



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION ST NO. 7369 OF 2023

Vilas Ashok Aawale  
Age: 49 years, Occ: Nil  
residing at – 1869, Ware  
Vasahat, Mangalwar Peth,  
Kolhapur.  
**(At present son of the petitioner  
is detained in the District Central  
Prison, Kalamba, Kolhapur)**

...Petitioner

Versus

1. The State of Maharashtra  
(Through the Additional Chief  
Secretary, Home Department,  
having office at Mantralaya,  
Mumbai)

2. The Collector, Kolhapur  
having office at Swaraj Bhavan,  
Nagala Park, Kolhapur.

3. The Superintendent  
District Central Prison,  
Kalamba, Kolhapur.

.....Respondents

Mr. Satyavrat Joshi a/w Mr. Sumant Deshpande, i/b Mr. Samay Pawar,  
for the Petitioner.

Ms. S. D. Shinde, APP for Respondents – State.

**CORAM : REVATI MOHITE DERE &  
GAURI GODSE, JJ.**

**DATE : 15<sup>th</sup> JUNE 2023**

**JUDGMENT: (PER: GAURI GODSE, J.)**

1. Heard.
2. This petition is filed to challenge the order of Detention bearing No. Desk-7/Home/Pol/MPDA/SR/02/2022 dated 16<sup>th</sup> December 2022 issued by the Respondent No. 2 – The District Magistrate, Kolhapur, in exercise of the powers conferred by sub-section (2) of 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 ('MPDA Act') for detaining the Petitioner's son – Pruthviraj Vilas Aawale.
3. Perusal of the detention order indicates that the offence registered against the detenu on 17<sup>th</sup> September 2022 being C.R. No. 509 of 2022 registered with Juna Rajwada Police Station as well as the

in-camera statements of two witnesses, are relied upon by the detaining authority to pass the order of detention.

4. The petitioner has raised various grounds for challenging the order of detention; however, it is not necessary to consider all the grounds raised by the petitioner, in as much as the Petition ought to succeed only on the ground raised in clause (B) of paragraph 6 of the petition, which reads as under:

*“B. That there is a gross difference in the English version and Marathi version of ‘grounds of detention’. In the English version it is mentioned in para 2 that “Thus to achieve criminal objectives, you have habitually committed offences against the public peace viz. committed offences of the type of murder by using a deadly weapon in a public place”. However, this is not mentioned in the Marathi version. The petitioner's son has not committed murder of any person, nor any such offence has ever been registered against him. This clearly shows a complete lack of application of mind on the part of the Detaining Authority (henceforth to be referred to as **DA** for the sake of brevity). This also shows that the DA was misguided by placing before him fabricated*

*papers.”*

5. Learned counsel for the Petitioner submitted that the ground stated by the Detaining Authority for recording satisfaction for issuing the detention Order as per the English version of the detention order and the Marathi version is different. The learned counsel referred to the reasons recorded in paragraph 2 of the detention order and the contents of the Marathi version of the same order. Thus, by comparing the English version as well as the Marathi version of the order, the learned counsel submitted that there is variance in the grounds of detention recorded in the English version of the impugned order and in the Marathi version of the same order.

6. Learned counsel for the petitioner submitted that perusal of the order of detention would show that there is a chart showing various offences registered against the detenu; however, the same is not relied upon by the detaining authority for passing the order of detention. He submitted that the only offence registered against the detenu on 17<sup>th</sup> September 2022 i.e. C.R. No. 509 of 2022, has been relied upon by

the detaining authority. Learned counsel further submitted that there is complete non-application of mind by the detaining authority in passing the detention order.

7. Learned APP has tendered an affidavit dated 14<sup>th</sup> June 2023 of Mr. Rahul Rekhawar, District Magistrate, Kolhapur, on behalf of the detaining authority (Respondent No. 2), as well as an affidavit of Mr. Anil Kulkarni, Joint Secretary, Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai on behalf of The State of Maharashtra (Respondent No. 1). The affidavits tendered by the learned APP are taken on record. The learned APP, by relying upon the aforesaid affidavits, has supported the order of detention.

8. Learned APP, by relying upon the affidavit filed on behalf of the Detaining Authority, denied that the relevant documents were not placed before the detaining authority as sought to be contended by the petitioner. The learned APP submitted that the in-camera statements of the two witnesses would show the violent tendencies and criminal activities of the detenu, which are prejudicial to the maintenance of

public order. She further submitted that the list of cases referred to in the detention order would show the tendency and inclination of the detenu towards illegal activities. The learned APP further submitted that perusal of the Marathi version of the order, as well as the English version, would show that there is absolutely no variance in both versions. Learned APP has thus supported the order of detention.

9. We have considered the submissions made by both parties. A perusal of the Marathi and English version of the detention order shows that the contents recorded in the English version of the order are absent in the Marathi version. Paragraph 2 of the English version of the order records ground for detention as under:

*“Thus to achieve criminal objectives, you have habitually committed offences against the public peace viz. committed offences of the type of murder by using a deadly weapon in a public place”.*

10. Learned counsel for the petitioner is thus right in submitting that there is variance in the Marathi version of the order as well as the English version. The ground recorded in paragraph 2 of the English

version is not consistent with the purpose of issuing detention order as recorded in the Marathi version. A perusal of the said paragraph of the English version of the detention order would show that there is a positive assertion that the detenu has committed offences of the type of murder; however, the Marathi version of the detention order does not record any such positive assertion. Thus, the learned counsel for the Petitioner is right in submitting that such variance in both versions of the detention order has deprived the detenu of making an effective representation against his detention.

11. Perusal of the affidavit filed on behalf of the detaining authority does not explain the reason for the variance in contents of the Marathi and English versions of the detention order. A perusal of the Marathi, as well as the English version of the detention order, shows that there is material inconsistency in both versions, which goes to the root of the matter. The English version says the detenu has committed offences of the type of murder, and the only CR relied upon is for the alleged offences punishable under Sections 326, 323, 504, read with

34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act. Therefore, there is complete non-application of mind in passing the detention Order. Thus, variance in the Marathi as well as the English version of the ground of detention recorded in the detention order, as noted aforesaid, left the detenu confused and deprived the detenu of making an effective representation against his detention. Any non-application of mind by the detaining authority would amount to a breach of constitutional imperative and would render continued detention impermissible and illegal.

12. In view of the facts of the present case, it is necessary to refer to the decision of this Court in the case of *Pradeep Panchal Vs The State of Maharashtra and others*<sup>1</sup>. In the case of *Pradeep Panchal*, the detaining authority had furnished a Hindi version of the detention order, as the detenu was not conversant with the English language. The ground of challenge to the detention order was that there were several discrepancies and variations in the English and Hindi version of the detention order. This Court set aside the order of detention by

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1 2014 ALLMR (Cri) 2331



holding in paragraph 15 as under:

*“As the law relating to prevention detention is visited with serious consequences, the question of 'prejudice', 'inadvertent mistakes' and 'typographical errors' have no place and no judicial protection can be afforded to such glaring mistakes that stare in the face of the detenu. In the light of the aforesaid, we hold that non-furnishing of accurate, true and faithful Hindi translation of the order of detention is a serious and glaring infirmity, which in the facts of the case, had the potential to mislead/confuse the detenu in making an effective representation. We therefore, have no hesitation in holding that because of the variance in the Hindi translation provided to the detenu, his right to make an effective representation under Article 22(5) of the Constitution of India was clearly impaired.....”*

13. In similarly situated facts of the case of ***Vijay Kumar Dharna @ Koka Vs Union of India and others***<sup>2</sup>, the Hon'ble Supreme Court has held that because of variance in the Gurmukhi version of the

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<sup>2</sup> (1990) 1 SCC 606

detention order and the contents of the detention order, the detenu was unable to make an effective representation against his detention and was thereby denied his right under Article 22(5) of the Constitution. The Hon'ble Supreme Court has held in paragraph 4 as under:

*“4. In the Gurmukhi version of the detention order it was stated that the detention order had become necessary ‘with a view to preventing him from smuggling goods and from abetting the smuggling of goods’. It is, therefore, clear that according to the Gurmukhi version the detenu was taken in detention under clauses (i) and (ii) of Section 3(1) of the Act. However, when we turn to the grounds of detention the detaining authority records his satisfaction as under:*

*“I am satisfied it is necessary to detain you under COFEPOSA Act, 1974 with a view to preventing you from concealing, transporting smuggled goods as well as dealing in smuggled goods”.*

*This satisfaction clearly reflects the grounds contained in clauses (iii) and (iv) of Section 3(1) of the Act. The above satisfaction does not speak of smuggling of goods or abetting the smuggling of goods which are the grounds found in the Gurmukhi version of the detention order. There is, therefore, considerable force in the contention urged by the learned counsel for the appellant that on*

*account of this variance the detenu was not able to effectively represent his case before the concerned authorities. In fact according to him the appellant was confused whether he should represent against his detention for smuggling of goods and/or abetting the smuggling of goods or for engaging in transporting and concealing smuggled goods and/or dealing in smuggled goods. Besides the English version of the detention order was only for abetting the smuggling of goods. The satisfaction recorded in the Gurmukhi version of the grounds for detention is not consistent with the purpose for detention found in the detention order. It left the detenu confused whether he should represent against the grounds in the detention order or the satisfaction recorded in the grounds of detention. We are, therefore, of the opinion that because of this variance the detenu was unable to make an effective representation against his detention and was thereby denied his right under Article 22(5) of the Constitution.*

14. The principles of law laid down by the Hon'ble Supreme Court in the case of ***Vijay Kumar Dharna @ Koka***, as well as by this Court in the case of ***Pradeep Panchal***, are squarely applicable to the facts of the present case. Thus, the law relating to preventive detention, being a drastic law affecting the personal liberty of a person, is required to be applied with utmost care and caution. Any kind of non-application of

mind will vitiate the order of detention and also deprive the detenu of making an effective representation and render the continued detention illegal and impermissible. On perusal of the facts of the present case, we are of the opinion that the satisfaction recorded in the English version of the grounds for issuing detention order is not consistent with the grounds recorded in the Marathi version, which shows that the detenu has been deprived of making an effective representation. Thus, the right of the detenu under Article 22(5) of the Constitution of India is violated, thereby rendering his detention illegal.

15. Thus, for the reasons recorded above, the petition is allowed by passing the following order:

### **ORDER**

i) Petition is allowed and rule is made absolute in terms of prayer clause 'b' which reads as under:-

“b. The order of Detention bearing No. Desk-7/Home/Pol/MPDA/SR/02/2022 dated 16/12/2022 issued under Section 3 of M.P.D.A. Act 1981 by the

Respondent No. 2 be quashed and set aside and on quashing the same the Petitioner's son namely Mr. Pruthviraj Vilas Aawale be ordered to be released forthwith.”

- ii) The detenu is set at liberty forthwith, if not required in any other case.

All concerned to act on the authenticated copy of this order.

**GAURI GODSE, J.**

**REVATI MOHITE DERE, J.**

**IRESH  
MASHAL**

Digitally signed by IRESH  
MASHAL  
Date: 2023.07.17 17:56:17 +0530