

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

CRIMINAL WRIT PETITION NO.592 OF 2021

Vasudev Mahadev Surve,
Aged about 50years, Occu. Tractor Driver,
R/o Hata, Tq. Balapur, Dist. Akola

...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. Distt. Akola.

...RESPONDENTS

Shri Suyash Agrawal, Advocate for the petitioner.
Shri S.S. Doifode, A.P.P. for respondents.

CORAM:- M.S. SONAK AND PUSHPA V. GANEDIWALA, JJ.
DATE :- 16th DECEMBER, 2021

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

Heard Shri Suyash Agrawal, learned counsel for the petitioner, and Shri S. S. Doifode learned Additional Public Prosecutor for the respondents.

2. The challenge in this petition is to the impugned detention order dated 20.05.2021 and its confirmation order dated 28.06.2021 detaining the petitioner preventively for 12 months in terms of Section 12(1) of the Maharashtra Prevention

of Dangerous Activities of Slumlords, Smugglers and Persons, Video Pirates, Stand Smugglers and Persons engaged in Black Marketing of Essential Commodities Act, 1981 (for short 'the said Act').

3. The learned counsel for the petitioner submitted that several grounds render the impugned detention order vulnerable. However, to begin with he pointed out that the three cases which the detaining authority has taken into consideration were cases under the Maharashtra Prohibition Act, 1949, and in all these three cases the police authorities did not even deem it appropriate to arrest the petitioner. He, therefore, submits that after hardly one or two months from this, there was no question of the Detaining Authority being satisfied that the petitioner should be preventively detained under the provisions of said Act. He submits that even otherwise the grounds of the detention order point out to routine law and order situations for which the drastic power of preventive detention could not have been exercised. Shri Suyash Agrawal learned counsel for the petitioner, therefore, submits the impugned detention order warrants interference.

4. Shri S.S. Doifode, learned Additional Public Prosecutor points out that the cumulative effect of all the three

cases has been taken into consideration by the Detaining Authority. He submits the Detaining Authority, in addition, has referred to the in-camera statements which suggest the witnesses are not coming forward to depose against the petitioner. He, therefore, submits that there is no illegality in the impugned detention order and this petition may be dismissed.

5. We have considered the rival contentions and also perused the material on record. According to us, the impugned detention order is vulnerable in this case and warrants interference.

6. The impugned detention order in paragraph 5 states that the same is based on three incidents/offences and the in-camera statements. Paragraph 5 of the impugned detention order reads thus:

“05. Recently you have committed following 03 offences in the contravention of Maharashtra Prohibition At, 1949. This clearly shows that, you did not have any respect for the normal law of the land and it also shows your tendency likely to revert to the similar activities.

This detention is based on said offences and the in-camera statements.

<i>Sr. No.</i>	<i>Police Station</i>	<i>C.R. No./Date</i>	<i>Under Section</i>	<i>Present status</i>
<i>5-1</i>	<i>Ural</i>	<i>85/2021 Dt. 12/03/2021</i>	<i>U/s 65(e)(d) (f) of Maharashtra Prohibition Act, 1949</i>	<i>Court Pending</i>

5-2	<i>Ural</i>	<i>128/2021 Dt. 28/03/2021</i>	<i>U/s 65 of Maharashtra Prohibition Act, 1949</i>	<i>Police Pending</i>
5-3	<i>Ural</i>	<i>151/2021 Dt. 12/04/2021</i>	<i>U/s 65(f) of Maharashtra Prohibition Act, 1949</i>	<i>Police Pending</i>

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7. The record bears out that in the above three cases registered under Section 65 of the Maharashtra Prohibition Act, 1949, the authorities did not even deem it appropriate or necessary to arrest the petitioner. Some material allegedly held by the petitioner was seized and thereafter, the petitioner was not even arrested. All these cases were instituted hardly one to two months before the impugned detention order was issued on 20.05.2021.

8. The circumstance that the police authorities did not even deem it necessary or appropriate to arrest the petitioner for the three offenses which are now relied upon to make the impugned detention order does not appear to have been put before the detaining authority by the sponsoring authority. Assuming that this aspect was indeed put up to the detaining authority, we are satisfied that the detaining authority has not at all applied its mind to this vital circumstance. Neither the impugned order nor the return reflects any application of mind to

this vital aspect. This according to us, amounts to non-application of mind to relevant and vital circumstances and this is sufficient to vitiate the impugned detention order.

9. Besides, we have also perused the two in-camera statements relied on by the detaining authority. Apart from the issue as to whether these statements have been appropriately verified or not, we are satisfied that these statements, at the highest, point to a situation that can be addressed under normal law enforcement provisions. Based on such in-camera statements, the drastic power of preventive detention could not have been exercised.

10. There are other grounds raised by learned counsel for the petitioner in support of the petition. However, now that we are satisfied that the impugned detention order is vulnerable for the aforesaid reasons, do not think it necessary to address the other grounds that have been raised.

11. For the aforesaid reasons, we set aside the impugned detention order/ confirmation order and direct that the petitioner be released forthwith unless his detention is necessary for any other matter.

12. The rule is made absolute in this Petition. There shall be no order for costs.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)

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