

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1170 OF 2018

Mahadev Ramchandra Howal

Petitioner

versus

The District Magistrate, Sangli and others

Respomndents

Ms.Jayshree Tripathi for petitioner.

Mr.J.P.Yagnik, APP, for State.

CORAM : S.C.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.

DATE : 20th April 2018

PC :

1. The petitioner has approached this Court by invoking writ jurisdiction of this Court under Article 226 of the Constitution of India to assail the order of detention dated 22nd December 2017 issued by the District Magistrate, Sangli under Section 3(1) of 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'). The said order was served upon the petitioner on 23rd December 2017. The petitioner was also served the grounds of detention dated 22nd December 2017 on the basis of which purported action has been initiated against him.

2. The impugned order of detention has been issued with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order. In paragraph 1 of the grounds of

detention it is stated that in accordance with Section 8 of the MPDA Act and Article 22(5) of the Constitution of India, the petitioner is being communicated the grounds as mentioned in paragraph 4 below on which the detention order has been issued by the detaining authority against the petitioner under sub-section (1) of Section 3 of the MPDA Act. It is further stated that the copies of documents placed before the detaining authority are annexed except the names and identifying particulars of the witnesses/victims in connection with the grounds mentioned in paragraphs 4(b)(i) and 4(b)(ii), which cannot be furnished in the public interest for which the detaining authority claimed privilege.

3. Paragraph 4 of the grounds refers to the offences registered with Chinchniwangi Police Station vide CR No.53 of 2017 under Sections 379, 353, 332, 323, 143, 147, 149, 504, 506 of Indian Penal Code and under Sections 4 and 21 of Mines and Minerals Act, 1957. The said CR was registered against the petitioner-detenu. The grounds of detention further refers to the statements of Witness-A dated 24th August 2018 and Witness-B dated 28th August 2017 which were recorded in-camera. The said witnesses have referred to the alleged acts committed by the petitioner in the second week and last week of July-2017. In paragraph (vi) it is stated that after going through the record of the crimes registered against the petitioner with Chinchniwangi Police Station, Kadegaon and Vishrambagh Police Stations, the detaining authority is personally satisfied that he is a criminal goonda with violent and dangerous tendencies. He is dangerous under Section 3(1) of MPDA Act. In paragraph (vii) it is alleged that the detaining authority has carefully gone through the material placed on record and is subjectively satisfied that the

petitioner is acting in a manner prejudicial to the maintenance of public order and that he is likely to revert to the similar activities prejudicial to the maintenance of public order in future and in view of his tendencies and inclinations reflected through the offences committed by him, and the previous actions taken against him under various prevailing acts were not sufficient to control his criminal activities and therefore it is necessary to detain him under the said Act.

4. Ms.Jayshree Tripathi, learned counsel appearing for the petitioner submits that the petitioner has agitated several grounds in the petition, however, ground 6(b) would be sufficient to set aside the order of detention. Ground 6(b) of the petition reads as follows :

“6(b) The petitioner says and submits that the detaining authority has taken into consideration a single solitary offence vide CR No.53 of 2017 under Sections 379, 353, 332, 323, 143, 149, 147, 504, 506 of IPC and 4, 21 of Mine and Mineral Act to arrive at his subjective satisfaction and pass the order of detention. The petitioner submits that in the said CR the detaining authority has not shown his awareness about bail position of the petitioner in CR No.53 of 2017. The detaining authority has not disclosed anything about the date of arrest, dates of remand, dates of bail application and bail order and other bail bond documents etc. The petitioner says and submits that in fact the petitioner was on bail on the date of his detention i.e. 22.12.2017. The petitioner says and submits that law is well settled as held by Hon'ble Supreme Court that when a person is already on bail on the date of his detention, bail application and bail orders are vital documents and they are necessarily to be placed before the detaining authority for arriving at his satisfaction and copies of the bail application and bail order have to be supplied to the petitioner. The petitioner says and submits that the

subjective satisfaction of the detaining authority vitiates for non-placement of vital documents like bail application and bail order before the detaining authority and also for non-furnishing copies of bail application and bail order to the petitioner. The order of detention is illegal and bad in law, liable to be quashed and set aside.”

5. Learned counsel for the petitioner submitted that there is total non-application of mind on the part of detaining authority while issuing the impugned order of detention. The grounds of detention are completely silent with regards to the date of arrest, date of remand, date of bail application and bail order etc.. It is submitted that the petitioner was on bail on the date of his detention. The bail application and bail orders are vital documents and they are necessarily to be placed before the detaining authority for arriving at his subjective satisfaction and that the copies of bail application and bail order have to be supplied to the petitioner. It is submitted that the detaining authority has not shown his awareness about the bail position of the petitioner in respect to CR No.53 of 2017. She further submitted that the counter filed by the detaining authority does not deal with the said contention in proper perspective and the said reply shows complete non-application of mind by the detaining authority. It is, thus, submitted that the order of detention be set aside.

6. Learned APP Mr.Yagnik supported the order of detention. He submitted that the list of documents annexed at Exhibit-D to the petition, which was a part of the grounds of detention, refers to all the relevant documents which are reflected at serial nos.11 to 27 in the index of the compilation of documents. He submitted that the said documents include investigation papers in relation to CR No.53

of 2017, the remand report, say filed by Police opposing the application for bail, attendance register and copy of the bail order. He relied upon the affidavit-in-reply filed by the detaining authority which, according to him, deals with grounds of challenge. It is, thus, submitted that there is no violation of the petitioner's rights under Article 22(5) of Constitution of India nor there is non-application of mind on the part of detaining authority.

7. We have gone through the annexures to the petition and the affidavit-in-reply filed by the detaining authority and the Secretary, Advisory Board. On perusal of the ground of detention it is apparent that the order of detention is based on CR No.53 of 2017 registered with Chinchniwangi Police Station, which is referred to in paragraph 4 of grounds of detention, as well as statements of Witness-A and Witness-B which were purportedly recorded in-camera. Although there is reference to the incident related to CR No.53 of 2017, which forms the basis for issuing the order of detention, the grounds nowhere disclose as to when the petitioner was arrested, produced for remand, whether he made an application for bail and whether he has availed the bail after the order granting bail passed by the concerned Court. The grounds nowhere reflect whether the petitioner is in custody or he is enlarged on bail and thereby likely to revert to the prejudicial activities. The list of documents no doubt refers to the remand application, bail order and the other documents relating to CR No.53 of 2017, however, there is no reference to the application for bail preferred by the petitioner-detenu, which shows that the same was neither placed before the detaining authority nor it has been supplied to the detenu. The reply filed by the detaining authority shows casual approach adopted by the said authority in

dealing with the matter relating to preventive detention which makes it obligatory to the authorities to safeguard the constitutional right of the detenu who is being detained. Although it is the contention of the detenu that the detaining authority in the grounds has nowhere shown its awareness about bail position of the petitioner-detenu, however, in the reply it is contended that the detaining authority has gone through the material placed on record and is subjectively satisfied that the detenu is acting in a manner prejudicial to maintenance of public order and that he is likely to revert to the similar activities prejudicial to the maintenance of public order in future and in view of his tendencies and inclinations reflected through the offences committed by him and previous actions taken against him under various prevailing acts are not sufficient to control the detenu's criminal activities, it is necessary to detain him under the provisions of MPD Act. The reply also states that the documents mentioned in Index at sr.nos.11 to 27 are pertaining to CR No.53 of 2017, which includes bail order, remand documents etc which were served upon the detenu. Apparently the detaining authority has not dealt with the grounds of challenge raised by the petitioner in proper perspective. The ground of detention is completely silent with regards to the issue relating to arrest, bail and whether the petitioner is at large when the impugned order of detention has been issued. This reflects total non-application of mind by detaining authority. In view of the above, the impugned order of detention is required to be set aside.

8. The order of detention challenged in the petition is hereby quashed and set aside. The detenu shall be released forthwith, if not required in any other case. Rule is made absolute in terms of prayer

clause (b). In the view that we have taken insofar as ground 6(b) of petition at pages 5 and 6, we have not allowed Ms.Tripathi to argue other grounds.

(PRAKASH D. NAIK, J.)

(S.C.DHARMADHIKARI, J.)

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