

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

CRIMINAL WRIT PETITION NO. 182 OF 2020

Siddhesh Bala Mhaskar @	}	
Siddhu Abhange, Age- Adult	}	
Residing at 002, Vina Building	}	
Lokpuram, Vasant Nagar	}	
Thane (West).	}	... <u>PETITIONER</u> / (Detenu)

VERSUS

1.	The Commissioner of Police	}	
	Thane.	}	
2.	The State of Maharashtra	}	
	(Through Addl. Chief Secretary	}	
	to Government of Maharashtra	}	
	Mantralaya, Home Department	}	
	Mantralaya, Mumbai	}	
3.	The Superintendent	}	
	Nashik Road Central Prison	}	
	Nashik.	}	
4.	The Secretary,	}	
	Hon'ble Advisory Board	}	
	Constituted under Section 9 of	}	
	M.P.D.A. Act, 1981, Mantralaya	}	
	Mumbai - 400 032.	}	... <u>RESPONDENTS</u>

APPEARANCES-

<i>For Petitioner-</i>	<i>Mr. Udaynath Tripathi i/b. Ms. Jayshree Tripathi.</i>
<i>APP for State-</i>	<i>Mr. J P Yagnik.</i>

**CORAM : S. S. SHINDE &
V. G. BISHT, JJ.**

RESERVED ON : 27/02/2020.
PRONOUNCED ON : 04/ 03/2020.

JUDGMENT (PER S. S. SHINDE, J.)

1. Rule. Rule made returnable forthwith and heard with the consent of learned counsel for the parties.

2. The Petitioner / Detenu Siddhesh Bala Mhaskar @ Siddhu Abhange has preferred this Petition questioning the preventive detention order passed against him on 28th August 2019 by Respondent No. 1 – Commissioner of Police, Thane. The said detention order has been passed under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug offenders, Dangerous persons and Video Pirates Act, 1981 (hereinafter referred to as ‘MPDA Act’). The said detention order has been issued as the Detenu is a Dangerous person whose activities are prejudicial to the maintenance of public order. The detention order is based on three Crimes i.e. C.R. No. I-83/2019 registered with Wagale Estate Police Station, for the offences punishable under Sections 325, 324, 323, 143, 144, 146, 147, 148, 149, 504 and 427 of the Indian Penal Code, C.R. no. I-129/2018 registered with Chitalsar Police Station, for the offences punishable under Sections 143, 144, 146, 147, 148, 149, 504, 506(2) of IPC read with 3(25) of Arms Act, and read with 37(1), 135 of the Maharashtra Police Act and CR No. I-73 registered with Kopari Police Station for the offences punishable under Sections 469, 500, 34 read with Section 66(d) of the Information Technology Act,

2000.

3. Though the number of grounds have been raised in the present petition whereby the detention order has been assailed, however, the learned counsel appearing for the Petitioner / Detenue has pressed only three grounds before us i.e. ground nos. 'b', 'c' and 'd'. Those grounds are reproduced herein below in verbatim.

b. The Petitioner says and states that an order of detention under Section 3(1) of M.P.D.A Act, came to be passed on 28.08.2019 against the Petitioner. The Petitioner submits that along with the order, the compilation of documents were executed by the Executing Authority much belatedly on 02.10.2019 after a lapse of five weeks. The Sponsoring Authority as well as detaining authority have not taken any prompt action to search and execute the order as per the requirement of law. The Petitioner says and states that he was very well available in the locality then the authorities should execute the order and serve upon him to comply with the requirement of Section 7(a) (b) of M.P.D.A. Act. The Petitioner says and states that he was on bail in all the criminal cases granted by competent Court of

law. The Sponsoring Authority has not taken any prompt and effective steps by moving to the Court for cancellation of bail, which is requirement of section 7 as held by Hari Kumar's case as held by the Hon'ble Supreme Court of India. A delay in execution of the order of detention throws doubt in the satisfaction of the detaining authority. The order of detention is illegal and bad in law for inaction and not executing of the order promptly. The order of detention is illegal and liable to be quashed and set aside.

- c. The Petitioner says and submits that the detaining authority has taken into consideration a criminal case registered at Kopari Police Station vide C.R. No. I-73 of 2019 under Section 469, 500, 34 of IPC r/w. I.T. Act, 2000 under Section 66(d). The Petitioner says that this is a case and the section wherein are not relevant for passing order of detention. Offences under I.T. Act, 2000 cannot be considered for putting a person under detention under M.P.D.A. Act. Hence, the order is illegal and bad in law liable to be quashed and set aside.*

Moreover no public order is disturbed by showing and executing photographs on social media. The order of detention is illegal and bad in law, liable to be quashed and set aside.

- d. *The Petitioner says and submits that, he is Maharashtrian and can read, write and understood Marathi language only. The Petitioner says and submits that he has been supplied Marathi translation of grounds of detention as well as all other documents of the compilation. The Petitioner says and submits that at Page Nos. 167 to 173. Certain relied on document in the compilation which are in English whose Marathi translations are not furnished to the Petitioner. This amounts to non-communication of grounds of detention. Thus affecting the first facet of Article 22(5) of the Constitution of India. As a result of non-furnishing documents in a language understood by the Petitioner he is deprived of making any effective representation. Thus both the facets of Article 22(5) of the constitution of India is violated. The order of detention is illegal and bad in law. The*

order of detention is illegal and bad in law, liable to be quashed and set aside.

4. We have heard learned counsel for the Petitioner and learned APP for the State at length. Learned counsel for the Petitioner invites our attention to the ground no. (b) reproduced herein above and submits that the sponsoring authority has not taken prompt and effective steps for execution of order of detention. Learned counsel submits that the sponsoring authority has not taken effective steps by moving to the Court for cancellation of bail, which is requirement of Section 7 as held by the Hon'ble Supreme Court in the case of *P.M. Hari Kumar Versus Union of India and Others reported in (1995) 5 SCC 691*.

Learned counsel further submits that the detaining authority has taken into consideration a criminal case registered at Kopari Police Station vide C.R. No. I-73/2019 under Section 469, 500, 34 of IPC. read with I.T. Act, 2000 under Section 66(d). The offences under I.T. Act, 2000 cannot be considered for putting a person under detention under M.P.D.A. Act. He further submits that pages no. 162 to 173 of the compilation of documents supplied to the detainee were in English and Marathi translation of those pages was not supplied to the Petitioner. Therefore, learned counsel for the Petitioner submits that petition may be allowed.

5. Learned APP appearing for State relying upon the averments in the affidavit in reply, so also compilation of additional documents submits that there was no delay in executing the detention order as per the requirement of law. It is submitted that the concerned authorities made sincere efforts to trace out the detainee, however, the detainee absconded. Learned APP invites attention of this Court to the additional documents and submits that, the authorities have taken sincere efforts to ensure the execution of order of detention and documents alongwith the said order. In reply to ground no. (b) learned APP invites attention of this Court to the affidavit in reply filed by Commissioner of Police, Thane City, Thane and also by Deputy Secretary (In-charge), Government of Maharashtra, Home Department (Special) Mantralaya, Mumbai and also affidavit in reply filed by Secretary, Advisory Board, MPDA Act, 1981, Home Department (Special), State of Maharashtra, Mumbai, and submits that petition is devoid of any merits and same may be rejected.

6. So far ground no. (b) is concerned, in reply filed by the Commissioner of Police, Thane City, Thane, it is stated that the order of detention was passed on 28.08.2019, police tried to secretly locate the whereabouts of petitioner to serve the order of detention and other relevant documents at this residence in Chitalsar but it was

noted that the Petitioner was not available in Chitalsar, Thane on the address which is available with the detaining authority. The detenue being a criminal continuously changed his residence from one place to another and therefore to trace him out, all necessary steps were initiated. Accordingly, station diary entries were made from time to time. Meanwhile on 30/08/2019 police got information that petitioner is residing in Amber Heights, Row house No. K-1 in the jurisdiction of Shivajinagar police station, Thane City alongwith his family. On instructions of Sponsoring Authority, police staff of Kopari police station with the help of Shivajinagar police station went at his present address as above. Petitioner somehow escaped from his house. Petitioner's wife, father-in-law and neighbor instead of co-operating police, abused, made false allegations against police, threatened and leaped over police staff. Accordingly, on 31.08.2019 Shivajinagar police station C.R. No. 0264/2019 u/s. 353, 504, 506, 34 of IPC was registered against Petitioner's wife and neighbours. After this incident too police tried to locate whereabouts of petitioner in the jurisdiction of Thane Police Commissionerate and nearby areas but as he did not have any permanent residence, police were unable to find him continuously for 4-5 weeks. Constant continuous efforts to move execution order upon the detenue were made. But detenue was absconding and WAS out of bounds of Thane Police Commissionerate, while police teams were searching him. Finally police were able to

trace him on 01.10.2019 in Chiplun, Dist.Ratnagiri. Police staff of Kopari police station brought him to Thane, handed him to Chitalsar police station. Immediately, on 02.10.2019 the detention order and related documents were served to him and he was detained in Nasik Road Central Prison, Nasik without any delay. Hence, the need to take action u/s. 7(a) (b) of MPDA Act did not arise. Therefore, the action not initiated u/s. 7(2) (a) and (b) cannot be ground to challenge the detention order as same will not affect the subjective satisfaction of the detaining authority.

In support of aforesaid contention, learned APP has relied upon the judgment of the Division Bench of this Court (Coram:- Vishnu Sahai & S.K. Shah, JJ.) in the case of Pyarelal @ Pyare Ambika Singh Versus M.M. Singh, Commissioner of Police, Greater Bombay, dated 13.12.2001 in Criminal Writ Petition No. 1312 of 2001. In the said judgment, the Division Bench has held that the failure of the sponsoring authority to move for cancellation of detenu's bail cannot be a basis for concluding that the detaining authority and the sponsoring authority were not sincere in their endeavor to execute the detention order and the subjective satisfaction of the detaining authority to detain the detenu under section 3(1) of the MPDA Act was not genuine.

7. We have perused additional documents filed by respondents . As stated in the affidavit in reply, the respondents have taken sincere efforts to trace out the detainee, however, it appears that the detainee did not make himself available and absconded as stated in the affidavit in reply of respondents. We are satisfied that the respondent authority has taken steps with promptitude to serve the order of detention and documents to detainee. Therefore, in the facts of this case, it cannot be said that no sincere steps were taken by the sponsoring authority to serve the order of detention and documents to detainee.

8. So far ground (c) is concerned, the contention of the learned counsel for the Petitioner that CR No. I-73/2019 u/s. 469, 500, 34 of IPC read with IT Act, 2000 under Section 66(d) should not have been taken into consideration for the purpose of passing the order of detention is devoid of any merits. It appears that Respondent No. 1 i.e. detaining authority has considered following three incidents:-

1) C.R. No. I-83/2019 registered with Wagale Estate Police Station for the offences punishable u/s. 325, 324, 323, 143, 144, 144, 146, 147, 148, 149, 504, 427 of IPC.

2) C.R. No. I-129/2019 registered with Chitalsar Police Station for the offences punishable u/s. 143, 144, 146, 147,

148, 149, 504, 506 (2) of IPC, r/w. Section 3, 25 of Arms Act read with Section 37(1) 135 of Maharashtra Police Act, 1951.

3) C.R. No. I-73/2019 registered with Kopari Police Station for the offences punishable u/s. 469, 500, 34 read with Section 66(d) of IT Act, 2000.

The detaining authority also relied upon the statements of two in-camera witnesses 'A' and 'B' recorded on 05.07.2019 and 07.07.2019 and social media terror. There are more than one offence, so also statements of witnesses which are relied upon by the detaining authority while arriving at the subjective satisfaction. If the C.R. No. I-73/2019 is excluded from consideration, even then by invoking Section 5A of the said Act on remaining grounds order of detention can legally sustain.

9. So far Ground (d) about non supply of English translation of Pages No. 167 to 173 of the compilation of documents supplied to the detainee is concerned, it is stated that Pages No. 167-173 are letters in English given by Cyber Cell to Chief Technical Officer Google and Facebook on application given by an applicant. After enquiry Kopari Police Station registered C.R. No. I-73/2019 against the Petitioner. These letters are part of investigation but same are

referred documents not relied upon or vital hence not translated in Marathi. Apart from that it is revealed from record that petitioner/detenuue know English language as also detenuue used social media such as Facebook, U-tube, Tik-Tok, Instagram etc. and even in the offence registered as Kopari Police Station C.R. No. I-73/2019 the I.T. Section 66 (d) is applied in said offence. In all above social media process he has used English language. This material clearly shows that detenuue is having knowledge of English language. Therefore, his right guaranteed under constitution is not affected at any stage in any manner.

10. In the light of discussion in foregoing paragraphs, we are of the considered view that no case is made out to cause interference in the impugned order of detention, Hence, writ petition stands rejected. Rule stands discharged.

(V. G. BISHT, J.)

(S. S. SHINDE, J.)