

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.336 OF 2021

Pravin Ganpat Kakad
Age 23 years, Residing at Flat No.8,
Krushna Apartment, Shivaji Nagar,
Dindori Road, Mhasrul, Nashik

..Petitioner

Versus

1. The Commissioner of Police,
Nashik City, Nashik.

2. The State of Maharashtra
(Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department
Mantralaya, Mumbai).

3. The Superintendent,
Nashik Road Central Prison, Nashik.

..Respondents

Ms. Jayshree Tripathi, Advocate for the Petitioner.
Mr. J. P. Yagnik, APP for the Respondent - State.

**CORAM : S. S. SHINDE &
MANISH PITALE, JJ.**

**RESERVED ON : 05.03.2021
PRONOUNCED ON : 19.03.2021**

JUDGMENT (Per Manish Pitale, J.)

1. By this writ petition the petitioner has challenged the order of detention dated 21.08.2020 passed by the respondent No.1 i.e. Commissioner of Police, Nashik City under section 3 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 as “the MPDA Act”) whereby petitioner has been detained. The order of detention and the grounds of detention along with relied upon material were served upon the petitioner.

2. Although number of grounds have been raised on behalf of the petitioner in the present writ petition, the learned counsel appearing for the petitioner has pressed grounds (c), (h), (i) and (f) in order to challenge the aforesaid detention order. Ground (c) pertains to improper recording of subjective satisfaction about truthfulness of in camera statements. Grounds (h) and (i) pertain to wrong translation of relied upon documents and ground (f) pertains to alleged non-application of mind by the respondent No.1 - detaining authority while issuing the detention order.

3. Ms. Jayshree Tripathi, learned counsel appearing for the petitioner specifically submitted that a perusal of the record would show that the truthfulness of the in camera statements was not properly verified and recorded that there was no subjective satisfaction of the officers in that regard. It was submitted that this indicated that the in camera statements could not be accepted as authentic and they could not have been utilized for the purpose of issuing the detention order. In support of the said ground, learned counsel for the petitioner

has relied upon **Lakhan Rohidas Jagtap Vs. Commissioner of Police, Pune & Ors., 2009 ALL MR (Cri) 5261, Smt. Vijay Raju Gupta Vs. R. H. Mendonce & Ors., 2001 All MR (Cri) 48, Zabin Salim Shaikh Vs. Shri. A. N. Roy, 2006 ALL MR (Cri) 3324** and **Ashish S/o Robert Felix Vs. Commissioner of Police, Nagpur City, Criminal Writ Petition No.390 of 2014.**

4. It was submitted by the learned counsel for the petitioner in the context of grounds (h) and (i) raised in the writ petition that wrong translation of vital documents relied upon by the respondent No.1 - detaining authority had vitiated the detention order. It was submitted that such wrong translation adversely affected the right of the petitioner under Article 22(5) of the Constitution of India for making an effective representation.

5. Learned counsel for the petitioner further submits that a perusal of the detention order demonstrated that there was non-application of mind because it was stated by the respondent No.1 that prejudicial activities of the petitioner concerned six named areas and adjoining localities of Nashik city whereas there was no material to support such an assertion. On this basis, it was claimed that the detention order deserved to be set aside. In this regard, learned counsel for the petitioner relied upon **Vijaya Ganesh Gajre Vs. Commissioner of Police, Pune & Ors., Criminal Writ Petition No.5052 of 2015.**

6. On the other hand, Mr. J. P. Yagnik, learned APP appearing on behalf of the respondents submitted that there was no substance in the contentions raised on behalf of the petitioner. Firstly, it was stated that the ground pertaining to alleged improper verification about truthfulness of in camera statements was not sustainable because there was no set format under which such verification was required to be recorded. It was submitted that in the present case the material on record sufficiently demonstrated that the in camera statements had been verified by the concerned officer and that therefore it could not be said that such statements were not reliable or that the respondent No.1 could not have considered such statements while issuing the detention order. In this regard, learned APP relied upon judgment of this dated 03/04.03.2016 passed in **Criminal Writ Petition No.4510 of 2015, Santosh Kashinath Kamble Vs. State of Maharashtra & Ors..**

7. Learned APP further submits that ground pertaining to improper or wrong translation of documents was also not sustainable for the reasons that the petitioner was required to demonstrate the prejudice that he had suffered due to such alleged wrong translation. It was further submitted that when the representation was admittedly made through advocate, such a ground was not available to the petitioner. In this regard, learned APP relied upon judgment of this Court in the case of **Bhaskar A. Shetty Vs. M. N. Singh, Commissioner of Police & Ors, 2001(5) Bom.C.R. 718.**

8. Learned APP further submits that the ground regarding non-application of mind was without any substance because entire material that was relied upon by the respondent No.1 - detaining authority was communicated along with the grounds of detention to the petitioner and therefore it could not be said that the detention order was liable to be set aside. Learned APP submitted that the material on record sufficiently demonstrated that the activities of the petitioner were prejudicial to public order and therefore the detention order was justified.

9. We have heard learned counsel for the rival parties and we have perused the writ petition as well as the replies and also the record pertaining to the case. In matters concerning detention of persons by exercise of power under statutes like the MPDA Act, the Courts have consistently scrutinized the material on record in detail so as to ensure that all safeguards are properly followed by the concerned authorities in order to ensure that the valuable rights available to detenués under Article 22 of the Constitution of India are not violated. The authorities are expected to scrupulously follow such requirements so as to ensure that detention of a person in exercise of such extraordinary power, without recourse to ordinary law, is strictly in accordance with law.

10. In the present case, in so far as the first ground of challenge is concerned, learned counsel for the petitioner has submitted that the verification regarding truthfulness of in

camera statements was not in accordance with law and therefore the in camera statements could not have been relied upon. In reply to the said ground, respondent No.1 has specifically stated that he was subjectively satisfied regarding the truthfulness of in camera statements and that the said statements were verified by the Deputy Commissioner of Police (Zone-1), Nashik City. The endorsement made by the said officer has been quoted in the reply and this is as per the record of the case. Learned counsel for the petitioner has relied upon four judgments mentioned above to claim that such verification in the present case was not in accordance with law.

11. In these judgments it was found on facts that the verification was not satisfactory and therefore in camera statements could not have been made the basis for issuance of the detention order. In this regard, a division bench of this Court in the case of **Santosh Kashinath Kamble** (*supra*) has held that there is no particular format in which verification of an in camera statement has to be recorded. It is laid down that there should be verification on such in camera statements and no particular format is expected and no particular words and expressions are supposed to be employed while recording verification of such in camera statements. The endorsement of the Deputy Commissioner of Police (Zone-1), Nashik City filed by respondent No.1 shows that the places mentioned in the in camera statements were visited by the verifying officer and truthfulness of the incidents mentioned in the statements was verified from the people present during such incidents. We are

of the opinion that such an endorsement clearly satisfies the requirement about verification of truthfulness of in camera statements and therefore, we find that there is no substance in the aforesaid ground raised on behalf of the petitioner.

12. As regards the second ground of challenge pertaining to wrong translation of certain documents supplied along with the order of detention, it is necessary to peruse the documents that were allegedly wrongly translated. We found on a perusal of the documents that there appear to be errors in the translation of few words in a medical certificate and part of reply to a bail application concerning the petitioner. The basis for claiming that such wrong translation ought to be held to be fatal to a detention order, is that it interferes with the right of the detinue to make an effective representation. In the present case, we are unable to appreciate how error in translation of the aforesaid two documents adversely affected the right of the petitioner to make an effective representation. In the six aforesaid judgments on which the learned counsel has placed reliance in support of the aforesaid ground, it was found on facts that supply of wrong translations had indeed adversely affected the right of detenués in those cases in making effective representations. In this regard, learned APP is justified in relying upon judgment of this Court in the case of **Bhaskar A. Shetty** (*supra*), wherein it has been categorically laid down that the Court must reach a conclusion that incorrect translation of a document or any infirmity in such translation has prejudicially affected or frustrated the right of the detinue

to make an effective representation. Therefore, it will not suffice for the petitioner to show error in translation of a few words in a couple of documents, but he will have to demonstrate how such erroneous translation adversely affected his right to make a purposeful and effective representation. We are of the opinion that in the facts of the present case, the petitioner has failed to do so.

13. Learned APP is justified in bringing to the notice of this Court that the representation in the present case was made by the petitioner through his advocate and that neither the petitioner nor his advocate at any point in time claimed that wrong translation of the said documents had prejudicially affected the right of the petitioner to make a purposeful representation. Therefore, we find that there is no substance in this ground also.

14. As regards the third ground pertaining to alleged non-application of mind on the part of the respondent No.1 i.e. detaining authority while issuing the detention order, we have perused the grounds of detention as also the entire record of the case. In the grounds of detention, respondent No.1 has not only given the past history but the said authority has also recorded the number of FIRs registered against the petitioner, in respect of which the petitioner is facing trial. The respondent No.1 has noted chapter proceedings initiated against the petitioner, as also recent offences in the form of FIRs registered against the petitioner for serious offences under the Indian

Penal Code as well as the Arms Act. The respondent No.1 has then referred to the two in camera statements indicating the activities of the petitioner and the manner in which his activities have prejudicially affected public order.

15. In this backdrop, we find that the ground of non-application of mind raised on behalf of the petitioner cannot be sustained. The judgment on which the learned counsel for the petitioner has placed reliance in this regard i.e. the case of **Vijay Ganesh Gajre** (*supra*) is distinguishable on facts because in the said case, this Court found that the detaining authority had wrongly placed reliance on certain FIRs and that the subjective satisfaction of the detaining authority was on wrong set of facts. Such is not the case here and this is evident from the contents of the grounds of detention in the present case.

16. In view of the above, since we have found that the grounds of challenge specifically raised on behalf of the petitioner are without any substance, the writ petition deserves to be dismissed. Accordingly, the writ petition is dismissed.

[MANISH PITALE, J]

[S. S. SHINDE, J]