

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

CRIMINAL WRIT PETITION NO. 4854 OF 2015

Shri. Sagar Prakash Bhosale]
Age 21 years, Residing at Settlement]
Free Colony No.3, Near Anganwadi]
No.4, Solapur].. Petitioner

Vs.

1. The Commissioner of Police,]
Solapur]
]]
2. The State of Maharashtra]
(Through Addl. Chief Secretary]
to Government of Maharashtra]
Home Department, Mantralaya]
Mumbai]
]]
3. The Superintendent]
Yerawada Central Prison,]
Pune].. Respondents

....

Mr. Udaynath Tripathi Advocate for Petitioner
Mr. J.P.Yagnik A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI AND
SMT. ANUJA PRABHUDESSAI, JJ.**

RESERVED ON : MARCH 18, 2016

PRONOUNCED ON : APRIL 04 , 2016

JUDGMENT [PER SMT. V.K.TAHILRAMANI, J.] :

1 The petitioner / detenu - Sagar Prakash Bhosale has preferred this petition questioning the preventive detention order passed against him on 1.6.2015 by the respondent no.1 i.e. Commissioner of Police, Solapur. The said detention order has been passed in exercise of powers under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (No. LV of 1981) (Amendment-1996 and 2009) (hereinafter referred to as the "MPDA Act"). The said detention order is based on one C.R. i.e. C.R. No. 350 of 2014 dated 7.12.2014 of Vijapur Naka Police Station, Solapur and two incamera statements. The said C.R. is under Section 392 read with Section 34 of IPC. The detention order was passed whilst the detenu was already lodged in Jail in connection with C.R.No. 350 of 2014. After passing of the detention order, the said detention order along with grounds of detention was served to the detenu in Jail.

2 Though grounds (a) to (g) have been raised in this

petition whereby the detention order has been assailed, however, Mr. Tripathi, the learned counsel appearing for the petitioner, has pressed only one ground i.e. ground (c) of the petition. In the said ground (c), it is stated that the detenu was already in judicial custody in C.R.No. 350 of 2014 which is a case under Section 392 read with Section 34 of IPC. He is in custody in the said case since 14.2.2015 and was not granted bail in the said matter. The remaining part of ground (c) briefly stated, is as under:

"(c) The detaining authority has not recorded his satisfaction as regards to the imminent possibility and real possibility of detenu's release on bail in abovesaid case. Moreover, there are no cogent materials before the detaining authority to come to such conclusion. It is therefore, not justified on the part of the detaining authority to clamp detention law on a person who is already in custody w.e.f. February, 2015.....

Since the detenu has never applied for bail, there cannot be any possibility of availing bail in the said C.R.No. 350 of 2014".

3 The sole contention raised before us, is that, since the detenu was already in jail, the subjective satisfaction

recorded by the detaining authority for issuing the impugned detention order, is vitiated. In that, the subjective satisfaction is founded on the ***ipse dixit*** of the detaining authority and not supported by any circumstance or material indicative of real possibility of release of the detenu on bail, who was already in custody. The learned counsel for the petitioner has stretched his argument to the extreme by contending that on the date of passing of the detention order, if no bail application has been moved by the detenu or was pending, then it necessarily follows that there was no likelihood of the person in custody being released on bail, hence, in such cases, the detention order would be nothing, but illegal.

4 To buttress this argument, reliance is placed on the decision of the three-Judge bench of the Apex Court in the case of ***Rekha vs. State of Tamil Nadu & anr., (2011) 4 SCC 260***. Reliance was placed on paragraph 27 of the judgment wherein it is stated that "there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person

in custody being released on bail, and hence, the detention order will be illegal."

5 The learned A.P.P. on the other hand placed reliance on two subsequent decisions of the Supreme Court in the case of ***D.M.Nagaraja Vs. Government of Karnataka and others***, reported in ***(2011) 10 S.C.C. 215*** and ***G. Reddeiah Vs. Government of Andhra Pradesh and another***, reported in ***(2012) 2 S.C.C. 389***. In both these decisions, the Supreme Court considered the earlier decision in the case of *Rekha* (*supra*) & distinguished it. In the case of *Nagaraja*, it is observed as under:

"18. The learned counsel for the appellant very much relied on a decision of Apex Court in *Rekha*. In the above case, against the detention order dated 8.4.2010 imposed on Ramkrishnan under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982 on the allegation that he was selling expired drugs after tampering with labels and printing fresh labels showing them as non-expired drugs, his wife filed a

habeas corpus petition before the Madras High Court. The said writ petition came to be dismissed. Hence, the wife of the detenu therein, approached the Apex Court by way of special leave to appeal.

19. In the judgment in Rekha, Apex Court has extracted the detention order and the grounds for detaining him under the Tamil Nadu Act, 1982. The grounds show that there is reference to one incident relating to selling expired drugs and the detaining authority by pointing out that necessary steps are being taken by his relatives to take him out on bail and since in similar case, bails were granted by the courts after lapse of some time and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public health and order and recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, on the materials placed and after fully satisfying, the detaining authority has passed an order under the Tamil Nadu Act, 1982. In para 7, the Bench has pointed out that in the grounds of detention, no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. The grounds retracted therein also are bereft of any further details. In those circumstances, this Court taking note of various earlier decisions came to the conclusion that normal recourse to ordinary law

would be sufficient and there is no need for invocation of the special Act.

20. In the case on hand, we have already extracted criminality, criminal activities starting from the age 30 and details relating to eleven cases mentioned in the grounds of detention.....

21. In view of enormous materials which are available in the grounds of detention, such habituality has not been cited in the above referred Rekha, we are satisfied that the said decision is "distinguishable" on facts with reference to the case on hand and the contention based on the same is liable to be rejected."

6 Thus, from the decision in the case of Nagaraja (*supra*), it is clear that each case will have to be decided on the peculiar facts of that case.

7 In the case of *G. Reddeiah (supra)* which was relied on by the learned A.P.P., the Supreme Court in paragraph 23, observed as under:

"23. Though an attempt was made to nullify the order of detention by drawing our attention to the decision of Apex Court in *Rekha Vs. State of T.N.*

(2011) 5 SCC 244 : (2011) 2 SCC (Cri.) 596, on going through the factual position and orders therein and in view of the enormous activities of the detenu violating various provisions of IPC, the A.P. Act and the Rules, continuous and habituality in pursuing the same type of offences, and taking note of the abundant factual details as available in the grounds of detention and also of the fact that all the procedures and statutory safeguards have been fully complied with by the detaining authority, we are of the view that the said decision is not applicable to the case on hand. On the other hand, we fully agree with the reasoning of the detaining authority as approved by the Government and upheld by the High Court".

8 Thus, in view of the decisions in Nagaraja and Reddeiah, in our opinion, it cannot be said that the decision in *Rekha's case (supra)*, is an authority on the extreme proposition canvassed before us that in cases where no bail application is pending on the date of passing of the detention order, detention order cannot be passed "at all" against the accused, who is already in jail. The judicial review of the subjective satisfaction reached by the detaining authority, therefore, will have to be tested on case to case basis; and if tangible justification is spelt out in the grounds of detention

that even though the accused is already in jail, yet, it is imminent to issue order of preventive detention qua him, that would be permissible and legitimate.

9 From the decisions in the case of Nagaraja and Reddeiah, it is clear that each case will have to be decided on its own facts. The facts in the present case are that in the preamble which is reflected in paragraph 4 of the grounds of detention, it is seen that the petitioner is involved in seven other cases. The said cases are mostly under Section 392 read with Section 34 of IPC. To issue the order of detention, the detaining authority has relied on C.R.No. 350 of 2014 of Vijapur Naka, Solapur dated 7.12.2014. This case is also under Section 392 read with Section 34 of IPC. In addition to C.R. No. 350 of 2014, the detaining authority has relied on statements of two incamera witnesses i.e. Witness "A" and Witness "B". In C.R. No. 350 of 2014 the petitioner while riding on a motor-cycle with his associate, snatched the gold chain of the complainant weighing 10 gms. In the incident relating to Witness "A", the petitioner at the point of knife, robbed the wife of Witness "A" of her "Mangalsutra". In the case of Witness "B", the detenu at

the point of knife, threatened one person and forcibly took money from him. The grounds of detention clearly advert to the fact that confidential enquiry was made about the criminal activities of the detenu in the localities of Vijapur Naka Police Station wherein it was noticed that a large number of people were victimised by the detenu in the recent past. It is also noted that the detenu was found to be a dangerous person and nobody was ready to complain and make statement openly against the detenu, due to fear of retaliation. The witnesses, only on being assured that their names and identities will be kept secret and they would not be called upon to give evidence against the detenu in any Court of Law or any other open forum, have expressed willingness to give their statements about the criminal activities of the detenu. The grounds of detention then reproduce the contents of the in-camera statements of the two witnesses "A" and "B" disclosing the involvement of the detenu in the criminal activities within the area of Vijapur Naka Police Station and nearby areas, indicating that the detenu unleashed a reign of terror having become a perpetual and potential danger to the society at large. The grounds further state that the people in the said areas are

under a sense of insecurity and are living and carrying out their daily avocation under a constant fear and due to this, the even tempo of life of citizens in the above areas, is badly disturbed. Thus, the activities of the detenu are prejudicial to the maintenance of public order in the said areas.

10 After having adverted to these matters, the detaining authority in paragraph 7 proceeded to record its subjective satisfaction in the following words:

" 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. To prevent your criminal activities in the year 2013, a preventive action U/sec. 110 of Cr.P.C. was initiated against you by Jodhabai Peth, Police Station. In this case, on 27.6.2013, you had submitted a Bond under Section 117 of Cr.P.C. before Spl. Executive Magistrate and A.C.P. Division I, Solapur City. After taking such a preventive action, you have not stopped your criminal activities and you have committed offences shown in the para 4. I am aware that you are in magistrate custody in C.R. No. 350/14 under section 392, 34 IPC registered at Vijapur Naka Police Station, Solapur, Law Officer of

the Office of the Commissioner of Police, Solapur opined that in future, if you will fulfill the conditions laid down by Hon'ble Court and submit proper surety, Hon'ble Court may release you on bail on certain conditions in connection with CR No. 350/14 under Section 392, 34 IPC which is registered at Vijapur Naka Police Station, Solapur, Taking into consideration the possibility of your bail, I am further satisfied that you are likely to revert to the similar activities prejudicial to the maintenance of public order in future and so it has become necessary to detain you under MPDA Act, to prevent you from acting in such a prejudicial manner in future too."

11 The above-mentioned portion leaves no manner of doubt that the detaining authority was fully aware of the fact that the detenu was in custody in the pending criminal case i.e. C.R. No. 350/14 which was under Section 392 r.w. 34 IPC. From the grounds of detention, it is clear that the detaining authority was aware that the charge sheet in the said criminal case was already filed on 20.4.2015. Thus, it cannot be said that there was no cogent material before the detaining authority to come to the conclusion that there was an imminent possibility of the detenu being released on bail in CR No. 350/14 as contended in the ground raised by the petitioner. Before the detaining

authority, the opinion of the Law officer was also very much there that the detenu may be released on bail in this case under Section 392 read with Section 34 IPC. Moreover, while considering the possibility whether bail can be granted, the nature of offence has also to be seen i.e. type of crime. The detenu was in custody in a case under Section 392 of IPC. The maximum punishment for the said offence is ten years. The offence is not punishable with death or life imprisonment and hence, the apprehension of the detaining authority that there was imminent possibility of petitioner being released on bail cannot be faulted. Thus, it cannot be said that there was no cogent and tangible material before the detaining authority to arrive at subjective satisfaction that there was imminent possibility of the detenu being released on bail considering the fact that the detenu was not involved in an offence punishable with death or life imprisonment. Further granting bail in such cases after filing of the charge-sheet, is a normal practice of most Courts. A priori, it cannot be argued that this is a case of mere *ipse dixit* of the detaining authority regarding the imminent possibility of the detenu coming out on bail. Looking to the history of the detenu, it cannot be said that there was no

material before the detaining authority to reach the subjective satisfaction that if released on bail, the detenu may again indulge in similar prejudicial activities. Keeping that in mind, the detaining authority arrived at the subjective satisfaction that the detenu may be granted bail at any time under the ordinary law of the land and hence, it was necessary to issue an order of detention to prevent the detenu from again indulging in similar activities which are prejudicial to the maintenance of public order.

12 In the case of *Rekha (supra)*, the detenu was involved in only one offence whereas the present detention order has been passed on basis of three incidents i.e. one CR and two incamera witnesses. Looking to the facts of the present case therefore, the exposition in *Rekha (supra)*, pressed into service by the learned counsel for the petitioner, will be of no avail.

13 The next argument of the learned counsel is that, considering the seriousness of the offence, there was hardly any scope for grant of bail in the criminal case registered against the detenu. For that reason, the subjective satisfaction

reached by the detaining authority is vitiated. Reliance is placed on the decision of the Apex Court in the case of ***T. V. Sravanan @ S. A. R. Prasana Venkatachaariar Chaturvedi vs. State (2006) 2 SCC 664***. This is another shade of the first argument already considered and rejected hitherto. Be that as it may, in the former case, the Court noted that the order of detention itself mentioned that the detenu had moved application for grant of bail before the Principal Sessions Judge, which was rejected. The detenu then moved another bail application before the High Court, which was withdrawn. The detaining authority also noted that the detenu had not moved any bail application subsequently. Even then, the detaining authority went on to state that there was possibility of detenu coming out on bail by filing another bail application before the Sessions Court or the High Court, since in similar cases the accused have been granted bail by the Sessions Court or the High Court, after lapse of time. The Court noted that the order of detention was passed merely 12 days after dismissal of the bail application, by the High Court and there was nothing on record to show that the accused had made any preparation for filing of bail application or bail application was filed by him,

which was likely to come up for hearing in due course. Such are not the facts in the present case, hence, the decision in the case of *T.V. Sravanan* would not apply to the present case.

14 Thereafter reliance was placed by Mr. Tripathi on a decision of the Supreme Court in the case of ***Champion R. Sangma Vs. State of Meghalaya and Anr.*** reported in ***2015 All MR (Cri.)3673 (S.C.)***. This decision also would not be applicable to the facts of the present case. In the said case, the detention order was quashed in view of the observations quoted below which appear in para 9 of the Judgment:

"We may point out that even if the appellant is in jail in connection with some criminal case(s) there is no prohibition in law to pass the detention order. Law on this aspect is well settled and stands crystalized by plethora of judgments of this Court. However, a reading of those very judgment also clarifies that there are certain aspects which have to be borne in mind by the detaining authority and satisfaction on those aspects is to be arrived at while passing the detention order. There are three such factors which were re-stated in ***Kamarunnissa Vs. Union of India and Anr.*** reported in ***1991(1) SCC 128 (pa.13)***:

`13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court..... It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to

refer to the High Court decisions to which our attention was drawn since they do not hold otherwise."

15 However, in the present case, there was reliable material before the detaining authority on the basis of which, the detaining authority would have reason to believe that there was real possibility of his release on bail. One of the materials being the nature of the offence which was under Section 392 read with Section 34 IPC for which the maximum sentence of imprisonment is ten years. This offence is not punishable with life or death. Thus, we can say that the main material before the detaining authority to reach his subjective satisfaction that there was real possibility of the detenu being released on bail is the nature of the offence. Moreover, in the case of *Champion R. Sangma (supra)*, the order was conspicuously silent on the aspect as to whether there was any probability of the detenu indulging in prejudicial activities if released on bail. However, in the present case, the detaining authority has categorically stated that if the detenu is released on bail, the detenu is likely to revert to similar activities which are prejudicial to the maintenance of public order in future and

hence, it has become necessary to detain him under MPDA Act. Thus, this decision also would not come to the aid of the petitioner. We would like to advert again to the observations of the Supreme Court in the decision in the case of *Champion R. Sangama (supra)*. The said observations are already reproduced by us in para 14 of this judgment. All the criteria mentioned above which are reproduced in paragraph 9 of the decision in the case of *Champion R. Sangama (supra)*, are met with in the present case. The Supreme Court observed in the case of *Champion R. Sangama* that if these criteria are met, the order of detention cannot be struck down. Those criteria were not met in the case of *Champion R. Sangama*, hence, the detention order was struck down. However, as all the criteria set out in paragraph 9 are met in the present case, detention order cannot be struck down on the ground urged by the learned counsel for the petitioner.

16 Lastly reliance was placed by Mr. Tripathi, the learned counsel for the petitioner on the decision of the Supreme Court in the case of ***Huidrom Konungjao Singh Vs. State of Manipur and others***, reported in **(2012) 7 S.C.C. 181** to support the

contention that if a bail application is not moved by the detenu, resorting to preventive detention, was not permissible. These observations are made in paragraph 15 of the judgment. However, in the very same judgment in paragraph 9, it is observed as under:

"In view of the above, it can be held that there is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case. However, if the detention order is challenged the detaining authority has to satisfy the Court the following facts:

"(1) The authority was fully aware of the fact that the detenu was actually in custody.

(2) There was reliable material before the said authority on the basis of which it could have reasons to believe that there was real possibility of his release on bail and further on being released, he would probably indulge in activities which are prejudicial to public order.

(3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities, and therefore, detention order was necessary. In case either of these facts does not exist the detention order would

stand vitiated. The present case requires to be examined in the light of the aforesaid settled legal proposition."

17 In the present case, all the criteria as set out in paragraph 9 of *Huidrom K. Singh (supra)*, are clearly met. Moreover, we find that decision in the case of *Huidrom K. Singh* is based on the decision in the case of *Rekha (supra)*. We have already stated above that the decision in the case of *Rekha* has been taken into consideration by the Supreme Court in the case of *Nagaraja (supra)* and *Reddeiah (supra)* and in both these decisions after considering the decision in the case of *Rekha*, it was observed that it was made in peculiar facts of that case and each case would have to be considered on its own facts and circumstances.

18 Before this Court in the case of ***Pramod Ashok Pujari Vs. The State of Maharashtra and Anr.; 2012 SCC OnLine Bom 1136: (2012) 5 AIR Bom R 638***, reliance was placed on the decision in the case of *Rekha (supra)* to contend that if no bail application is pending, no detention order can be passed. This Court observed as under:

" The decision in ***Rekha case (2011) 4 SCC 260*** is not an authority on the extreme proposition canvassed before this Court that in cases where no bail application is pending on the date of passing of the detention order, detention order cannot be passed "at all" against the accused, who is already in jail. The judicial review of the subjective satisfaction reached by the detaining authority, therefore, will have to be tested on case to case basis; and if tangible justification is spelt out in the grounds of detention that even though the accused is already in jail, yet, it is imminent to issue order of preventive detention qua him, that would be permissible and legitimate".

19 Useful reliance can be placed on the decision of the Apex Court in the case of ***Noor Salman Makhani vs. Union of India, 1994 Cr.L.J. 602***. In that case, the grievance of the detenu was that the detention order as passed, suffered from non-application of mind because of the bald statement made by the detaining authority about the possibility of detenu being likely to be released on bail. The Apex Court rejected that plea in the facts of that case by observing that nothing more could have been said in the grounds of detention by the detaining authority in the context of its subjective satisfaction about the

possibility that the detenu was likely to be released on bail.

20 In a recent decision of the Supreme Court in the case of ***State of Tamil Nadu Through Secretary to Government, Public (Law and Order-F) and Another; (2015) 12 SCC 127 : (2016) 1 SCC (Cri.) 304***, the Supreme Court observed that the High Court could not have quashed the detention order on the ground that the detenu was involved in only one solitary case and that he or his family / relations have not applied for bail. After observing this, the order of the High Court was set aside.

21 In a decision of the Division Bench of this Court in the case of ***Omprakash Parshuram Rihal vs. C.D. Singh, 1995 (1) ALL. M.R. 491***, the challenge was on similar lines, as in the present case. In that case, the detenu had moved a bail application which was rejected on 10.10.1994. In spite of that, detention order was passed on 24.11.1994 under the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The argument was that the subjective satisfaction of the detaining authority lacked awareness of any compelling necessity. The Court negated

the said plea and while doing so, relied on the observation of the Apex Court in the case of ***Biru Mahato vs. District Magistrate, Dhanbad, AIR 1982 SC 1539, Merugu Satyanarayana vs. State of Andhra Pradesh & ors., AIR 1982 SC 1543, Devi Lal Mahto vs. State of Bihar & anr., AIR 1982 SC 1548, and Vijay Kumar vs. Union of India, (1988) 2 SCC 57***. The Apex Court in these decisions has observed that the awareness must be of the fact that the person, against whom the detention order is being made, is already under detention or in jail in respect of some offence. This awareness must find its place either in the grounds of detention or in the affidavit justifying the detention order when challenged.

22 The Supreme Court in the case of ***Ahamed Nassar Vs. State of Tamil Nadu and others, (1999) 8 SCC 473*** has observed that "Thus inspite of rejection of the bail application by a court, it is open to the detaining authority to come to his own satisfaction based on the contents of the bail application keeping in mind the circumstances that there is likelihood of the detenu being released on bail. Merely because no bail application was then pending, is no premise to hold that there was no likelihood of his being released on bail".

23 In the present case, the grounds of detention, in no uncertain terms, mention about the possibility of petitioner being released if he moved an application for bail and on becoming a free person there was imminent possibility of again indulging in similar activities which are prejudicial to the maintenance of public order. Looking to the nature of the offence, it cannot be said that there was no material before the detaining authority to reach his subjective satisfaction that there was an imminent possibility of the detenu being released on bail and looking to the past history of the detenu, it cannot be said that there was no material before the detaining authority to reach his subjective satisfaction that if the detenu is released on bail, he will again indulge in similar activities which are prejudicial to the maintenance of public order.

24 Moreover, the subjective satisfaction has been reached in the present case, keeping in mind that the petitioner was a habitual offender and continued to indulge in criminal activities prejudicial to public order, unabatedly. In substance, the subjective satisfaction is not founded on one

factor but, combination thereof and totality of all the circumstances indicative of the fact that there was imminent possibility of the detenu being released on bail and if released, he would again indulge in similar activities which were prejudicial to the maintenance of public order. Accordingly, there is no substance in the argument under consideration.

25 In view of the above, in our opinion, the ground raised by the learned counsel for the petitioner to espouse the case of the detenu, is of no avail. Accordingly, the petition is dismissed. Rule is discharged.

[SMT. ANUJA PRABHUDESSAI, J.]

[SMT. V.K.TAHILRAMANI,J.]