

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1337 OF 2020

Narayan Radhakishan Bhusari
age 32 years, occ. Agriculture
r/o Village Juni Nagzari
Tq. Georai, Dist. Beed

Petitioner

Versus

1. District Magistrate
Beed.
2. The State of Maharashtra
Through Addl. Chief Secretary
to Govt.of Maharashtra, Home dept.
Mantralaya, Mumbai 32.
3. The Superintendent
Central Prison, Aurangabad
Harsul, Aurangabad

Respondents

Mr. V.N. Tripathi, Advocate holding for Mr. A.. Phad, Advocate for the
petitioner.
Mr. S.J Salgare, APP for all respondents.

**CORAM : T.V. Nalawade &
M.G. Sewlikar, JJ.**

DATE : 15th December, 2020.

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

1. Rule. Rule returnable forthwith.

2. By consent, heard both the sides at admission stage for final disposal.

3. By this writ petition under Article 226 of the Constitution of India, the petitioner has challenged his detention under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Person, Video Pirates, Sand Smuggler and Black Marketing of Essential Commodities Act, 1981 (hereinafter referred to as the "MPDA Act").

4. Facts leading to this petition are that on 18.08.2020, the sponsoring authority forwarded the proposal for detention of the petitioner on the grounds that several offences of theft of sand have been registered against the petitioner and the petitioner is in the habit of committing offences. To contain his activities, proceedings under Section 107 of the Code of Criminal Procedure have also been initiated against him. But the same had no deterrent effect on the petitioner. The petitioner has no fear of law. It is further alleged that he has been continuously engaging himself in the commission of violent activities which have created terror in the mind of the persons residing in the area of operation and has disturbed the even tempo of

life as well as public order. Accordingly, the Detaining Authority i.e. the District Magistrate, Beed, communicated the grounds of detention to the petitioner. The Detaining Authority informed the petitioner vide the aforesaid communication dated 19.08.2020 that following offences have been registered against him :-

Sr. No.	Police Station & C.R. No.	Section	Filing date	Court Case No.	Remarks
01	P.S. Gondhi 152/2016	325, 323, 504, 34 IPC	22/05/2016	RCC No. 318/17	Pending in Court
02	P.S. Gondhi 403/2017	353, 332, 143, 147, 336, 379, 427, 504, 506, 111 IPC r/w sec. 3, 4 of Mines & Minerals Act, r/w Sec. 125 of Maharashtra Police Act	20/12/2017	RCC No. 149/2019 29/04/19	Pending in Court
03	P.S. Gondhi 314/2019	379 IPC r/w 3, 4 Mines & Minerals Act	08/08/2019	RCC No. 302/2019 16/09/2019	Pending in Court
04	P.S. Georai 40/2019	279, 379 I.P.C. r/w 21(I), 21(2) Mines & Minerals Act r/w 184 of M.V. Act	05/02/2019	RCC No. 135/2019 16/08/2019	Pending in Court
05	P.S. Georai 233/2020	379 IPC	16/05/2020	–	On investigation
06	P.S. Georai	353, 379, 511, 506, 34 IPC	12/06/2020	–	On investigation
07	P.S. Georai 302/2020	379 IPC	01/07/2020	–	On investigation

08	P.S. Gondi 100/2020	353, 379, 143, 147, 504, 506 of IPC r/w 3, 4 Mines & Minerals Act r/w 135 of Maharashtra Police Act	17/03/2020	–	On investigation
09	P.S. Georai 329/2020	379, 188, 279, 270 IPC r/w Sec. 51(B) of Disaster Management Act 2005 r/w Sec. 3, 4 Mines & Minerals Act	17/07/2020		On investigation

5. It is further informed to the petitioner vide this communication that these offences have been registered against him from time to time but his criminal activities continued and it had no reformatory effect on the petitioner. It is further informed to the petitioner that preventive action was initiated against him in Chapter Case No. 27/2019 under Section 107 of the Code of Criminal Procedure. Petitioner committed offences under Sections 379, 188, 279, 270 of the Indian Penal Code read with Section 51(B) of the Disaster Management Act, 2005, read with Sections 3, 4 of Mines & Minerals Act vide C.R. No. 329/2020 registered with Georai police station. It is alleged that all these criminal activities show that the petitioner has violent tendencies therefore, the petitioner is a

“dangerous person”. These criminal activities of the petitioner are prejudicial to the maintenance of public order as defined under Section 2(a)(iv) of the MPDA Act.

6. The grounds of detention further mention that the Detaining Authority considered only one offence viz., CR No. 329/2020 registered on 17.07.2020 with Georai police station. The Detaining Authority also considered the in-camera statements of witnesses A and B and satisfied itself subjectively that the petitioner is in the habit of committing offences, because of his activities the even tempo of life has been disturbed and his activities are prejudicial to the maintenance of public order. Therefore, the petitioner was ordered to be detained for a period of one year.

7. On 21.06.2020, report regarding detention of the petitioner was forwarded to the State Government. On 25.08.2020, the Government approved detention of the petitioner. On 04.09.2020, hearing was given to the detenu by the Advisory Board. On 10.09.2020, the Advisory Board approved detention of the petitioner and on 11.09.2020, the State Government confirmed the detention. This order is under challenge in this writ petition.

8. Heard Shri Tripathi, learned counsel holding for Shri Phad, learned counsel for the petitioner and Shri Salgare, learned APP for the State.

9. Learned counsel Shri Tripathi submitted that vide order dated 19.08.2020, the petitioner was communicated about his detention under the MPDA Act. In the said order, the petitioner is alleged to be a sand smuggler who is in the habit of committing theft of sand from the bank of river Godawari. He submitted that the Detaining Authority, in the grounds of detention communicated to petitioner, has labelled him as a 'dangerous person' as defined in Section 2(b-1) of the MPDA Act. He argued that 'sand smuggler' is separately defined in the MPDA Act and 'dangerous person' is also separately defined in the said Act. He submitted that this itself clearly shows that there was no subjective satisfaction on the part of the Detaining Authority. This shows that the grounds of detention is nothing but a product of total non-application of mind. He further submitted that the detenu had made representation to the State Government against the order of his detention but the same has not been decided. He argued that this itself clearly shows that without

considering the representation of the petitioner, the State Government has approved his detention and the Advisory Board has also approved his detention. This is against the principles of natural justice and, therefore, on this ground alone, it is liable to be set aside.

10. He further submitted that the documents supplied to the petitioner were in English. The mother-tongue of the petitioner is Marathi and he has no knowledge of English. Therefore, he was not in a position to understand the contents of those documents. He further argued that copies of 45 documents were not supplied to the petitioner. Learned counsel Shri Tripathi further submitted that in all these offences, the petitioner had been released on bail but the sponsoring authority has not placed all the bail applications and orders before the Detaining Authority. He submitted that because of all these reasons, detention of the petitioner is bad in law. The subjective satisfaction gets vitiated for non-placement of orders of bail before the Detaining Authority. He, therefore, prayed for setting aside the order of detention.

11. Learned APP Shri Salgare argued that representation was

decided by the State Government and it has been communicated to the petitioner. He further submitted that the activities of the petitioner are prejudicial to the maintenance of public order. According to learned APP, the Detaining Authority has subjectively satisfied itself about the criminal activities of the petitioner. The Detaining Authority also satisfied itself about the fact that witnesses are not coming forward to depose against the petitioner. The Detaining Authority has satisfied itself that because of the activities of the petitioner, even tempo of life has been disturbed and his activities are prejudicial to the maintenance of public order. Therefore, detention was rightly ordered. The Advisory Board has also approved the detention. He, therefore, prayed for the dismissal of the petition.

12. Before appreciating the submissions of both the learned counsel, provisions of the MPDA Act will have to be looked into.

Section 2(b-1) of the MPDA Act defines dangerous person as :-

2(b-1) "dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets 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.

Thus, this clearly shows that in order to bring the activities of the petitioner within the purview of this definition, it is to be established that the petitioner habitually commits 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. Chapter XVI of the Indian Penal Code deals with offences against human body and Chapter XVII of the Indian Penal Code deals with offences against properties. Section 379 of the Indian Penal Code deals with the offences against property and, therefore, it comes within the scope of Chapter XVII of the Indian Penal Code.

13. Section 2(e-2) of the MPDA Act defines 'sand smuggler' thus :-

2(e-2) "sand smuggler" means a person who individually or as a part of a group of persons is engaged in or is preparing to engage in or associated with or abets unauthorised extraction, removal, collection, replacement, picking up or disposal of sand and its transportation, storing and selling or who commits or attempts to commit or abets the commission of offences in respect of sand which are punishable under the Mines and Minerals (Development and Regulation) Act, 1957 or under the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013.

From this definition it is evident that to bring the activities of a person within the definition of sand smuggler, it is to be established that the said person has engaged himself in unauthorised extraction, removal, collection, replacement, picking up or disposal of the sand and its transportation, storing and selling. So far as ingredients of Section 379 of the Indian Penal Code are concerned, it has to be established that the property belonging to another was removed out of the possession of owner/possessor without consent of that person.

14. Section 3(3) of the MPDA Act requires the Detaining Authority to forthwith report the fact of detention to the State Government together with the grounds on which the order has been made and such other particulars as, in its opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after making thereof, unless, in the meantime, it has been approved by the State Government. 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 and this communication is required to be 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 the grounds on which the order has been made within three weeks from the date of detention of a person. Section 11 states that within seven weeks from the date of detention of the person, the Advisory Board shall submit the report to the State Government. Section 13 states that detention shall not exceed twelve months.

15. Learned counsel for the petitioner did not bring to the notice violation of any of these provisions which means that the detenu does not dispute that all the provisions have been followed in letter and spirit. On 19.08.2020, the grounds of detention were communicated to the petitioner. On 21.08.2020, report regarding detention was communicated to the State Government. On 25.08.2020, the Government approved detention of the petitioner. On 10.09.2020, the Advisory Board approved detention. It is not the case of the petitioner that he was not given hearing by the Advisory Board.

16. By the grounds of detention, it was informed to the

petitioner that he has right to make representation to the Detaining Authority i.e. District Magistrate. It was also made known to him that by approval of the order of detention by the State Government, the right to represent shall stand automatically terminated. The petitioner was also informed that he had a right to make representation to the State Government and that his detention order will be placed before the Advisory Board. This clearly shows that all these provisions have been followed by the Detaining Authority.

17. The first and foremost requirement for ascertaining whether the detention is proper or not is whether the Detaining Authority has subjectively satisfied itself about the grounds of detention of the petitioner. For this purpose, the Detaining Authority has considered CR no. 329/2020 under section 379, 188, 279,270 of the Indian Penal Code r/w section 51(B) of the Disaster Management Act, 2005, read with Sections 3 and 4 of Mines & Minerals Act. The grounds of detention mention several offences alleged to have been committed by the petitioner. But the Detaining Authority has not considered any of these offences. It has only made reference of those offences so as to indicate that the petitioner has criminal antecedents and he has engaged himself in the activities of sand theft and that he

has engaged himself in committing offences of attacking the public servants. First Information Report in CR No. 329/2020 was placed before the Detaining Authority. It shows that the said offence was committed on 17.06.2020 at 7.30 pm. It is alleged in the First Information Report that 4 *keni* were being used for illegal extraction of sand from the bed of the river Godawari and by the side of the *keni*, there were heaps of sand weighing about 10 brass. The petitioner was present there. 4 *keni* worth Rs. 20,000/- each total Rs. 80,000/- and 10 brass sand of Rs. 25,000/- were seized from the said spot. This shows that the petitioner has engaged himself in committing the offence of sand theft.

18. The in-camera statements of two witnesses i.e. witness A and witness B have been produced before the Detaining Authority. Their statements were recorded by Police Inspector of Georai police station. Those have been verified by his superior Sub Divisional Police Officer, (SDPO) Georai. **Witness A has unleashed the reign of terror in the area of his operation.** Witness A has stated in his statement that on 13.06.2020 at 8.00 am, the petitioner confronted him as to why witness A objects to his use of tractor. Witness A stated to him that because of his sand business, sand level and water

level is coming down because of which, drought situation is created. The petitioner got enraged and abused him in filthy language and beat him with kicks and fists blows. The petitioner is a ruffian. Because of his criminal activities nobody dares to come forward to depose against him. Witness A has also come forward to depose against the petitioner only when he was given assurance that his name will not be divulged any time anywhere and that he will not be required to depose against the petitioner.

19. Witness B has stated in his statement that the petitioner abused him on 15.06.2020 at 9.00 am on the ground that witness B is the informer of the police and he informs the activities of illegal extraction of sand by petitioner to the police. Witness B denied that he had given any information to the police about the activities of the petitioner. Thereupon the petitioner punched him and fell witness B down. He fished out a knife from his waist and placed it at the neck of the witness B. Witness B shouted but nobody came forward to save him because of the fear of the petitioner. This witness also requested to keep his identity secret and not to disclose his identity to anyone. He has given this statement on the assurance that his identity will not be disclosed anywhere and that he will not be

required to depose against the petitioner anywhere.

20. The statement of witness A indicates that the petitioner has committed offence under Chapter XVI of the Indian Penal Code i.e. offence against human body. Similarly, statement of witness B also indicates that the petitioner has committed offence against human body. Already one offence is registered against the petitioner vide CR No. 329/2020. The petitioner also has committed these two offences but these two witnesses did not come forward to depose against the petitioner because of the terror created by the petitioner in the locality. These three incidents clearly indicate that the petitioner is in the habit of committing offences. Because of his activities, people are not coming forward to depose against him nor they are interested in giving evidence against him. Therefore, there was subjective satisfaction on the part of the Detaining Authority that the petitioner is in the habit of committing offence and he has created terror in the society because of which, people are scared of deposing against him. Nobody comes forward to depose against the petitioner on account of his criminal activities. Therefore, we are of the view that the Detaining Authority has subjectively satisfied itself that the activities of the petitioner are prejudicial to the maintenance

of public order and therefore, his detention was necessary.

21. It is true that in the order of detention dated 19.08.2020, the Detaining authority has described the petitioner as a sand smuggler whereas in the grounds of detention the petitioner has been described as a dangerous person. Definitions of 'dangerous person' and 'sand smuggler' have been narrated above. Section 379 of the Indian Penal Code requires that any movable article is moved out of the possession of the concerned without that person's consent. In the case at hand, the property which has been moved without the consent of the State Government is the sand from the bed of the river Godawari. The grounds of detention show that in CR No. 329/2020 offences under Sections 3 and 4 of Mines and Minerals Act have also been registered against the petitioner. Therefore, he was rightly described as "Sand Smuggler". Therefore, submission in this respect cannot be accepted.

22. Learned counsel Shri Tripathi has placed reliance on the case of Vishal Waman Mhatre Vs. The Commissioner of Police and others reported in **2013 ALL MR (Cri) 42** wherein it has held thus :-

9. It will be also necessary to make a reference

to another decision of the Apex Court in the case of Sunila Jain v. Union of Indian & Another [(2006)3 SCC 321] : [2006 ALL MR (Cri) 941 (S.C.)] In Paragraph 12 and 18 of the said decision, it is held thus :-

“12. The question as to whether an offence is bailable or not is not a vital fact whereupon an order of bail can be passed. Application of mind to the averments made in a bail application may be relevant where the grounds stated therein reveal certain facts which are vital for passing an order of detention. In a case of such nature, it may be said that the application for bail was necessary to be placed before the detaining authority and non-furnishing a copy thereof to the detenu would vitiate the order of detention.”

“18. The decision of this Court referred to hereinbefore must be read in their entirety. It is no doubt true that whether a detenu on the date of the passing of the order of detention was in custody or not, would be a relevant fact. It would also be a relevant fact that whether he is free on that date and if he is, whether he is subjected to certain conditions in pursuance to and in furtherance of the order of bail. If pursuant to or in furtherance of such conditions he may not be able to flee from justice, that may be held to be relevant consideration for the purpose of passing an order of detention but the converse is not true. Some such other grounds raised in the application for bail and forming the basis of passing an order of bail may also be held to be relevant. It would, however, not be correct to contend that irrespective of the nature of the application for bail or irrespective of the nature of the restrictions, if any, placed by the court of competent jurisdiction in releasing the detenu on bail, the same must invariably and mandatorily be placed before the detaining authority and the copies thereof

supplied to the detenu.” (underlined supplied)

Thus, the position that emerges from this authority is that if averments made in the bail application reveal certain facts which are vital for passing order of detention, then such application is necessarily to be placed before the Detaining Authority and non-furnishing a copy thereof to detenu would vitiate the order of detention. In the case at hand, no such circumstance is brought on record to indicate that the bail application contained such averments which would vitiate the subjective satisfaction of the Detaining Authority. Therefore, non-production of bail application and bail order in the case at hand will not vitiate the order of detention.

23. Shri Tripathi, learned counsel for the petitioner has placed reliance on the judgment of the Honourable Apex Court in the matter of Nainmal Pertap Mal Shah Vs. Union of Indian and others reported in AIR 1980 Supreme Court 2129 wherein it has been observed as under :-

2. Controverting this allegation, the Under Secretary to the Government of India stated that the grounds were explained to the detenu by the Prison authorities. In the affidavit the name of the authority concerned or the designation is not mentioned. Nor is there any affidavit by the

person who is stated to have explained the contents of the grounds to the detenu. The Under Secretary further suggested that as the detenu had signed number of documents in English, it must be presumed that he was fully conversant with English. This is an argument which is based on pure speculation when the detenu has expressly stated that he did not know English. Merely because he may have signed some documents it cannot be presumed, in absence of cogent material, that he had a working knowledge of English. It is also in dispute that a translated script of the grounds were supplied to the detenu at the time when the grounds were served on him. This is undoubtedly an essential requirement, as held by this court in *Hadibandhu Das v. District Magistrate, cuttack*, (1969) 1 SCR 227 : (AIR 1969 SC 43). In these circumstances, therefore, there has been a clear violation of the Constitutional provisions of Article 22(5) so as to vitiate the order of detention. The petition is, therefore, allowed, the continued detention of the detenu being invalid, he is directed to be released forthwith.

This authority has no application to the facts of the instant case. Learned APP has produced original record produced before the Detaining Authority. It shows that the grounds of detention in Marathi script bear the signature of the petitioner. This clearly shows that the petitioner was provided with the grounds of detention in Marathi. Therefore, there is no force in the submission of learned counsel Shri Tripathi that the petitioner was served with

the grounds of detention in English. For the same preposition, reliance was placed on the case of Harikisan Vs. State of Maharashtra reported in **1962 AIR (SC) 911**. Learned counsel Shri Tripathi has further placed reliance on the judgment in the matter of Mrs. Satwinder Kaur Maan Vs. District Magistrate and another reported in **2002 ALL MR (Cri) 1123** in which it has been held that non-furnishing of documents relevant to the material particulars and facts in the language known to the detenu, has deprived him of his right to make effective representation against his detention and the impugned order on that count has to be held illegal and would stand vitiated.

24. As indicated above, the petitioner was served with the grounds of detention in Marathi script. Moreover, nothing is placed on record to show that copies of 45 pages were not supplied to the petitioner. Learned counsel Shri Tripathi submitted that there are 45 pages/documents which are referred to and relied on by the Detaining Authority in English language translation of which was not provided to the petitioner in Marathi. Therefore, the petitioner is deprived of making effective representation guaranteed under Article 22(5) of the Constitution of India. The petitioner has vaguely

mentioned in the petition that 45 pages relied on by the Detaining Authority are in English and translation of the same was not supplied to him. The petitioner has not given details of these documents. Therefore, submission in that respect being vague cannot be considered.

25. Learned counsel Shri Tripathi further submitted that the petitioner had made representation but that was not decided by the State Government and, therefore, the order of detention stands vitiated on this ground alone. The petitioner has annexed the said representation with the petition. It shows that this representation was made on 21.09.2020. Detention of the petitioner was approved by the State Government on 25.08.2020 and the Advisory Board also approved detention of the petitioner on 10.09.2020. This clearly indicates that the petitioner made representation after the Advisory Board upheld his detention vide order dated 10.09.2020. As stated above, the petitioner was informed that if representation is not made before approval of his detention by the State Government, his right to representation shall automatically stand terminated/extinguished. In the case at hand, his right to make representation has been terminated/extinguished as he did not make representation before

his detention was approved by the State Government.

26. Thus, the record placed before the Detaining Authority and the grounds of detention communicated to the petitioner unmistakably indicate that the Detaining Authority subjectively satisfied itself that the activities of the petitioner are prejudicial to the maintenance of public order and that his detention on that count has become necessary. The record also reveals that all the procedural requirements have been complied with the by Detaining Authority. In this view of the matter, the petition is devoid of any substance. Petition, therefore, stands dismissed. Rule discharged.

(M. G. SEWLIKAR)
Judge

(T.V. NALAWADE)
Judge

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