
(2012) 10 BOM CK 0159

In the Bombay High Court

Case No : Criminal Writ Petition No. 2174 of 2012

Swapnil Sanjay Tahsildar

APPELLANT

Vs

The District Magistrate and Others

RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226

Citation : (2013) ALLMR(Cri) 16

Hon'ble Judges : Sadhana S. Jadhav, J;A.S. Oka, J

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; A.S. Pai, App for the State, for the Respondent

Final Decision : Allowed

Judgement

A.S. Oka, J.—By this Petition for seeking a writ of habeas corpus under Article 226 of the Constitution of India, the Petitioner has taken an exception to the order dated 26th April, 2012 passed by the first Respondent in exercise of powers u/s 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders & Dangerous Persons Act, 1981 (hereinafter referred to as the "Said 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. Learned counsel appearing for the Petitioner has urged two grounds. The first 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 two in-camera statements are not verified by any senior officer to ensure that the statements are true and genuine. Learned counsel appearing for the Petitioner pointed out the affidavit of the detaining authority in which it is contended that in-camera statements were duly verified by the Sub-Divisional Police Officer, City Police Station, Kolhapur on 16th February, 2012. He submitted that copies of the verification statements were not furnished to the Petitioner detenu which is in violation of Article 22(5) of the Constitution of India.

He pointed out that the detaining authority has relied upon three criminal cases registered against the Petitioner. However, in case of none of the three offences, the bail orders have been placed before the detaining authority and the detaining authority was completely unaware of the position regarding grant of bail. He pointed out that in case of one offence, the detaining authority has merely recorded that the Petitioner was released on bail. However, he urged that there is nothing on record to show that the order granting bail was placed before the detaining authority. He invited our attention to Paragraph 3 of the affidavit-in-reply filed by the detaining authority in which it is admitted that in case of C.R. NO. 27 of 2012, the bail order was passed after submission of the proposal and, therefore, the bail order was not included in the supporting documents of the proposal. He has placed reliance on various decisions of this Court and the Apex Court. The learned APP supported the impugned order of detention. The learned APP submitted that considering the prejudicial activities of the Petitioner, the detaining authority has rightly passed an order of preventive detention after recording subjective satisfaction. Her submission is that no interference can be made with the impugned order of detention in view of the subjective satisfaction recorded by the detaining authority after considering the prejudicial activities of the Petitioner detenu.

2. 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, Kolhapur on 16th February, 2012. The detaining authority has merely stated that copies of in-camera statements have been duly furnished by the Petitioner detenu. We may note here that in Ground (b), 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 in-camera statements and the copies of the verification have not been furnished to the Petitioner detenu.

3. 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 Tukaram Sawant Vs. R.H. Mendonca and Others, . He has also placed reliance on another decision of a Division Bench of this Court in the case of Shri Vijay Ramchandra Angre Vs. Shri S.M. Shangari and Others, . 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 detention is vitiated on that ground. Perusal of the affidavit of the detaining authority shows that in relation to C.R. No. 27 of 2012, the Petitioner was enlarged on bail before the

order of detention was passed. Perusal of the affidavit of the detaining authority shows that the application for bail and the order granting bail was not perused by the detaining authority.

4. It is well settled law that the bail order passed in favour of the detenu is a vital document. In the case of Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others, , the Apex Court held that non placing and non consideration of vital material such as bail order vitiates the order of the detention passed by the detaining authority. Thus, even on this count, the order of detention is vitiated. Hence, the Petition must succeed and we pass the following order:-

ORDER:

(a) The Rule is made absolute in terms of prayer clause (c).