

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.412 OF 2021

Sayed Noor Sayed Nasir,
Aged about 33 years,
Occupation-Labourer,
R/o. Wadali, Amravati.

.. **Petitioner**

.. **Versus.**

1] State of Maharashtra, through
Secretary, Preventive Detention,
Home Department (SPL),
Mantralaya, Mumbai-32.

2] Commissioner of Police, Amravati. .. **Respondents**

.....
Mr. J.B. Kasat, Advocate for the petitioner,
Mr. S.S. Doifode, APP for the respondents.
.....

**Coram: M.S. Sonak and
Pushpa V. Ganediwala, JJ.**

Date: 24th November 2021.

JUDGMENT (PER: M. S. SONAK, J.)

Heard Mr. J.B. Kasat, learned counsel for the petitioner,
and Mr. S.S. Doifode learned Additional Public Prosecutor for the
respondents-State.

2. The challenge in this petition is to the detention order dated 2.3.2021 made under the provisions 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 (the said Act), *inter alia* on the ground that the detainee (Sayed Noor Sayed Nasir) is a “dangerous person”.

3. Mr. Kasat, learned counsel for the petitioner, has pressed the following four grounds in support of the petition :

- (a) that, the detainee was already in custody when the impugned detention order was made; there was no application seeking bail made or pending before the appropriate court. The impugned detention order does not record any satisfaction on the issue that the release of the detainee was imminent. In the absence of the record of such satisfaction, the issue of the impugned detention order was illegal and *ultra vires*;
- (b) That, the detainee understands only Hindi language. The impugned detention order was made in English language and the translation supplied to the detainee was in the Marathi language. This amounts to non-communication of the grounds of detention thereby breaching

the mandate of Article 22 (5) of the Constitution of India;

- (c) That the translation of certain portions of the grounds of detention were not at all supplied to the detainee. Such non-supply amounts to non-communication of the ground of detention and consequently there is a breach of Article 22 (5) of the Constitution of India.
- (d) That certain relevant documents i.e. transcript of the “in camera statement” relied upon by the detaining authority and supplied to the detainee were illegible; Supply of illegible relevant and vital documents amounts to non-communication of the grounds of detention, thereby breaching the mandate of Article 22 (5) of the Constitution of India.

4. Mr. Doifode, learned Additional Public Prosecutor for the respondents-State, submits that even though the detention order may not have made specific reference to the subjective satisfaction on the aspect of the imminent release of the detainee, there is ample material on record, based on which, such satisfaction can be said to have been validly reached by the detaining authority. He referred to the statements of some of the witnesses to submit that the detainee may not have been one of the main authors of the

crimes in question since he was not the one who stabbed the victim.

5. Mr. Doifode submitted that this material was sufficient to conclude that the release of the detainee from custody was quite imminent and even though, the detaining authority may not have said so in the detention order. He relied on **Kamarunnissa .vs. Union of India and another**, (1991) 1 SCC 128, **Union of India and one .vs. Dimple Happy Dhakad**, (2019) 20 SCC 609, **Union of India through Joint Secretary (COFEPOSA), Ministry of Finance, New Delhi .vs. Ankit Ashok Jalan**, (2020) 16 SCC 185 and **Sarjerao Pawar f/o Detenu Santosh @ Satya Sarjerao Pawar .vs. M.N. Singh**, 2003 ALL MR (Cri) 2444, in support of these submissions.

6. Mr. Doifode referred to the certificate issued by the Principal of Zilla Parishad Madhymik Boys School, Amravati to submit that the detainee had studied Marathi as a second language during his education in the said school from standard 7th to 10th from 1999 to 2004. Based on this certificate, Mr. Doifode submitted that the petitioner had knowledge of the Marathi language and there was no infirmity in providing the translations in the Marathi language.

7. Mr. Doifode submitted that some translation errors do not vitiate the impugned detention order, particularly because the detainee neither pleaded nor established any prejudice. He relied on **Pravin Ganpat Kakad .vs. Commissioner of Police, Nashik, 2021 LawSuit (Bom) 424**, in support of this proposition.

8. Mr. Doifode submitted that all the documents supplied to the detainee were quite legible. He relied upon **Vishal Popat Sangle .vs. Commissioner of Police, Nashik, 2020 LawSuit (Bom) 85** to submit that illegibility of certain words and sentences in not so very vital documents was not an impairment of the rights of the detainee by Article 22 (5) of the Constitution.

9. The rival contentions now fall for our determination.

10. In this case, the impugned detention order dated 2.3.2021 was made and served on the detainee on the same day, while he was already in custody in connection with Crime No.685/2020. The record indicates that the detainee was in custody since 14.12.2020 i.e. almost 3 months before the detention order was made and served on him.

11. There is also no dispute whatsoever that the detenue's Criminal Bail Application No.1577/2020 had been rejected by the Additional Sessions Judge-2, Amravati by a detailed order dated 5.1.2021. There is further no dispute that as on the date when the impugned detention order dated 2.3.2021 was made and served on the petitioner, no bail application on behalf of the petitioner was pending before the Additional Sessions Judge.

12. In the grounds for detention, as incorporated in the impugned detention order dated 2.3.2021, all that is stated on the aspect of detenue already being lodged in Central Prison, Amravati at the time of making and serving the impugned detention order, reads thus :

"That, from 18/12/2020 you are in Magistrial Custody Remand and were lodged in Central Prison, Amravati. You had moved bail applications however the Hon'ble Court has rejected the said bail applications. The copy of the bail application is obtained and is part of record. I had perused the same."

13. Thus, at least in the impugned detention order or in the grounds of detention, there is no record of satisfaction about the possibility of either imminent release or the release in near future of the detenue, even though the Additional Sessions Judge had recently, by order dated 5.1.2021, rejected the detenue's bail

application and further no bail application on behalf of the detenue had been filed or was pending before the learned Additional Sessions Judge.

14. The decisions in *Kamarunnissa (supra)* and *Dimple Dhakad (supra)* delivered by the Division Benches of Hon'ble Supreme Court along with some other decisions were considered by a bench comprising of three judges of the Hon'ble Supreme Court in *Ankit Jalan (supra)*. In paragraph 11 of the said decision, the Hon'ble Supreme Court held thus :

"As per catena of decisions of this Court, even if a person is in judicial custody, he can be detained under the relevant provisions of the Act concerned, like the COFEPOSA Act, etc. However, there must be a proper application of mind and the detaining authority must have been subjectively satisfied on considering the relevant material that there is a reason to believe that there is a real possibility of detenus being released on bail and that on being so released the detenus will in all probability indulge in prejudicial activity. In the recent decision, this court in Dimple Happy Dhakad had an occasion to consider the aforesaid aspect and after considering the decisions of this Court in Kamarunnissa, Union of India .v. Paul Manickam, Huidrom Konungjao Singh v. State of Manipur, Dharmendra Suganchand Chelawat v. Union of India and Veeramani, this court observed and held (i) that the order of detention validly can be passed against a person in custody and for that purpose it is necessary that the grounds of

detention must show whether the detaining authority was aware of the fact that the detenu was already in custody; (ii) that the detaining authority must be further satisfied that the detenu is likely to be released from custody and the nature of activities of the detenu indicate that if he is released, he is likely to indulge in such prejudicial activities and therefore, it is necessary to detain him in order to prevent him from engaging in such activities; and (iii) the satisfaction of the detaining authority that the detenu is already in custody and is likely to be released on bail on being released, he is likely to indulge in the same prejudicial activities with the subjective satisfaction of the detaining authority.”

15. The aforesaid means the preventive detention order can undoubtedly be made and served upon a detenue who is already in custody, but for this purpose, it is necessary that the grounds of detention must show whether the detaining authority was aware of the fact that the detenue was already in custody; that the detaining authority was satisfied that the detenue was likely to be released from custody shortly; that the detaining authority was satisfied that the detenue on such release was likely to indulge in such prejudicial activities for which the making of the detention order was necessary.

16. In the present case, the impugned detention order indicates that the awareness of the detaining authority about the detenue being in custody at the time of the making of the impugned

detention order. Further, the impugned detention order to some extent records satisfaction about the detainee being likely to indulge in some prejudicial activities warranting preventive detention if the detainees were to be released from custody. However, in the impugned detention order, there is not a whisper about any satisfaction about the detainee's imminent release.

17. In terms of *Ankit Jalan (supra)* relied upon by Mr. Doifode himself, this was quite necessary. This is because the object of preventive detention is not to punish the detainee for having done something, but to intercept and to prevent him from doing so, as was observed in *Dimple Dhakad (supra)*. In the absence of a record of any satisfaction whatsoever about the imminent release of the detainee, we are doubtful whether the drastic powers of preventive detention could at all have been exercised.

18. In **Rekha .vs. State of Tamil Nadu, (2011) 5 SCC 244**, the three-judge bench of the Hon'ble Supreme Court has held that Article 22 of the Constitution, which permits preventive detention in certain circumstances cannot be read in isolation but must be read along with Articles 19 and 21. Article 22 (3) (b) which permits preventive detention is not itself a fundamental right but only an exception to Article 21. Such an exception can apply only in rare

and exceptional cases, and it cannot override the main rule. Article 21 is the most important of the fundamental rights guaranteed by the Constitution of India. Right to liberty guaranteed by Article 21 implies that before a person is imprisoned, a trial must ordinarily be held giving him a full opportunity of hearing and that too through a lawyer because a layman would not be able to properly defend himself.

19. The Hon'ble Supreme Court proceeded to observe that preventive detention is often described as a "jurisdiction of suspicion". Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. However, since Article 22 (3) (b) of the Constitution permits preventive detention, it cannot be held illegal. But the power of preventive detention must be confined to very narrow limits, otherwise, the great right to liberty won by our Founding Fathers, who were also freedom fighters, after long, arduous, and historical struggles, will become nugatory. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however, technical is mandatory and vital. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that the detaining authority must show that

the impugned detention meticulously accords with the procedure established by law. The history of liberty is the history of procedural safeguards. These procedural safeguards are required to be zealously watched and enforced by the court and their rigour cannot be allowed to be diluted based on the nature of the alleged activities of the detainee.

20. In *Rekha (supra)* the Hon'ble Supreme Court held as under :

“Where a detention order is served on a person already in jail, there should be 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. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.”

21. Similarly, in the case of **P.P. Rukhiya .vs. Joint Secretary, Government and another**, (2019) 20 SCC 740, the Division Bench

of the Hon'ble Supreme Court was concerned with the case of detenue, who was served with the detention order while already in jail. The learned Senior Counsel appearing on behalf of the detenu made a neat submission that when the detenu, who was in jail, had not made any bail application, there could not have been any apprehension on the part of the detaining authority about him indulging in any activities as alleged in the detention order and thus, there was no occasion to pass any preventive detention order in respect of the detenue. The Hon'ble Supreme Court relying on the aforesaid principle of law in *Rekha's case (supra)*, quashed and set aside the impugned detention order.

22. Mr. Doifode, however, relies on *Dimple Dhakad (supra)* to submit that even if, in the detention order, the detaining authority does not specifically record that the "detenu is likely to be released, it cannot be said that the detaining authority has not applied its mind to the aspect of the imminent release of the detenu or the release of the detenu in near future. Mr. Doifode focused on such observations in paragraph 38 of *Dimple Dhakad (supra)* but was unable to point out, whether in *Dimple Dhakad (supra)*, there was no reference whatsoever of the detenue's likelihood to be released in near future or whether that was a case of absence of some specific reference. He submitted that this decision lays down

that as long as there is some material on record that suggests that the release of the detainee is imminent, a preventive detention order can be validly made even without a record of any satisfaction on the aspect of the imminent release. This may not be the correct construction of this decision having regard to the Constitutional mandate of communicating the grounds of preventive detention to the detainee and the decision of the three-judge bench of the Hon'ble Supreme Court in *Ankit Jalan(supra)* and *Rekha (supra)*.

23. Be that as it may, even if we accept Mr. Doifode's construction of the said decision, as entirely correct, in the facts of the present case, we do not think that there was any material on record from which the detaining authority could have satisfied itself about the imminent release of the detainee or the release of the detainee in near future. The material in the form of the statements or the FSL report of the weapon was already before the Additional Sessions Judge, who after consideration of the same, had declined bail to the detenu on 5.1.2021. From the perusal of the order dated 5.1.2021, we find that the rejection of the bail was on merits and not merely because no charge sheet had then been filed against the detainee. Therefore, this is a case where the impugned detention order not only records no satisfaction whatsoever on the aspect of the imminent release of the detainee but further, this is a case where

there was no material before the detaining authority, based on which, such satisfaction could have been recorded by the detaining authority. There is no dispute that factually no such satisfaction was ever recorded by the detaining authority in the impugned detention order.

24. Mr. Kasat submitted and the learned APP did not dispute that the detenue in the present case was ultimately released on bail only in the month of July-2021 i.e. after almost 5 months from the impugned detention order. This aspect is relevant because, in *Ankit Jalan (supra)*, the Hon'ble Supreme Court held that the detenues were granted bail by the court on the very date, orders of detention were quashed and therefore, the apprehension in the mind of detaining authority that the detenues were likely to be released on bail, was well-founded and fortified. Therefore, if the detaining authority in the present case were to have recorded satisfaction on the aspect of the Petitioner's imminent release (which he has not), such apprehension would not be well-founded having regard to the time gap of almost 5 months between the issue of the detention order whilst the Petitioner was in jail and the order by which he was granted bail.

25. Similarly, the Constitution Bench in **Rameshwar Shaw .vs. District Magistrate, Burdwan and another, AIR 1964 SC 334**, held that though it would be both inexpedient and undesirable to lay down any inflexible test about whether a detention order can be made in respect of the detenue, who is already in custody, the question about the validity of the satisfaction of the authority will have to be considered on the facts of each case. This is because the detention of a person without a trial is a very serious encroachment on his personal freedom, and so, at every stage, all questions in relation to the said detention must be carefully and solemnly considered. The relevant facts in connection with the making of the detention order may differ and that may make a difference in the application of the principle that a detention order may be passed against a person in jail. In dealing with this question, again the considerations of the proximity of time will not be irrelevant. Thus, if a person is sentenced to rigorous imprisonment for ten years, it cannot be seriously suggested that a detention order can be made no sooner than the sentence is pronounced. On the other hand, if a person who is undergoing imprisonment, for a very short period, say for a month or two or so, and it is known that he would soon be released from jail, it may be possible for the authority to consider the antecedent history of the said person and decide whether the detention of the said person would be necessary after he is released

from jail, and if the authority is bonafide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely to be released. Therefore, the question as to whether an order of detention can be passed against a person who is in detention or jail will always have to be determined in the facts of each case.

26. Following the principles laid down by the Constitution Bench in *Rameshwar Shaw (supra)*, we cannot ignore the circumstances that two months before making the impugned detention order, the learned Additional Sessions Judge, by a speaking order, had declined to release the detenue on bail by adverting to the merits of the matter. Further, there was no bail application filed by the detenue that could be said to be pending on the date the impugned detention order was made and served in jail on the Petitioner. There was no material on record to arrive at a subjective satisfaction about the imminent release of the detenue. Unlike in the case of *Ankit Jalan (supra)* and the illustrations in *Rameshwar Shaw (supra)*, the detenue, in the present case, was released almost five months after the impugned detention order came to be made which itself is an indicator that the apprehension, if any, about the imminent release was quite misplaced. Perhaps, this is the reason why the detaining authority, in the present case,

did not even deem it fit to record the subjective satisfaction about the imminent release of the detainee in the impugned detention order. Thus, having regard to the law laid down in *Ankit Jalan (supra)*, *Rameshwar Shaw (supra)*, *Rekha (supra)*, and *Rukhiya (supra)*, the impugned detention order warrants interference.

27. However, even if we were to uphold Mr. Doifode's contention, based on his construction and reading of the decision in *Dimple Dhakad (supra)*, we think that the impugned detention order will have to be set aside, because, in the present case, we are satisfied that there was non-communication of certain vital portions of the ground of detention to the detainee. Article 22 (5) of the Constitution provides that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. Thus, communication of grounds of detention as soon as maybe is a constitutional mandate that has to be meticulously complied.

28. The grounds of detention are to be found in paragraph 5 of the impugned detention order. Out of this, a vital portion of

the ground in Clause (2) of Para 5.1 reads as follows :

“That during investigation of above said crime it has clearly revealed that you have no regard to law and the consequences and you are daring enough to attempt to murder people by entering their homes. You have no fear of law neither you respects the law. It is revealed that you are dangerous and are squarely covered in the definition of “Dangerous Person” as mentioned in M.P.D.A. Act, 1981.”

29. Similarly, Clause 7 of Paragraph 5 containing a ground of detention refers to the gist of the ‘in-camera statements’ relied upon by the detaining authority to make the impugned detention order. The last line of Clause 7 of paragraph 5 of the impugned detention order reads as follows :

“That, the said in camera statements are verified by the Assistant Commissioner of Police Frezarpura Division.”

30. The impugned detention order, as noted earlier, was made in the English language. The detaining authority has admitted that the detainee did not understand the English language and therefore, supplied the translation in Marathi. Although the detainee has disputed that he understands Marathi and claimed that he understands only Hindi, for the present, we can proceed on the admitted basis that the detainee does not understand English. In the Marathi translation, the aforesaid quoted crucial portions of Clause (2) of Paragraph 5.1 and paragraph 7 of the impugned

detention order, are completely absent. This means that the crucial portions of the ground of detention were not even communicated to the detenu in the language which the detaining authority claims the detenu understands. In the petition, a specific ground on the above aspect was raised but the same has been denied quite evasively.

31. Mr. Doifode, however, contended that the pleadings in the petition on this aspect are defective and in any case, no prejudice is established.

32. On the aspect of defective pleadings, we refer to the observations in paragraph 4 of **Mohinuddin alias Moin Master .vs. District Magistrate, Beed, and others, (1987) 4 SCC 58**, which reads as follows :

“It was an improper exercise of power on the part of the High Court in disallowing the writ petition on the ground of imperfect pleadings. Normally, writ petitions are decided on the basis of affidavits and the petitioner cannot be permitted to raise grounds not taken in the petition at the hearing. The same rule cannot be applied to a petition for grant of a writ of habeas corpus. It is enough for the detenu to say that he is under wrongful detention, and the burden lies on the detaining authority to satisfy the court that the detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed. This Court on more occasions than one has dealt with the question and it is now well settled that it is incumbent on the State to satisfy the court that the

detention of the petitioner/detenu was legal and in conformity not only with the mandatory provisions of the Act but also strictly in accord with the constitutional safeguards embodied in Article 22 (5)."

33. Similarly, the prejudice is writ large because this is a case of non-communication of the grounds or vital portions of the grounds of detention in breach of the Constitutional mandate of Article 22(5). The detenue was entitled to know that during the investigation of Crime No.685/2020, it was clearly revealed that the detenue has no regard to law and its consequences, and further the detenue was daring enough to attempt to murder people by entering their homes. The detenue was entitled to know that the detaining authority entertained an opinion that the detenue had no fear of law or that the detenue did not respect the law. Most importantly the detenue was entitled to know that he was dangerous and squarely covered by the definition of "Dangerous Person" as mentioned in the M.P.D.A. Act, 1981. Similarly, the detenue was entitled to know that the 'in-camera statements' had been verified by the Assistant Commissioner of Police, Frezarpura Division. The material concerning Crime No.685/2020 and the 'in-camera statements' was the most vital material relied upon by the detaining authority in arriving at the subjective satisfaction for making the impugned detention order. This was stated so in the grounds of detention reflected in the impugned detention order

made in the English language. However, all this was simply missing in the translated copy of the detention order supplied to the detainee. According to us, this is a clear case of non-communication of the grounds of detention or the vital portions of the grounds of detention to the detainee in breach of the mandate of Article 22 (5) of the Constitution.

34. In *Pravin Kakad (supra)*, the issue was not about non-communication of the ground or vital portion of the ground of detention themselves. The issue was about the error in the translation of a few words in the medical certificate and part of the reply to the bail application concerning the detainee. It is in the context of such facts that the Division Bench held that the error in translation of the two documents had not adversely affected the right of the detainee to make an effective representation. The facts, in the present case, are completely different, because this is a case of not some error in the translation, but this is a case of non-providing and consequently non-communicating the grounds of detention or vital portions of the grounds of detention. If the detainee is not communicated the ground for his detention or a vital portion of such ground, then surely his right to represent effectively against such a ground is bound to be impaired. This is good ground for quashing the impugned detention order.

35. Having regard to the aforesaid, we do not think that it is necessary to address the remaining two grounds urged on behalf of the detenue. Though, we must say that the certificate dated 14.12.2020, relied upon by Mr. Doifode, states that the detenue had studied in Hindi medium of instruction and Marathi was only his second language. Therefore, the issue as to whether the detenue, in such circumstances had sufficient knowledge of the Marathi language and the detaining authority was justified in providing translations of the detention order in the Marathi language instead of Hindi would arise for consideration. But having regard to the discussion on the earlier two grounds, we think that there is no necessity to go consider this aspect any further.

36. On the aspect of illegibility of one of the in-camera statements, however, we find that the illegibility was not of such an extent as to render the said document unreadable, though with some slight difficulty. In any case, we do not propose to go into this issue as well because we are satisfied that the impugned detention order warrants interference on the first two grounds raised by Mr. Kasat. We are also satisfied that the first two grounds are independent of one another and based on either of the two grounds, the impugned detention order warrants interference.

37. For all the aforesaid reasons, we quash and set aside the impugned detention order dated 2.3.2021 passed by respondent no.2-Commissioner of Police, Amravati, and make the Rule absolute in terms of prayer clauses (A) and (B).

38. The petitioner is directed to be released forthwith unless he is required to be detained in relation to any other matter.

39. The petition stands **disposed of** accordingly without any order for costs.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)