

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

CRIMINAL WRIT PETITION NO.677 OF 2020

Elizabeth Ranibhai Prabhudas
Gaikwad, Aged about 52 years,
Occ.Housewife, r/o. Wadalpura
Station Area, Murtizapur,
District 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, District Akola.

..... RESPONDENTS

Mr.S.V.Sirpurkar, Advocate for the petitioner.

Ms H.N.Jaipurkar, A.P.P. for Respondent Nos. 1 and 2.

CORAM : SUNIL B. SHUKRE &
AVINASH G. GHAROTE, JJ.

DATE : 15.2.2021.

ORAL JUDGMENT (Per Sunil B. Shukre, J) :

1. **Rule.** Rule made returnable forthwith. Heard finally by consent.

2. It is seen from the impugned orders that what really weighed with respondent no.1 and 2 was pendency of seven criminal cases against the petitioner. All the seven cases were in relation to the offences allegedly committed under various Sections of Maharashtra Prohibition Act, 1949. In short, these offences only gave a narrative of boot legging tendencies of petitioner. Such tendencies of petitioner, by the preventive detention orders impugned herein, have been tried to be painted with the colour of fear and terror overpowering the mind of the members of public. If this is so, it would have been necessary for respondent nos. 1 and 2 to have taken into consideration some of the fundamental facts which would have had far reaching consequences on reaching of subjective satisfaction regarding need for preventive detention of petitioner felt by these

respondents. These facts were in the nature of bail having been granted to the petitioner in each of the seven offences presently pending against the petitioner as these very offences have been considered by the respondents as constituting sufficient material for reaching the subjective satisfaction in the matter. So, in such a case, it was necessary for the respondents to also have considered the impact these bail orders would have had on the proceedings initiated against the petitioner under Section 3 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 (hereinafter referred to as “*the Act of 1981*”). This Section authorises the District Magistrate to order preventive detention of a person in anticipation of the person committing various crimes thereby creating terror and fear in the mind of members of the public. Therefore, it is all the more necessary for the authorities exercising power under Section 3 of the Act of 1981 to consider as to what would be the consequence if the proposed detainee will be allowed to remain at large when criminal cases are pending against him. 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.

4. In the result, the petition is allowed. The impugned orders are hereby quashed and set aside.

Respondent no.2 is at liberty to consider the matter afresh, if desired.

Rule accordingly.

JUDGE

JUDGE

jaiswal

**Suraj
Jaiswal**

Digitally signed
by Suraj Jaiswal
Date:
2021.02.17
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