

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

**CRIMINAL WRIT PETITION NO.702 OF 2021**

Sourabh s/o Sahebrao Rathod,  
 Aged about 22 years,  
 Occupation-Education,  
 R/o. 30, Dhamangaon Road,  
 Durgai Gruha Nirman Sanstha,  
 Chandore Nagar, Yavatmal,  
 Tahsil and District-Yavatmal.

.. Petitioner

Akshay s/o Atmaram Rathod,  
 Aged about 32 years,  
 R/o. District-Yavatmal.

.. Detenu

At present lodged in Aurangabad  
 Central Prison, Aurangabad.

.. Versus ..

1. State of Maharashtra,  
 Through Home Department,  
 (Special), 2<sup>nd</sup> Floor, Mantralaya,  
 Mumbai-400 032.

2. District Magistrate,  
 District-Yavatmal.

3. Sub-Divisional Police Officer,  
 Sub-Division, Darwha,  
 Tah. Darwha, District-Yavatmal.

4. Police Inspector, Police Station  
 Yavatmal City, District-Yavatmal.

.. Respondents

Mr. P.V. Navlani, Advocate for the petitioner,  
 Mr. S.S. Doifode, APP for the respondents-State.

**Coram : M.S. Sonak and  
Pushpa V. Ganediwala, JJ.**  
**Date : December 23, 2021.**

**ORAL JUDGMENT** [PER : M.S. SONAK, J.]

Heard the learned counsel for the parties.

2. The petitioner challenges orders dated 2.6.2021 and 16.7.2021 preventively detaining the petitioner 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).

3. Several grounds have been raised in support of this petition. However, on hearing the learned counsel for the parties and perusing the material on record, we are satisfied that this petition will have to be allowed on the two grounds that we shall advert to hereafter.

4. Firstly, the detention order refers to and relies on two in-camera statements at pages 446 and 447 of the paper book. On such statements for accompanying them,

there is no reference to the verification of the contents of such statements by the concerned SDPO. There is also no endorsement that these two statements or its purported verification was ever verified by the detaining authority i.e. the District Magistrate. There is no dispute that such verification by the SDPO and the fact of verification by the detaining authority is a must in such matters.

5. Mr. Doifode submitted that such verification was, in fact, undertaken. He submitted that the fact that such verification statements were not communicated to the detainee, does not vitiate the impugned detention order, in the absence of the detainee establishing prejudice. He relied on **Mohammed Mustafa s/o Mohammad Mastan .vs. The State of Maharashtra and another, 2018 ALL MR (Cri) 37**, in support of this proposition.

6. In this case, there was an assertion in the affidavit that verification was indeed undertaken by the SDPO and the detaining authority. Mr. Doifode showed us the original record which suggests that verification of the in-camera statements was undertaken by the SDPO. However, there is no contemporaneous record about this fact being verified by the detaining authority. Therefore,

except for the assertion in the return, there is nothing in the record to establish such verification by the detaining authority. Be that as it may, we think that the verification by the SDPO and the alleged verification or the factum of alleged verification by the detaining authority ought to have been communicated to the detenue along with the detention order, so that the detenue could have at the earliest opportunity represented against the same. From the contention advanced before us as also the returns, there is an assertion that such verifications constituted both relevant and vital material in the context of the impugned detention order. Therefore, having regard to the provisions in Article 22 (5) of the Constitution of India, the communication of such material was necessary.

7. Mr. Doifode, however, submitted that since the petitioner was able to raise the grounds based on the in-camera statements in this petition, no prejudice is discernible. Here, we are unable to agree with Mr. Doifode. The ground raised in this petition is that the non communication of this relevant and vital material constituted infringement of Article 22 (5) of the Constitution of India. The prejudice, in this case, is quite apparent because the petitioner was, at the earliest opportunity,

deprived of his right to make an effective representation against the detention order.

8. The decision in *Mohd. Mustafa (supra)* was based on circumstances not comparable to those in the present case. There, on facts, the court found the absence of prejudice. Besides, the focus in the said case was on the other grounds that were pressed and not the ground which is now pressed in this petition.

9. Even if we were to negate this first ground, the petition will have to succeed on the second ground, for which there was no answer from the respondents.

10. The detention order, in this case, relies on five criminal cases pending against the petitioner. Out of this the latest was Crime No.708/2020 dated 13.11.2020. The impugned detention order has been after almost seven months from the date of registration of this case. Therefore, the live nexus between this last case and the impugned detention order is not shown.

11. Even if some indulgence is extended to the respondents because the proposal for such detention was

moved on 9.3.2021, we are satisfied that there was yet another serious flaw that vitiates the impugned detention order. The proposal dated 9.3.2021 as also the impugned detention order dated 2.6.2021 very specifically notes that the petitioner was absconding and consequently could not be arrested in connection with Crime No.708/2020 registered on 13.11.2020. This is factually erroneous and several vital and relevant documents on this aspect were not even placed before the detaining authority.

12. In connection with Crime No.708/2020, there is unimpeachable material that a Criminal Writ Petition No.635/2020 had been instituted in this court and this court vide order dated 14.12.2020 had directed that no coercive action should be taken against the present petitioner on the basis of FIR No.708/2020.

13. Thereafter, by order dated 11.3.2021, Criminal Writ Petition No.635/2020 was disposed of. In the order, at least three paragraphs were devoted exclusively to the present petitioner, who was petitioner no.5 in Criminal Writ Petition No.635/2020 and such paragraphs 6, 7 and 8 read as follows :

6. *There is another factor which needs consideration at this stage. After the relief was*

*granted to petitioner No.5, no application was moved by the State for cancellation of the interim relief and thus petitioner No.5 has continued to be under protection of this interim relief till date. This would only show that the respondent - State or the Investigating Officer does not feel any pressing need to arrest petitioner No.5 at least till this date.*

7. *This would make the case of petitioner No.5 as very special. In the circumstances, we would extend the interim protection granted to petitioner No.5 only for a limited period of time and accordingly interim protection granted to petitioner No.5 on 14<sup>th</sup> December, 2020 is extended till 18<sup>th</sup> March, 2021.*

8. *We make it clear that grant of interim protection to petitioner No.5 shall not be construed in any manner as recording of prima facie finding affecting merits of the case of petitioner No.5. We further make it clear that we have not commented upon absence or presence of any prima facie case viz-a-viz petitioner No.5 and this issue would have to be decided by the Court of competent jurisdiction on its own merit without being influenced in any manner by the order passed this Court. The petition is, therefore, dismissed as withdrawn subject to above observations.*

14. The aforesaid very clearly means that the petitioner was never absconding but rather was protected by interim orders made by this court. Despite all such material that was clearly available to the sponsoring authority or in any case to the State, the impugned detention order proceeds on the basis that the petitioner was absconding. All these, according to us, indicates total non application of mind to relevant and vital material or all this indicates the failure on the part of the detaining authority to take into account relevant and vital material before making the impugned detention order. This,

according to us, is sufficient to vitiate the impugned detention order.

15. Mr. Doifode submitted that the detaining authority was aware of the above material and therefore, must be deemed to have taken such material into consideration. In matters, where liberty of citizen is involved, no such presumption can be raised. In any case, assuming this is correct, then, this is a case of non communication of relevant and vital material which the detaining authority claims to have taken into account for making the impugned detention order. Either way, the impugned detention order is quite indefensible, insofar as this ground is concerned.

16. For the aforesaid reasons and on the aforesaid two grounds, that operate independent to one and another, we quash the impugned orders. We clarify that we have not gone into the other grounds raised in support of this petition.

17. The rule is made absolute in above terms.

18. The petitioner is ordered to be released forthwith,

unless his detention is required in any other matter.

19. There shall be no order for costs.

**Pushpa V. Ganediwala, J.**

**M.S. Sonak, J.**