SCC 295.
- (3) Vidyadhar H. Varma v. R.H. Mendonca, Commissioner of Police and Ors., 2000 ALL MR (Cri) 773.
- (4) Santosh Bhagwan Patil v. State of Maharashtra and Ors., 2013 (3) Bom. C.R.

(Cri) 231.

(5) Sunita Hanumant Fulore v. State of Maharashtra, 2011 (5) Bom. C.R., 753.

10. For properly appreciating the rival contentions, a reference will have to be made to some basic facts. We have been noticing that during the course of arguments in detention matters, certain general grounds are set out in pleadings regarding the infraction and breach of the constitutional guarantee and mandate but the sweep of the arguments is not restricted to those grounds or the language of the grounds on which the detention order is challenged. The arguments overlap overlooking the fundamental distinction in law between the grounds of challenge. Either the detainee challenges the legality and validity of the detention order or the continued detention pursuant to the same. In the former challenge, there is attack on the subjective satisfaction while in the latter, the emphasis is on violation of constitutional safeguards post the order and its communication. We say nothing more than inviting the attention of all concerned to the following binding principles emerging from the judgment of the Hon'ble Supreme Court reported in AIR 2013 SC 1376 Abdul Nasar Adam Ismail v. State of Maharashtra and Ors :

"17. We would like to make it clear that the delay in disposal of the representation of the detainee has vitiated only the continued detention of the detainee and not the detention order. In Meena Jayendra Thakur v. Union of India (1999) 8 SCC 177, this Court was considering a case where the detainee was detained under the provisions of the said Act. This Court held that if the detaining authority on the basis of the materials before him did arrive at his satisfaction with regard to the necessity for passing an order of detention and the order is passed thereafter, the same cannot be held to be void because of a subsequent infraction of the detainee's right or of non-compliance with the procedure prescribed under law because that does not get into the satisfaction of the detaining authority while making an order of detention under section 3(1) of the said Act. It does not affect the validity of the order of detention issued under Section 3(1) of the said Act. Similar view has been taken by this Court in Sayed Abdul Ala, (2007 AIR SCW 6974). In that case, this Court was concerned with an order of detention issued under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. It was argued that there was delay in considering the representation of the detainee. Relying on Meena Jayendra Thakur, this Court expressed that even if it is to be assumed that there was some delay in considering the representation, the same would not vitiate the original order of detention. By reason of the delay, only further detention of the detainee will become illegal. The delay in considering the representation does not vitiate the order of detention itself. In Harish Kumar (AIR 2007 SC 1430) this Court was again considering an order of detention issued under the provisions of the said Act. This Court reiterated the same view and held that the detention order passed at the satisfaction of the detaining authority on the basis of the material available in no manner gets vitiated for the reason of non-consideration of the

representation made by the detainee to the Central Government. It was held that initial order of detention was not rendered void ab initio. It may be noted that even the Constitution Bench of this Court in K.M. Abdulla Kunhi (AIR 1991 SC 574) held that any unexplained delay in disposal of representation of the detainee would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal and set aside the continued detention of the detainee."

The confusion between the two, therefore, results in both sides citing plethora of judgments either of this Court or the Hon'ble Supreme Court of India. Some times, Division Benches do not have the benefit of all the judgments being cited for some are reported and others are not. In such circumstances, we would not venture into laying down any broad legal propositions. Before considering the applicability of the principles laid down in all decisions, the facts are to be clearly and properly noted.

11. It is common ground before us that this detainee on whose behalf the petition has been filed has projected firstly by the unamended grounds that the detention order was issued on 7th August, 2015, and it is incumbent upon the detaining authority to disclose to this Court as to what exactly was the proposal for detention of the detainee made by the sponsoring authority. This is in relation to the incidents which are noted and in which bail was granted. However, this ground and which runs through pages 4 and 5 essentially refers to the in camera statements recorded on 15th July, 2015. Pertinently, at page 5 of the petition the petitioner himself states that the in camera statements were recorded by the sponsoring authority on 15th July, 2015, and they were verified on 27th July, 2015. It is thereafter the impugned order has been passed. The rest of the particulars of this ground need not detain us.

12. The other aspect at page 6 of the petition refers to the record covering 226 pages and placed before the detaining authority. The argument with regard to very short time in which the detention order came to be issued is mentioned in the passing. However, we find that no grievance can be made by the detainee as all the events and the complete chain is narrated in the affidavit of the detaining authority. All the dates and events could be gathered therefrom. It is not as if any hasty or hurried decision has been taken for the detaining authority has set out the time consumed and taken by him in considering the materials.

13. We do not find, therefore, that there is substance in such an argument which is made in passing.

14. We should also not refer to page 7 onwards of the petition for what we find is that the amended petition and the grounds post amendment are really pressed into service.

15. In that regard, the amended petition incorporating additional grounds with the leave of this Court at page 18A projects ground Nos.4(xvi) and 4(xvii). These grounds read as under :

"4(xvi) The Petitioner says and submits that the detaining authority has taken into consideration two statements of witnesses "A" and "B" recorded in camera for arriving at the satisfaction and for issuing the order of detention. The Petitioner says and submits that the above said two camera statements are not verified by any Senior Police Officer of the rank of Asstt. Commissioner of Police and above and further no copies of verification is furnished to the detainee along with the statements. Thus the right to make effective representation guaranteed to the Petitioner under Article 22(5) of the Constitution of India is violated. Such statements without verification are not authentic documents and cannot be relied on by the detaining authority for passing the order of detention. The order of detention is illegal and bad in law, liable to be quashed and set aside.

(xvii) The Petitioner says and submits that the detaining authority has taken into consideration a criminal case vide C.R. No. 3098 of 2015 under Section 37(1) r.w. 135 and Section 7(25) of Arms Act. The details of incident is narrated in paragraph No.4.1 of the grounds of detention. The Petitioner says and submits that on a plain reading of the said incident by no stretch of imagination it will be held by a man of prudence that as a result of mere finding in possession of one sharp Koyta with the person and in car of the Petitioner, public order is disturbed. The Petitioner says and submits that mere possession of any arm without any use and overt act of the same, cannot be held that public order is disturbed and if no public order is disturbed, provisions of MPDA Act, 1981 i.e. Section 3 of the said Act cannot be attracted. The order of detention is illegal and bad in law, liable to be quashed and set aside."

16. Mr. Tripathi presses these two grounds essentially. With regard to ground para 4(xvi), we find that the emphasis is on a right to make effective representation guaranteed to the petitioners under Article 22(5) of the Constitution of India being violated.

17. However, during the course of his arguments, Mr. Tripathi also assailed the detention order and the subjective satisfaction recorded therein by submitting that once the two in camera statements and one C.R. is omitted from consideration, then, all that remains is a single C.R. which projects an offence punishable only under the Arms Act. That could not have led to the subjective satisfaction that it is a threat to the public order. In such circumstances, the detention order itself is vitiated is the argument of Mr. Tripathi.

18. We find from the record that the two in camera statements, copies of which are supplied to the petitioner, are of one witness "A". This witness "A" gave his first statement on 15th July, 2015 and before the senior Police Inspector, Pimpri Police Station, Pune. That statement is recorded in Marathi and a true copy of the same has been supplied to the petitioner. Then, this very witness gave a supplementary statement on 27th July, 2015. Equally that is in Marathi and signed also in that language and before the same authority. Then comes a statement of witness "B" which is recorded on 15th July, 2015 and equally he gave a supplementary statement all of which as far as the language and the

authority before whom the statement is made is identical.

19. At page 41 of the paper-book we find a copy of the confidential communication No.3768/Secret/2015 emanating from the Assistant Commissioner of Police, Pimpri Division, Pune City dated 27th July, 2015. That is addressed to the Commissioner of Police, Pune City, on the subject of verification of the statements recorded in camera. A copy of this has been supplied to the detainee. This verification report states that the two in camera statements were placed before this authority, namely, the Assistant Commissioner of Police, Pimpri Division, Pune. He summoned these two witnesses, enquired from them the incidents which they have narrated in their statements. The incidents were confirmed by these two witnesses and thereafter the report says that this authority is satisfied that the incidents which are true, genuinely reflect the concern of all those making them that the same would have a bearing on the detainee's activities. Thus, the genuineness and truthfulness of the incidents has been verified by the reporting authority by summoning these two witnesses whose statements were recorded in camera and based on this he states that it is true and correct that the incidents did occur and that created fear and apprehension in the minds of these persons.

20. Now, we must consider the arguments of Mr. Tripathi under the heading "Non Furnishing Verification of in camera Statements to Detainee Resulting in Violation of Article 22(5) of the Constitution of India" commencing from a recent judgment delivered by a Bench presided over by the Hon'ble Acting Chief Justice and Hon'ble Mr. Justice A.S. Gadkari in the case of Jay @ Nunya Rajesh Bhosale v. The Commissioner of Police, Pune and Ors., 2015 ALL MR (Cri) 4437.

21. This judgment relies upon the judgment of a Division Bench of this Court rendered in the case of Smt. Subhangi Tukaram Sawant v. Shri R.H. Mendonca and Ors. 2001 ALL MR (Cri) 68.

22. We would carefully refer to the facts in the case of Jay (supra).

23. There, the detention order was passed on 19th May, 2015, under the same enactment MPDA Act. That order along with the grounds of detention was served on the detainee on 19th May, 2015. The true copies had been annexed to the petition. A perusal of the grounds of detention (Annexure-B) shows that the detention order was passed in two C.Rs and three in camera statements. C.R. No.91 of 2015 of Faraskhana Police Station referred to offences punishable under sections 384, 386 and 504 IPC. The second C.R. No.3088 of 2015 of the same Police Station referred to section 37(1)(3) read with 135 of the Maharashtra Police Act and section 4 read with section 25 of the Arms Act. The detainee was found to be in possession of a koyta by the Police when they were on patrolling duty within the limits of Faraskhana Police Station. Thereafter, reliance is placed on three in camera statements.

24. With regard to these in camera statements, the specific ground taken in the Writ Petition was that these statements were not verified by any senior Police

Officer of the rank of Assistant Commissioner of Police or above and further, no copy of the verification has been furnished to the detainee along with the statements. Thus the right of the detainee to make an effective representation against the detention order has been violated.

25. The detaining authority filed an affidavit-in-reply which is referred by the Division Bench in extensor and wherein there is an admission that the Assistant Commissioner of Police, City Division, Pune, verified these in camera statements, but there was no statement in the affidavit about furnishing of the verification by the Assistant Commissioner of Police of the in camera statements to the detainee. Therefore, the original record was sent and the Assistant Commissioner of Police indeed put an endorsement on all the statements that he had verified the same. That endorsement is found at the bottom of all three in camera statements. However, it was noticed that in the copies of the in camera statements of the witnesses supplied to the detainee, the endorsement of the Assistant Commissioner of Police read that "statements are verified" by the Assistant Commissioner of Police. Instead of the word "verified" what is stated in the copy furnished to the detainee is the word "perused". Once the original file revealed as such, then, the Division Bench had no hesitation in arriving at the conclusion that this right guaranteed had indeed been violated. This was enough to vitiate the continued detention of the detainee under MPDA Act.

26. However, the arguments as in the present case cover very wide canvass. The APP in that case (Jay) tried to support the detention order which was made on five grounds in that case. That referred to two C.Rs and three in camera statements. The argument was assuming these three in camera statements cannot be relied and ought to be omitted from consideration, section 5-A of the MPDA Act would operate and that also would be enough to sustain the detention order. That is how and surprisingly the argument of the State proceeded not so much in justification of the detention order, but to meet the ground of continued detention being vitiated for want of opportunity to make an effective representation against the same.

27. That is how from paragraph 5 of the judgment, the arguments read and as if the detention order itself has been questioned and challenged on the ground that there could not have been a subjective satisfaction as recorded based on the three in camera statements and the two C.Rs.

28. The Court found that one C.R. was also required to be omitted from consideration. That was C.R. No.3088 of 2015. The argument was that this alleges that the detainee was in possession of a weapon. Merely being in possession of a weapon would not lead to disturbing public order. This was a single case and it cannot be said that the detainee is habitually committing offences under the Arms Act. Reliance was placed upon Sudarshan Tukaram Mhatre v. R.D. Tyagi, Commissioner of Police, Thane and Ors., 1990 Cri. L.J. 1964. Merely carrying a concealed firearm in public place is not a menace to the public order unless of course the person flourishes the weapon or by word or

gesture indicates that the weapon is with him and he shall not stop at using it. The court found that C.R. No.3088 of 2015 does not record any such act on the part of the detainee. The weapon was never brandished. He never said that he had the weapon and he will not stop using it. Therefore, this incident does not affect the public order. Then as far as C.R. No.91 of 2015 is concerned, the detainee came to some hotel and threatened everybody in the place loudly that if the complainant did not pay hafta of Rs.10,000/- per month, then the hands and legs of the workers in the hotel would be broken and the hotel would be closed down. It was alleged that because of this loud threats and shouting the customers ran away.

29. On watching this incident in the hotel, the pedestrians on the road got frightened and ran away. According to the State, this was, therefore, an incident affecting public order. It affected the maintenance of public order and, therefore, C.R. No.91 of 2015 would be clearly attracting the provisions of section 2(a) (iv) of the MPDA Act. It is in dealing with this argument that the following observations are made in paragraphs 9, 10 and 11 :

"9 The relevant definition applicable to a "dangerous person" in section 2(a)(iv) is as follows:

"2. In this Act, unless the context otherwise requires.-

(a) "acting in any manner prejudicial to the maintenance of public order" means-

(i)... ..

(iv) in the case of a dangerous person, when he is engaged, or is making preparation for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order. The activity of the detainee is clearly covered by Section 2(a)(iv).

Thereafter Mr. Tripathi submitted that if the grounds relating to three in camera witnesses and the ground relating to CR 3088 of 2015 is excluded only CR 91 of 2015 remains. He submitted that only on the basis of this single solitary incident it cannot be said that the detainee is a dangerous person. The detention order in the present case has been passed against the detainee because he is a "dangerous person" as visualised under the MPDA Act, in which case, it would be necessary to see Section 2(b-1) which defines "dangerous person". As per this section dangerous person means a person, who either by himself or as a member or leader of a gang, "habitually commits" , or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959 (LIV of 1959).

10 Thus, a perusal of the Section 2(b-1) would show that if the person singly or as a member or a leader of a gang "habitually commits" or attempts to commit or abets the commission of any offence punishable under Chapter XVI or Chapter XVII of the IPC or Chapter V of the Arms Act, he would be a dangerous person in

terms of Section 2(b-1) of the MPDA Act. Just as a single swallow does not make a summer a solitary act, does not constitute a habit. In the instant case, after the three in camera statements are excluded from consideration as the verification of all the in camera statements by the ACP was not furnished to the detainee and CR No. 3088 of 2015 cannot be taken into consideration, for the reasons stated in paragraph 7 above by us, that leaves us to only with CR No. 91 of 2015. We shall now proceed to examine whether on the basis of this CR, the detainee can be held to be a dangerous person so as to sustain the order of detention.

11 On applying 5-A of MPDA Act, only CR No. 91 of 2015 remains. In such case it can be held that the detention order is issued only on the basis of CR No. 91 of 2015. This solitary act would not constitute a "habit" . In our view on the basis of the said solitary CR No. 91 of 2015 it cannot be said that the petitioner - detainee "habitually commits" or attempts to commit or abets the commission of any of the offences mentioned in Section 2(b-1) of the MPDA Act and since the detainee has been detained as he is a "dangerous person", the impugned detention order would not be sustainable in law."

30. A careful perusal of these findings and conclusions would reveal that for the reasons that are elaborately recorded and based on which the subjective satisfaction was held to be vitiated exclude the three in camera statements and C.R. No.3088 of 2015. The single solitary incident and reflected in C.R. No.91 of 2015 was not enough to arrive at the subjective satisfaction that the detainee is a dangerous person.

31. We are, therefore, of the firm opinion that this decision must be held to be confined to the facts and circumstances of that case. Any broad or wide principle cannot be culled out, much less, which is highlighted that a single incident does not constitute a habit.

32. We say nothing more for there are plethora of judgments in the prevention detention law itself and rendered by the Hon"ble Supreme Court of India from time to time that such absolute legal principle cannot be culled out from its decisions or from the statutes enabling preventive detention. The State has made laws and which, therefore, have been considered from time to time.

33. We would only refer to them and one of them is in the case of Mrs. Saraswathi Seshagiri v. State of Kerala and Anr. AIR 1982 SC 1165.

34. That was referred specifically in the Constitution Bench judgment rendered in the case of Attorney General of India etc. etc. v. Amratlal Prajivandas and Ors. etc. etc. AIR 1994 SC 2179 (Para 47). The paragraph reads thus :

"47. Now, it is beyond dispute that an order of detention can be based upon one single ground. Several decisions of this Court have held that even one prejudicial act can be treated as sufficient for forming the requisite satisfaction for detaining the person. In Debu Mahato v. State of West Bengal (1974) 4 SCC 135, it was

observed that while ordinarily-speaking one act may not be sufficient to form the requisite satisfaction, there is no such invariable rule and that in a given case one act may suffice. That was a case of waggon breaking and having regard to the nature of the Act, it was held that one act is sufficient. The same principle was reiterated in *Anil Day v. State of West Bengal*, (1974) 4 SCC 514. It was a case of theft of railway signal material. Here too one act was held to be sufficient. Similarly, in *Israil SK v. District Magistrate of West Dinajpur*, (1975) 3 SCC 527 and *Dharua Kanu v. State of West Bengal*, (1975) 3 SCC 527, single act of theft of telegraph copper wires in huge quantity and removal of railway fish-plates respectively was held sufficient to sustain the order of detention. In *Saraswathi Seshagiri v. State of Kerala*, (1982) 2 SCC 310, a case arising under COFEPOSA, a single act, viz., attempt to export a huge amount of Indian currency was held sufficient. In short, the principle appears to be this: Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. That is the reason why single acts of waggon-breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish-plates were held sufficient. Similarly, where the person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, it was held that such single act warrants an inference that he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity. If one looks at the acts the COFEPOSA is designed to prevent, they are all either acts of smuggling or of foreign exchange manipulation. These acts are indulged in by persons, who act in concert with other persons and quite often such activity has international ramifications. These acts are preceded by a good amount of planning and Organisation. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention."

35. We do not think that we have to dwell on this aspect and lay down any legal principle or decide as to whether the principle which Mr. Tripathi culls out from the Division Bench judgment in *Jay* (supra) is correct or we not, we leave the matter here.

36. Suffice it to state that everything would depend upon the facts and circumstances and the ground on which the detention is challenged. For the present, we proceed on the assumption that the ground in the present petition would enable Mr. Tripathi to assail the subjective satisfaction.

37. That is assailed in this case on the ground that the copies of the verification statement which though supplied to the petitioner is no verification in law at all. The judgment in the case of Rohidas @ Pintya Laxman Gupte v. The Commissioner of Police, Pune, Writ Petition No. 395 of 2015 decided on 17th April, 2015, proceeded on a consideration of the ground of detention at paragraph 8 with respect to verification of the in camera statements of the witnesses A and B by the Assistant Commissioner of Police, Swargate, Pune. The verification done with respect to these in camera statements was not furnished to the detainee along with the documents in support of the grounds and, therefore, the right to make effective representation guaranteed under Article 22(5) of the Constitution of India is violated. It is in relation to that in paragraph 6, the Division Bench Rules thus :

"6. In response to the aforesaid ground No.7(n) of the Petition, the Respondent No.1 i.e. the detaining authority in his affidavit dated 7th April, 2015 has stated that, in fact the original statements of Witnesses "A" and "B" clearly show that the verification was done by the concerned Assistant Commissioner of Police and the said statements were produced before him which were perused by him and in his grounds of detention at paragraph No.8 he has clearly stated that the Assistant Commissioner of Police, Swargate Division, Pune has verified the Witnesses "A" and "B" and submitted a report to him.

That in the said report the Assistant Commissioner of Police, Swargate Division, Pune has mentioned that the facts given in the statements and apprehension entertained by the Witnesses "A" and "B" are true and reasonable. He has further stated that after perusing the said report, he was satisfied that the facts enumerated in the statements and apprehension entertained by the Witnesses "A" and "B" are true and reasonable. He has further stated that because of non-furnishing of the said verification statements of the Witnesses "A" and "B" recorded by the Assistant Commissioner of Police to the detainee, the right of the detainee to make effective representation guaranteed under Article 22(5) of the Constitution of India is any way prejudiced. He has further stated that with a view to conceal the identity of the witnesses, the said verification statements were not parted with the detainee."

38. Then, reliance is placed and primarily on a Division Bench judgment of this Court in the case of Smt. Subhangi Tukaram Sawant v. Shri R.H. Mendonca and Ors. 2001 ALL MR (Cri) 68. Once again we must notice the challenge in the case of Shubhangi Sawant. Shubhangi Sawant proceeded on the footing that in camera statements recorded by the senior Police Inspector and verified by the Assistant Commissioner of Police, copies of which were supplied to the detainee in the case did not contain the verification made by the concerned Assistant Commissioner of Police. Therefore, the violation to the mandate of Article 22(5) has been held to be established and proved and that judgment proceeds to hold that the detention order is vitiated. It is paragraph 3 of this judgment which is reproduced herein below that is consistently followed later.

"3. From the grounds supplied to the detainee it is apparent that the detaining authority has taken into consideration in camera statement of witness (A) recorded on 16.9.1999 and in camera statement of witness (B) recorded on that very date. There is no dispute that the said in camera statements were recorded by Senior Police Inspector, Saki Naka Police Station and the said in camera statements were verified by the Assistant Commissioner of Police. However, the copies of in camera statements supplied to the detainee do not contain verification made by the concerned Assistant Commissioner of Police. This has resulted in violation of Article 22(5) of the Constitution of India and vitiates the order of detention."

39. We must also, therefore, carefully refer to the judgment in *Smt. Vijaya Raju Gupta v. R.H. Mendonca and Ors.*, 2001 ALL MR (Cri) 48 where a Division Bench of this Court of which His Lordship Hon^{ble} Mr. Justice R.M. Lodha (as His Lordship then was) was a party, referred to the celebrated judgment of the Supreme Court in the case of *Phulwari Jagdambaprasad Pathak v. R.H. Mendonca and Ors.*, (2000) 6 SCC (Cri) 751. In *Vijaya* (supra) as well, what the Division Bench found was that in camera statements were verified by a higher grade officer of the rank of Assistant Commissioner of Police but there appeared to be an apparent inconsistency and dichotomy in the three affidavits that were filed. The detaining authority's affidavit did not reveal the compliance with the mandate of Article 22(5). The Court, therefore, concluded that the English translation of the verification made by the Assistant Commissioner of Police below the in camera statements merely states that the language in which the statements were recorded has been verified and there was nothing more in it. If that was lacking and which enabled the Division Bench of this Court to conclude that there was indeed a verification, then, that factual aspect has prevailed upon the Court in allowing the Writ Petition.

40. *Phulwari*'s case clearly holds that in camera statements regarding alleged acts of the detainee adversely affecting public order can be utilised by the detaining authority for arriving at the subjective satisfaction and that is not prohibited. The effect of these in camera statements and which complied with the constitutional guarantee was an aspect then considered in *Phulwari*'s case (supra) and whether that is enough to sustain the subjective satisfaction. Meaning thereby, whether on the basis of these statements the court can arrive at the conclusion that subjective satisfaction indeed met the tests and standards stipulated by the MPDA Act. However, while concluding that the detention order in that case was not vitiated, the Hon^{ble} Supreme Court held that preventive detention measure is harsh, but it becomes necessary in the larger interest of the society. It is in the nature of a precautionary measure taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of this power, it is not necessary to prove to the hilt that the person concerned had committed any offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably satisfy itself of the necessity for detention of the person concerned in

order to prevent him from indulging in activities prejudicial to the maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute intends to achieve, the power vested in the detaining authority should not be unduly restricted. It is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed.

41. We cannot be unmindful and lose sight of these very vital observations and conclusions of the Hon'ble Supreme Court of India which underline the importance of a statute of the present nature.

42. In such circumstances and having perused all the judgments cited by Mr. Tripathi on this point we are not in agreement with him that there is no compliance with the constitutional mandate in the instant case. The verification report in the present case and placed on record is indeed a verification. The Assistant Commissioner of Police is admittedly a higher officer in the hierarchy. The statements recorded before the senior Police Inspector of Pimpri Police Station and in camera were placed before this Assistant Commissioner of Police. In his verification report, he certifies that he summoned the persons making such statements and they reiterated the contents of the in camera statements before him. Based on this, he was satisfied that the incidents narrated are indeed true and have taken place and, therefore, they could be said to be having reasonable nexus with the criminal activities and that is why he forwarded the proposals for the detention of the detainee to a higher officer in the hierarchy.

43. None of the judgments cited lay down any principle that there is any particular format in which the verification must be done. The verification ought to be there. The in camera statements and the witnesses making them ought to be questioned about them. Thus, it should be verification and not in a particular format or answering any particular description or employing any particular words and expressions. Similarly, none of these decisions say that the verification ought to be appearing on the face of the in camera statements or the copy of the same supplied to the detainee. If there is an in camera statement recorded and there is a verification done the verification can well be contained in a separate report. So long as copy of the statements and that report is forwarded to the detaining authority, if that forms part of the material and documents taken into consideration by the detaining authority, then, neither the detention is vitiated for lack of supply thereof nor the right to make an effective representation guaranteed under Article 22(5) of the Constitution of India is affected. From the record of the present case, we have found that there is indeed a verification of the statements recorded in camera. The detainee cannot expect that the identity of these persons or the witnesses ought to be revealed. Given the demands of secrecy and confidentiality in such matters, though the report is confidential in

nature, it has not set out the names of these persons and advisedly. Yet copies of all the statements and this report was furnished to the petitioner. After the petitioner/detinue was indeed furnished a copy of this report, then merely because such a verification as is demanded by law does not appear on the face of the copies of the in camera statements that would not vitiate the order of detention nor the continued detention on the grounds of violation of the constitutional mandate. The petitioner's assertion in the grounds reproduced above is that no copies of the verification report are supplied to the detinue. At the same time the contrary plea is that there is no verification at all. Now, the argument is otherwise and that the copy of verification report being supplied is apparent from page 43 of the petition, but that is assailed as not in accordance with law. However, no requirement in law is placed before us. The judgments relied upon are distinguishable as they are not on this point at all.

44. Once we cannot exclude the in camera statements as desired by Mr. Tripathi, then, the incidents therein and which are found to be true and genuine together with the contents of the C.Rs can certainly form the basis of a subjective satisfaction that the detinue is a dangerous person. That the activities, therefore, come within the purview of the definition of those terms and relevant and material for our purpose in the MPDA Act is thus apparent.

45. We cannot exclude the verification report and neither, as desired by Mr. Tripathi, the contents of the C.R. for the law requires the subjective satisfaction to be based on the activities of the detinue being prejudicial to the maintenance of public order. This not a vague or uncertain term. It is statutorily defined. In the MPDA Act, unless the context otherwise requires "acting in any manner prejudicial to the maintenance of public order" means :

(i) in the case of a slumlord, when he is engaged, or is making preparations for engaging in any of his activities as a slumlord, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(ii) in the case of a bootlegger, when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(iii) in the case of a drug-offender, when he is engaged, or is making preparations for engaging, in any of his activities as a drug-offender, which affect adversely, or are likely to affect adversely, the maintenance of public order.

(iv) in the case of a dangerous person, when he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order.

(v) in the case of a video pirates, when he is engaged, or is making preparations for engaging, in any of his activities as a video pirates, which affect adversely, or are likely to affect adversely, the maintenance of public order.

Explanation. - For the purpose of this clause (a), public order shall be deemed to

have been affected adversely, or shall be deemed likely to be affected adversely, inter alia, if any of the activities of any of the persons referred to in this clause directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof, or a grave or widespread danger to the life of public health or disturbs the life of the community by producing and distributing pirated copies of music or film products, thereby resulting in a loss of confidence in administration:"

46. This must be read together with sub-clauses (i) to (iv) and the Explanation. That is an explanation for clause (a) as a whole. That enacts a deeming fiction. Thus, the explanation takes in its fold not only what is set out in clause (a), but also in the subclauses (i) to (iv). The deeming fiction, therefore, cannot be ignored nor the explanation as a whole. One finds that clause (iv) therein has been pressed into service in the present case. The term "dangerous person" is also defined in the very statute as under :

"2. Definitions.- In this Act, unless the context other requires.-

(a) ? ? ? ?

(b-1) "dangerous person" means a person who, either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959 (LIV of 1959);"

47. A bare perusal of this definition would denote as to how a person who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959, is a dangerous person and if he is engaged or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order, that he can be detained under section 3 of the MPDA Act.

48. We must not forget this chain and which we have attempted to connect with the aid of these statutory definitions. We have not found anything in the context of the present case which requires a different interpretation being placed on these words and expressions.

49. Once we hold as above that the in camera statements, copies of which were duly supplied as also the verification report cannot be omitted from consideration then the contents thereof and equally the two C.Rs can safely lead to the conclusion that the detainee is a dangerous person. This is not a case of a single swallow making a summer. This is not a case where the contents which are subject matter of the two C.Rs are not referable to the Chapters XVI and XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the

Arms Act, 1959. Indeed, that is not the argument of the detainee as well. The contents of the C.Rs are extensively referred and that is how the subjective satisfaction is arrived at. To complete the chain, we would reproduce paragraphs 6, 7, 8 and 9 of the detention order:

"6. After going through your criminal record, it is seen that, you are a habitual and dangerous criminal involved in serious crimes. Your dangerous and criminal activities are threatening to public life and property. You were arrested in various offences and were granted bail by the Hon'ble court. After you were released on bail, you have again committed various serious crimes. The residents, local traders and workers are under tremendous fear due to the reign of terror created by you. Your terrorising acts have disrupted the routine life of the residents of the locality. To contain your criminal activities, preventive actions were taken against you. However, your criminal activities are showing an ascending trend and are prejudicial to maintenance of public order. This shows that, normal laws of the land are insufficient to contain your dangerous criminal activities.

7. From the above facts, I am subjectively satisfied that you are a "dangerous person" as defined in Section 2 (b-1) of the said Act. You have unleashed a reign of terror and have become a perpetual danger to the society at large in the area of Bhosari, Hinjewadi and Pimpri Police Station. The people are experiencing a sense of insecurity and are living under shadow of constant fear, whereby even day-to-day business and activities of citizens are under threat. You show no respect to law of the land and to the citizens of the society where you live. You are perpetually an impulsive violent man who wants to spread terror in the society by your violent criminal activities in connivance with your criminal

8. I have carefully gone through the material placed before me and I am subjectively satisfied that you are acting in a manner prejudicial to the maintenance of public order. On 27/07/2015 you were granted bail by the Hon'ble court and since then you are on bail. In view of your tendencies and inclinations reflected in the offences committed by you as stated above, I am further satisfied that having become a free person, you are likely to revert to similar activities. These are prejudicial to the maintenance of public order in future and it is necessary to detain you under the said Act to prevent you from acting in such prejudicial manner in future.

9. I hereby communicate to you as required under Section 8(1) of the said Act read with Article 22(5) of the Constitution of India, the aforesaid grounds on which detention order has been passed by me. The copies of documents placed before me are enclosed herewith except the particulars of the Witnesses in connection with grounds at paragraph No.5 of grounds of detention which cannot be furnished to you in the public interest for which I claim privilege as per Section 8(2) of the said Act r/w Article 22(6) of the Constitution of India. The Assistant Commissioner of Police, Pimpri Division, Pune has verified the Witnesses "A" and "B" and submitted a report to me. In the said report, the

Assistant Commissioner of Police, Pimpri Division, Pune has mentioned that the facts given in the written statements and apprehension entertained by the Witnesses "A" and "B" therein are true and reasonable. After perusing the said report, I am satisfied that the facts given in the statements and apprehension entertained by the Witnesses "A" and "B" are true and reasonable."

50. Upon a perusal of these paragraphs and which clearly refer to not only the in camera statements, but the contents of the C.Rs, the subjective satisfaction that the detainee is a dangerous person can be sustained. We are in agreement with Mr. Yagnik that in the instant case, the incidents which are not of the immediate past, but are of the years 2010 and 2012 are not relied upon, but referred to indicate the activities indulged in by the detainee. They disclose his past antecedents and activities. Beyond that, the subjective satisfaction is not based on them. The subjective satisfaction is based on the incidents of the immediate and recent origin. Those have been extensively referred and we find that it is not possible to agree with Mr. Tripathi that the incidents recorded and forming part of C.R. Nos. 3098 of 2015 and 392 of 2015 and the in camera statements together will not be enough to arrive at the subjective satisfaction that the detainee is a dangerous person within the meaning of the term and that the criminal activities and of the nature referable to the statutory prescription affect adversely the maintenance of public order.

51. Once we arrive at the above conclusion, then, it is not necessary to refer to all the judgments and which have been relied upon by Mr. Tripathi on the second point, namely, that the single or solitary incident cannot form subject matter of the subjective satisfaction with regard to the detainee being a dangerous person. That by habit and therefore, habitually he should be indulging in such activities is the emphasis of the arguments of Mr. Tripathi. All judgments on that point are clearly, therefore, distinguishable for we are not concerned with the case of a single solitary incident.

52. As a result of the above discussion, the Writ Petition fails. Rule is discharged.

53. We clarify that the judgment that we have delivered in the present case and distinguishing all the other authorities and precedents is in the backdrop essentially of the facts and circumstances of the present case. Secondly, having found that there was indeed a verification report and which answers and satisfies the requirement of the constitutional guarantee that we conclude that the in camera statements could have formed the basis of the subjective satisfaction.