

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 454 OF 2022

Shri. Pandurang @ Panda Narayan Garud
Age 36 yrs. R/o. Chavanwadi (Karde),
Tal. Shirur, Dist: Pune ... Petitioner

Versus

1. The District Magistrate
Pune
2. The State of Maharashtra
(Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department
Mantralaya, Mumbai)
3. The Superintendent
Yerwada Central Prison
Pune ... Respondents

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Mr. Nitin Gaware Patil with Mr. Abhishek Datta Nagade for the
Petitioner.

Mr. J P. Yagnik, Assistant Public Prosecutor for the State.

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**CORAM: NITIN JAMDAR AND
N.R. BORKAR, JJ.**

DATED: 12 AUGUST 2022

JUDGMENT :-

By this writ petition, the Petitioner is praying for quashing
and setting aside the order of detention dated 6 December 2021

issued by Respondent No.1, the District Magistrate, Pune. The order of detention is issued under section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers (Drug Offenders, Dangerous Persons and Video Pirates) Act, 1981 (for short "MPDA Act"). Since the Petitioner was detained pursuant to the detention order, the Petitioner is praying that he be set forth at liberty.

2. Along with the copy of the order of detention dated 6 December 2021, a copy of the committal order, grounds of detention and material thereupon were supplied to the Petitioner. In the grounds of detention, the Detaining Authority relied upon the case registered against the Petitioner vide C.R. No. 638 of 2021 for the offences punishable under Sections 379, 34 of the Indian Penal Code; Section 3 of the Prevention of Damages to the Public Property Act; Sections 9 and 15 of the Environment Protection Act; and Sections 3,4 and 21 of Mines and Minerals (Regulation and Development) Act, 1957. The Detaining Authority also relied upon two in-camera statements of witnesses "A" and "B".

3. The Detaining Authority considered the history of criminal activities of the Petitioner, the recent crimes committed and the action taken by the Revenue Department against the Petitioner

at relevant times and the chapter case filed. Based on this material, the Detaining Authority concluded that the activities of the Petitioner were detrimental to public order and could not have been dealt with under ordinary law. Forming a subjective satisfaction that the Petitioner was a sand smuggler within the meaning of Section 2(b) (i) of the MPDA Act and his activities had caused terror prejudicially to the maintenance of public order, the Detaining Authority held that preventive detention of the Petitioner was warranted. The representation made by the detenu was rejected. Therefore, the Petitioner is before us with this petition.

4. We have heard Mr. Gaware, learned Counsel for the Petitioner and Mr. Yagnik, learned APP for the Respondent/State. Rule has already been issued in this petition. Taken up for disposal.

5. The learned Counsel for the Petitioner *inter alia* submitted that the bail application and the reasoned order on the anticipatory bail in respect of C.R No. 638 of 2021 were not placed before the Detaining Authority by the Sponsoring Authority, neither copies were given to the Petitioner. According to the Petitioner, this has two effects. First, that subjective satisfaction of the Detaining Authority would be

vitiated in law. Secondly, since a copy of a vital document has not been furnished to the petitioner, his fundamental right to make a representation guaranteed under Article 22(5) of the Constitution of India is affected. The learned Counsel has relied upon the decision of the Hon'ble Supreme Court in the case of *Abdul Sathar Ibrahim Manik vs. Union of India*¹ as also the decision of this Court in the cases of *Paras s/o. Ramprasad Sahu vs. State of Maharashtra and another*²; and *Shri Abbad Ali Khan vs. Shri R. H.Mendonca and others*³.

6. The factual position that copies of the application for anticipatory bail and the order of bail were neither supplied by the sponsoring authority to the Detaining Authority nor supplied to the Petitioner is not disputed before us. The learned APP sought to contend that though this is an admitted position, it would have no legal consequences.

7. In *Paras v. State of Maharashtra*, the division bench has clarified the legal position on this aspect of the controversy as follows:

“8. What is the bearing of absence of the material regarding granting bail to the detenu in respect of the offences registered against him and which are

1 AIR 1991 SC 2261

2 2003 (3) Mh. L.J.

3 2000 ALL MR (Cri) 792

taken into consideration by the Detaining Authority for clamping order of detention is explained way back in 1991 by the Apex Court in (1992) 1 SCC 1 : AIR 1991 SC 2261, Abdul Sathar Ibrahim Manik v. Union of India. The Apex Court has observed 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.

9. This Court in 2000 ALL MR (Cri) 792, Shri Abbad Ali Khan v. Shri R.H. Mendonca, while considering the petition challenging the order of detention passed under this Act and dealing with the same question as to the effect of non-furnishing the copy of the bail application and the order passed on it to the detenu, who has been released on bail and also not having the said documents before the Detaining Authority while considering the case of the detenu for imposing detention order, has placed reliance on the decision of the Apex Court (supra) and has observed as under:

Since the bail application was not placed before the Detaining Authority and its copy not furnished to the detenu, the impugned detention order is vitiated on a dual count:—

(a) the subjective satisfaction of the Detaining Authority to preventively detain the detenu under the aforesaid provision is vitiated in law; and

(b) since the copy of a vital document has not been furnished to the detenu, his fundamental right to make a representation guaranteed by Article 22(5) of the Constitution of India, is impaired.

10. In the case before hand, as stated earlier, admittedly, the Detaining Authority was not having, even for perusal, the application for bail and the order passed granting bail. It is significant to note that, in spite of the petitioner being released on bail, the Detaining Authority passed the order of detention of the petitioner. It goes without saying that the subjective satisfaction of the Detaining Authority has been totally hampered for not taking into consideration the fact that the petitioner was already released on bail. That apart, the petitioner was also deprived of making effective representation when the detention order has been passed by the Detaining Authority. Therefore, the order of detention cannot sustain. It is vitiated”.

8. The above mentioned dicta is clear and unambiguous and supporting the contention of the Petitioner. Though the learned APP has sought to contend based upon the decision of the Division Bench of this Court in the case of *Dharmendra Kamlakar Tangadi v. Commissioner of Police, Thane and Ors*⁴ that non supply of bail order and application to the detenu cannot

⁴ 2012 CRI. L.J. 3798

impair the right of the detenu to make effective representation, there is no answer to the first ground that the subjective satisfaction of the Detaining Authority is vitiated for non consideration of the application for bail and the bail order. It cannot be said that the application for anticipatory bail and the order of bail were not germane for consideration of the Detaining Authority. The reasons on which the detenu applied for bail and was granted bail by the ordinary court would reflect upon the need to pass the order of detention. Non-consideration of these vital documents would vitiate the subjective satisfaction of the Detaining Authority. In view of this legal position arising from the admitted facts on record, the Petitioner is entitled to succeed, as the impugned order of detention stands vitiated.

9. As a result, the petition is allowed. Rule is made absolute in terms of prayer clause (b); that is, the order of detention dated 6 December 2021 is quashed and set aside. The Petitioner is set forth at liberty unless required in any other case.

**TRUPTI
SADANAND
BAMNE**

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

Digitally signed by
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