

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.980 OF 2020

Angad S/o. Khandu Kaluse
Age: 24 years, Occu.: Agriculture,
R/o. Village Mahasangvi, Tal.Patoda,
Dist.Beed.

..Petitioner

VERSUS

1. The State of Maharashtra
Through Deputy Secretary,
Home Department Mantralaya,
Mumbai - 32.

2. The State of Maharashtra
Through District Magistrate,
Beed.

3. The State of Maharashtra
Through Superintendent,
Central Jail, Aurangabad.

..Respondents

...
Advocate for Petitioner : Shri Rupesh A. Jaiswal
APP for Respondents-State : Shri S.J.Salgare
...

**CORAM : T.V.NALAWADE &
M.G.SEWLIKAR, JJ.**

DATE: 28th September, 2020

JUDGMENT:- (Per: M.G.Sewlikar J.)

1. By this petition the petitioner is challenging his order of detention passed by the District Magistrate, Beed dated 23.05.2020 passed under Section 3(2) 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 to as the MPDA Act), whereby the petitioner has been detained for a period of one year.

2. Facts giving rise to this petition are that the petitioner was arrested and detained on 23.05.2020 by the order of respondent No.2 under the provisions of Section 3 of the MPDA Act. On 06.04.2020, Police Inspector, Patoda Police Station, District Beed, forwarded the proposal to the District Magistrate (Detaining Authority) for the detention of the petitioner as the activities of the petitioner had become dangerous to the society, which were affecting the public order. Grounds of detention were communicated to the petitioner by respondent No.2. Reference was made to the Advisory Board. The Advisory Board approved the proposal. Thereafter, the State Government confirmed the said detention for a period of one year. The petitioner is challenging the detention on the ground that the respondent No.2, Detaining Authority has not reached the subjective satisfaction and on the basis of irrelevant material has recorded its subjective satisfaction, which is illegal. It is also challenged on the ground that the petitioner was released on bail in all the offences registered against the petitioner. The bail orders of the said offences were not produced before the Detaining Authority. Therefore, without considering the bail applications and bail

orders, the order of detention has been passed. Therefore, the impugned order has been passed without there being subjective satisfaction.

3. Heard Shri R.A. Jaiswal, learned counsel for the petitioner and Shri S.J.Salgare, learned APP for all the respondents.

4. Shri Jaiswal, learned counsel for the petitioner argued that in show cause notice, eight offences have been mentioned but respondent No.2, Detaining Authority has considered only two offences those are Crime No.35 of 2019 (RCC No.51 of 2019) and Crime No.16 of 2020, which is still under investigation. He argued that in Crime No.16 of 2020, charge-sheet is yet to be filed. In the said offence, First Information Report (FIR) was lodged three days after the incident. Injury certificate does not disclose any injury. In-camera statements have been recorded late. This shows that the detention order has been passed without application of mind. He argued that for these reasons, the order of detention cannot be sustained.

5. Shri Jaiswal, learned counsel for the petitioner relied upon the following Judgments:

- a) *Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others [(2012) AIR (SC) 890].*

- b) *Hrishi @ Sarjerao Baban Takele Vs. The District Magistrate, Sangli & Ors. [2018 ALL MR (Cri) 516].*
- c) *Aalam Yosuf Shaikh Vs. The Commissioner of Police, Pune & Ors. [1018 ALL MR (Cri) 1908.*
- d) *Gokul Sahabrao Sabale Vs. The Commissioner of Police, Pune & Ors. [2017 ALL MR (Cri.) 2051].*
- e) *Rashid Shaukat Husain Sayyed @ Jagga Vs. The State of Maharashtra & Ors. [2018 ALL MR (Cri.) 3543].*
- f) *Narendra @ Chotya Mahadev Balkawade Vs. The Commissioner of Police, Pune & Ors. [2020 ALL MR (Cri.) 862].*

6. Shri Salgare, learned APP argued that the petitioner has committed several offences. He was externed from the town. He has criminal background. Witnesses are not coming forward to depose against the petitioner. He has enlisted a reign of terror in the locality. It is evident from the two in-camera statements recorded by the Police authorities. He argued that the offences registered against the petitioner fall under Chapter XVI of the Indian Penal Code (IPC) i.e. offence against human body and under Chapter XVII of the IPC i.e. offence against property. In-camera statements also indicate that the petitioner has continued his criminal activities involving the offences against human body and property. He argued that on the basis of single offence, the petitioner can be detained. He submitted that because of the atmosphere of fear created by the petitioner, witnesses are not ready to depose against him nor the aggrieved

persons are prepared to lodge complaint against him. Therefore, the activities of the petitioner are prejudicial to the maintenance of public order and therefore, the petitioner was rightly detained by respondent No.2.

7. Before embarking upon the enquiry, provisions of MPDA Act will have to be looked into.

8. “Dangerous person” is defined under Section 2(b-1) to mean a person, who either by himself or as member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.

9. Thus, the essential requirement of this Section for determining whether a person is a dangerous person is that he must be habituated to committing offences or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. Chapter XVI of the Indian Penal Code deals with the offences against the human body and Chapter XVII of the Indian Penal Code deals with the offences against the property.

10. The next important provision is Section 2(a)(iv) of the MPDA Act. It has defined the expression “acting in any manner prejudicial to the maintenance of the public order”. Section 2a(iv) reads as under:-

“Section 2:

(a) “acting in any manner prejudicial to the maintenance of public order” means -

(i)

(ii)

(iii)

(iv) in the case of a dangerous person, when he is engaged or is making preparations for engaging, in any of the activities as a dangerous person, which affects adversely, or are likely to affect adversely, the maintenance of the public order.”

11. This provision signifies that merely a person is a dangerous person is not sufficient to invoke the provisions of the MPDA Act . The further essential requirement is that the activities of a dangerous person must prejudicially affect the maintenance of public order. If the activities of a dangerous person do not affect prejudicially the maintenance of the public order, the provisions of the MPDA Act cannot be invoked.

12. Section 3 of the MPDA Act provides thus :-

“3(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed [six months] but the State Government may, if satisfied as aforesaid that it is necessary so to amend such order to extend such period from time to time by any period not exceeding [six months] at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such

order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."

13. This Section mandates that if a District Magistrate or a Commissioner of Police is satisfied that a person needs to be detained with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, shall make the order of detention. Sub-Section 3 of Section 3 casts a duty on the Detaining Authority to report the fact of detention to the State Government together with the grounds on which the order has been made within a period of twelve days from the date of passing of the order.

14. Section 8 of the MPDA Act makes it obligatory for the Detaining Authority to communicate to the detenu the grounds on which the order has been made within five days of the date of detention and also shall afford him an opportunity of making representation against the order of the State Government. Section 10 of the MPDA Act requires the State Government to place before the Advisory Board within three weeks from the date of detention of a person the grounds on which the order has been made. Section 11 states that within seven weeks from the date of detention of the person, the Advisory Board shall submit

its report to the State Government. Section 13 states that detention shall not be for more than twelve months.

15. After having gone through the relevant provisions of the MPDA Act, it will have to be examined whether the detaining authority recorded subjective satisfaction for the detention of the detenu.

16. In the grounds of detention, respondent No.2 has made a mention of seven crimes registered against the petitioner. Their details are as under;

Sr. No.	Police Station	C.R.No.	Section	Filing date	Court Case No.	Remarks
1.	Patoda	53/2017	353,332,504, 34 IPC	06.03.2017	RCC No. 112/17	Pending
2.	Patoda	NC 55/17	323,504,506 IPC	13.03.2017	----	Complainant is directed to seek redressal in court
3.	Georai	17/2018	122 M.P.Act.	14.01.2018	SCC No. 105/2018	Pending
4.	Patoda	NC 375/2018	323,504,506, 34 IPC	16.10.2018	----	Complainant is directed to seek redressal in court
5.	Patoda	35/2019	143,147,148, 149,452,336, 323, 504,506 IPC	15.03.2019	RCC No. 51/2019	Pending
6.	Patoda	16/2020	143,147,149, 324,504,506 IPC with 142 of M P Act	22.01.2020	----	Investigation
7.	Patoda	42/2020	142 M P Act	05.03.2020	----	Investigation

17. This chart shows that out of seven offences, two offences are non-cognizable in nature and other two offences at sr.nos.6 and 7 are still under investigation. Show cause notice also makes a mention of Chapter Case No.54 of 2019 under Section 107 of the Code of Criminal Procedure and Externment Case No.1 of 2019 under Section 55 of M.P.Act by which the petitioner was externed for one yer from the jurisdiction of Beed District. However, the Detaining Authority considered two offences for detaining the petitioner i.e. Crime Nos.35 of 2019 and 16 of 2020.

18. Learned APP has produced original record, which shows that FIR No.16 of 2020 was produced before the Detaining Authority. The said FIR shows that the petitioner and his other associates assaulted the informant by means of a chair on the ground that the informant was working for Bhartiya Janata Party. This incident took place on 19.01.2020, but the FIR was lodged on 22.01.2020, which means after three days of the incident. The said offence is registered under Sections 143, 147, 149, 324, 504 and 506 of the IPC. The Detaining Authority did not consider that the FIR was lodged after three days of the incident. No explanation is assigned for the delay in lodging the report. The injury certificate produced on the record shows that there was no injury on the person of the informant. The allegations

themselves show that the incident took place on account of political rivalry.

19. The Detaining Authority has relied on in-camera statements of two witnesses 'A' and 'B'. Record shows that in-camera statement of witness 'A' was recorded on 07.03.2020 of the incident which had taken place on 22.01.2020. Statement of this witness 'A' shows that on 22.01.2020, petitioner met witness 'A' and abused him calling him '*Kutrya*' and started beating him with kicks and fist blows and took out a knife and placed it at his throat. In-camera statement of this witness records that the petitioner assaulted this witness as the petitioner suspected witness 'A' to be the informer of the Police. No explanation is coming forward from the respondents as to why the statement of this witness was recorded so late. If the activities of the petitioner are so dangerous as to create fear in the mind of general public that nobody dares give evidence against the petitioner, it was expected from the Police authorities to act swiftly or with reasonable promptitude in recording the statements of the witnesses. However, the Police authorities did not record his statements for more than a month. It has been held in the case of ***Rashid Shaukat Husain Sayyed @ Jagga Vs. State of Maharashtra & Ors. [2018 ALL MR (Cri.) 3543 (Bom.HC)]*** as under:

“If the incidents are as narrated by the two in-camera witnesses, of this detenu allegedly going around with deadly weapons, assaulting people, extorting money in several areas, market and within the jurisdiction of Shivaji Nagar Police Station and around, then, it was expected of the Detaining Authority to take prompt action. If not swiftly, at least expeditiously. If not immediately, at least with reasonable promptitude. We do not see how we can term this explanation for the delay as reasonable for we find that every authority, whose name is mentioned, is supposed to be playing some role.”

20. So far as unwillingness of the witnesses to depose against the petitioner is concerned, the Detaining Authority has to satisfy itself that the witnesses are afraid of coming forward to give statements against the petitioner. Merely producing the statements of the in-camera witnesses in verbatim does not indicate that the Detaining Authority had applied its mind to this aspect of the matter.

21. In the case of ***Gokul Sahabrao Sable Vs. The Commissioner of Police, Pune & Ors. [2017 ALL MR (Cri.) 2051]*** it has been held as under;

“In that view of the matter, the decision cited before us applies in the present case with its full force. In Sanjay Ramlal Shahu vrs. State of Maharashtra and another (supra), this Court has specifically recorded a finding that reproduction of contents of those statements cannot show subjective satisfaction envisaged in law. The subjective satisfaction has to be about unwillingness of such persons to come forward and to give

statement against the petitioner. Since there was no whisper about this aspect in the impugned order, the order was set aside. In the present case also the impugned order does not reflect the same.”

22. In the case at hand also there is no whisper in the order of Detaining Authority that it had applied its mind to this aspect of the matter. In this case also the statements of the witnesses in verbatim were reproduced and there is no whisper that the Detaining Authority satisfied itself that the witnesses are not really coming forward to give evidence against the petitioner.

23. The petitioner has alleged in paragraph (F) of the petition as under;

“That it is important to note that entire papers i.e. bail applications and orders therein of both alleged offences have not been placed on record before the detaining authority nor served to the petitioner, which is fatal to the case of Respondents, since it vitiates subjective satisfaction of detaining authority.”

24. For this purpose, he placed reliance on the case of ***Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others [(2012) AIR (SC) 890]***. It has been held in the case of ***Hrishi @ Sarjerao Baban Takele Vs. The District Magistrate, Sangli & Ors. [2018 ALL MR (Cri.) 516]*** as under;

"8. Mr.Tripathi pointed out that in the case of Rushikesh Bhoite [2012 ALL SCR 1373] (supra), in paragraphs 9 and 10 of the said decision, it is observed as under;

"9. In a case where Detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

10. In the present case, since the order of bail dated August 15,2020 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of material as vital as the bail order has vitiated the subjective decision of the detaining authority."

9. Mr.Tripathi pointed out that after making above observations in paragraphs 8,9 and 10 of the decision in the case of Rushikesh Bhoite [2012 ALL SCR 1373] (supra), the Supreme Court observed that the order of bail was neither placed before the Detaining Authority at the time of passing the detention order nor the Detaining Authority was aware of the order of bail. Hence, detention order is rendered invalid. It was further observed that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective satisfaction of the Detaining Authority. In the present case also, nowhere in the detention order or in the grounds of detention, the Detaining Authority has shown its awareness that bail was granted to the Detenu in C.R.No.36 of 2016. It is also an admitted fact that detailed order

granting anticipatory bail to the Detenu running into six pages was not placed before the Detaining Authority nor a copy thereof was furnished to the Detenu.”

25. In the case at hand also, the applications for bail and bail orders were not produced before the Detaining Authority. Therefore, in the absence of bail applications and orders thereon, it cannot be said that the Detaining Authority had recorded its subjective satisfaction.

26. Shri Salgare, learned APP for the respondents-State placed reliance on the case of ***Sachin Sudhakar Nikam Vs. A.N.Roy and Ors. [MANU/MH/0820/2004]*** in which it has been held that “*the condition precedent for passing an order of detention against a dangerous person under the MPDA Act, 1981 is that the Detaining Authority must record a subjective satisfaction that the detenu either by himself or as a member or a leader of a gang has been habitually committed or is attempting to commit any of the offences punishable under Chapter XVI or Chapter XVII of the IPC or Chapter V of the Arms Act, 1959.*”

As discussed earlier, there is complete lack of subjective satisfaction on the part of the Detaining Authority.

27. Reliance has also placed by the learned APP on the case of ***Phulwari Jagdambaprasad Pathak Vs. R.H.Mendonca and Ors. [MANU/SC/0453/2000]*** in which it has been held as under:-

“16. Then comes the crucial question whether ‘in-camera’ statements of persons/witnesses can be utilised for the purpose of arriving at subjective satisfaction of the detaining authority for passing the order of detention. Our attention has not been drawn to any provision of the Act which expressly or impliedly lays down the type of material which can form the basis of a detention order under Section 3 of the Act. Preventive detention measure is harsh, but it becomes necessary in larger interest of society. It is in the nature of a precautionary measure taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve the power vested in the detaining authority should not be unduly restricted. It is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. Presumably, that is why the Parliament did not make any provision in the Act in that regard and left the matter to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed.”

As stated herein above in-camera statement of witness-‘A’ cannot be accepted because of the delay in recording the

statement. The other offence i.e. CR No.16 of 2020 also cannot be considered for the simple reason that FIR was lodged belatedly i.e. after three days and there was no injury on the person of the informant. Therefore, the Judgment of the Hon'ble Supreme Court is not applicable to the facts of the instant case.

28. For the same proposition, he placed reliance on the case of ***Nitin Narayan Pandare Vs. M.N.Singh and Ors. [MANU/MH/1801/2002]***.

29. In view of the above, it cannot be said that there was subjective satisfaction on the part of the Detaining Authority. Therefore, the detention of the petitioner cannot be sustained. Hence, the following order is passed:-

ORDER

- I) Criminal Writ Petition is allowed.
- II) Relief is granted in terms of prayer clause (B)
- III) The petitioner is to be released with liberty forthwith.
- IV) Rule is made absolute in those terms.

(M.G.SEWLIKAR)
JUDGE

(T.V.NALAWADE)
JUDGE