

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

CRIMINAL WRIT PETITION NO. 477 OF 2021

Indragol Debaji Ramchawre,
Aged about 53 years, Occu. - Agriculturist,
R/o. Kinkhed, Tq. Murtizapur, District : Akola,
(In Jail)

... PETITIONER

----VERSUS----

1. The State of Maharashtra,
Home Department (Special),
Through its Section Officer,
Second Floor, Main Building,
Mantralaya, Mumbai -32.
2. Collector & District Magistrate,
Akola, Dist. Akola.

... RESPONDENTS

Mr. S. V. Sirpurkar, Advocate for Petitioner.
Shri T. A. Mirza, Additional Public Prosecutor for Non-applicants/State.

CORAM: **M. S. SONAK AND**
 PUSHPA V. GANEDIWALA, JJ.

DATE: **27.10.2021.**

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

1. Heard learned Counsel for the parties.
2. Rule was issued in this petition on 09.07.2020 and the
pleadings are completed.
3. The challenge in this petition is to the order
dated 27.04.2021 made by respondent No.1 preventively
detaining the petitioner under provisions of Maharashtra

Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers And Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (said Act).

4. Mr. S. V. Sirpurkar, learned Counsel for the petitioner submits that in this case, the impugned detention order for rather the grounds in support of the impugned detention order refer to six cases pending adjudication in which the petitioner was charged with having committed offenses under Section 65 (e) of the Maharashtra Prohibition Act, 1949. He submits that the petitioner was released on bail in all these cases but, such bail applications or the orders made thereon for neither taken into consideration by the Detaining Authority nor were the copies of the same communicated/supplied to the petitioner. He submits that in the present matters, such bail applications and orders made thereon constituted extremely relevant and vital material that the Detaining Authority was duty-bound to take into consideration. He submits that failure to consider the same and further, communicate the same to the petitioner amount to the infraction of the constitutional safeguard in Article – 22(5). He submits that in identical circumstances, this Court, in its judgment and order dated 15.02.2021 in ***Criminal Writ Petition***

No.677/2020 (Elizabeth Ranibhai Prabhudas Gaikwad Vs. The State of Maharashtra and Anr.) set aside the detention order.

5. Mr. S. V. Sirpurkar, learned Counsel for the petitioner also relies upon the judgment and order dated 02.07.2007 in ***Criminal Writ Petition No.470/2006 (Manoj S/o. Dilip Trivedi Vs. The State of Maharashtra and Ors.)*** in support of his contention.

6. Mr. T. A. Mirza, the learned Additional Public Prosecutor submits that the records indicate that the Sponsoring Authority had informed the Detaining Authority about the petitioner being released on bail. He submits that even the impugned detention order states that the Detaining Authority was aware that the petitioner was not in custody at the time of the making of the impugned detention order. He submits that the entire purpose of placing the bail orders before the Detaining Authority is only to make the Detaining Authority aware that the proposed detainee was out on bail and nothing further. He submits that since, in this case, the Detaining Authority was made aware of this position by the Sponsoring Authority, there is no infirmity for the impugned detention order or the order confirming the impugned order.

7. The rival contentions now fall for our determination.

8. There is no dispute in this case that the subjective satisfaction was purported to be reached by the Detaining Authority based on these pending prosecutions under Section 65(e) of the Maharashtra Prohibition Act, 1949. There is also no dispute that in all these prosecutions, the petitioner had been enlarged on bail by the competent Court. There is also no dispute that the Sponsoring Authority had never placed the bail applications and the bail orders before the Detaining Authority. In any case, there is no dispute that such bail applications and orders made thereof were never communicated to the petitioner herein.

9. Mr. T. A. Mirza, the learned Additional Public Prosecutor placed for our perusal the records and drew our attention to one of the columns of the check-list maintained by the Sponsoring Authority. This column requires the Sponsoring Authority to give reasons as to why the proposed detainee was required to be preventively detained, even though he had been released on bail by the Competent Court. In the check-list, the Sponsoring Authority had only tick marked the relevant column as if indicate that such reasons had been provided or at least suggested. However, there is nothing in the impugned detention order or the grounds on which the impugned detention order was made that could be regarded as some reasons on this aspect.

10. Mr. T. A. Mirza, the learned Additional Public Prosecutor also referred to the grounds of detention and pointed out that towards its conclusion, there is a reference to the Detaining Authority stating that the petitioner is presently at liberty. From this, Mr. Mirza, concludes that the Detaining Authority was aware of the petitioner being out on bail, and further, the detention order was made despite such knowledge and awareness because the Detaining Authority was subjectively satisfied that preventive detention was necessary.

11. According to us, the inference which Mr. Mirza seeks to draw may not be appropriate in the facts of the present case. This is a matter where the applications for bail made by the petitioner or in any case, the orders made thereon constituted relevant and vital materials that the Detaining Authority was duty-bound to consider before making the impugned detention order. Admittedly, said material was never placed by the Sponsoring Authority before the Detaining Authority and consequently, such material, was never considered by the Detaining Authority in the present case. The purpose for placing such material before the Detaining Authority is not simply to make the Detaining Authority aware of the position that the proposed detainee is out on bail, but also to consider the conditions that may have been imposed on the petitioner for his release on bail and to thereafter apply mind and

record subjective satisfaction that preventive detention, is nevertheless necessary and warranted. If such relevant and vital material is never placed before the Detaining Authority, then, it can, at least in the facts of the present case, be regarded as non-application of mind or failure to take into account relevant and vital material.

12. In the case of ***Elizabeth*** (supra), the Division Bench gave the following reasons for its decision.

*“2. If the Authority does not take into consideration the orders of bail granted to the proposed detainee, it may lead to an anomalous situation whereby one authority of law i.e. Criminal Court thinks it fit to enlarge such a person in criminal offences registered against him and the other authority of law considers it necessary that such person is detained in custody because of his criminal activities exhibited by pendency of criminal cases against him. The law does not expect any mismatch between the orders passed by the two law enforcing authorities and therefore, it is necessary that when one authority releases a person on bail, the other authority seeking to detain him again for the same criminal activities, considers the impact of the bail order and reaches to an appropriate conclusion in the matter. This law is expounded by the Apex Court in the case of **Abdul Sattar Ibrahim Manik Vs. Union of India and Others**, AIR 1991 SC 2261 which has been followed by another Division Bench in the case of **Paras S/o. Ramprasad Sahu Vs. State of Maharashtra and another**, 2003 (3) Mh.L.J.24. In paragraph 8 of this Judgment, the Division Bench has reproduced relevant observations of Supreme Court in the cited case of Abdul Sattar Ibrahim Manik. For the sake of convenience, we would like to reproduce the same as under :*

“In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the Detaining Authority has to necessarily rely upon them as that would be vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should be supplied to the detenu.”

3. As stated earlier, the impugned orders do not consider in any manner the bail orders passed in various criminal cases pending against the petitioner and therefore, the impugned order cannot be said to be valid in the eye of law. It stands vitiated owing to the law laid down by Hon’ble Supreme Court in the said case of Abdul Sattar Ibrahim Manik.”

13. **Manoj Trivedi** (supra), considers the somewhat identical issue in great detail and concludes that in these types of matters, non-consideration of bail orders and further, the non-communication of the bail orders will vitiate the detention orders.

14. According to us, both the above decisions support the contentions now raised by Mr. Sirpurkar in the present matter. Based upon the same, the impugned detention order will have to be quashed and set aside.

15. At this stage, we may clarify that we may not be taken to have laid down some blanket proposition that the furnishing of bail applications or the orders made thereon is a must in every case of preventive detention. Ultimately, this will depend from case to case. In the present case, however, we find that the

impugned detention order is purported to be based only on the six pending prosecutions under the Maharashtra Prohibition Act. In all these matters, there is no dispute that the petitioner was enlarged on bail. The terms and conditions subject to which the petitioner was enlarged on bail were, therefore, quite relevant because, as was pointed out by Mr. Sirpurkar that several restrictions were imposed upon the petitioner and the same, have not even been taken into account by the Detaining Authority before purporting to record subjective satisfaction on the necessity of issuing the impugned detention order. In the case, we find that the two decisions referred to above support the case of the petitioner and no good ground has been shown to us to take some contrary view, assuming that we would be competent to do so.

16. For the aforesaid reasons, we quash and set aside the impugned detention order as also the order confirming the same.

17. The Rule in this petition is made absolute in terms of prayer clause-1.

18. The petitioner shall now be released forthwith unless he is required to be detained in some other matter.

PUSHPA V. GANEDIWALA, J.

M. S. SONAK, J.