

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

CRIMINAL WRIT PETITION NO. 6094 OF 2021

Mr. Vishal Shivaji Shelke
Age- 20 Years, Occ : labourer
R/ at. Nilkantha Temple Lane,
Bholenagar, Ambegaon,
Khurd, Pune
(Presently detained in Yerwada
Central Prison, Pune) ... Petitioner

Versus

1. The State of Maharashtra
2. The Superintendent
Yerwada Central Prison
Pune ... Respondents

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Mr. Vipin Bidkar for the Petitioner.
Ms. Jayshree Tripathi appointed as Amicus Curiae.
Ms. M.H. Mhatre, Assistant Public Prosecutor for the State.

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

DATED: 23 AUGUST 2022

JUDGMENT : (Per Nitin Jamdar, J.)

By this petition filed under Article 226 of the Constitution
of India, the Petitioner is seeking a writ of habeas corpus and to

quash and set aside the order dated 15 September 2021 passed by the Commissioner of Police, Pune City placing the Petitioner under preventive detention. The impugned order of detention is passed under Section 3 (2) 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 is in custody 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 15 September 2021, a copy of the committal order and grounds of detention were supplied to the Petitioner. The Detaining Authority has given reasons for detention. The Detaining Authority referred to the criminal history of the Petitioner of two offences registered against him on 18 November 2020 and 8 March 2021. Then reference was made to preventive action taken against the Petitioner on 4 February 2021. The Detaining Authority noted that preventive action did not deter the petitioner. Two offences committed by the Petitioner on 9 March 2021 were taken into consideration by the Detaining Authority, and it noted the circumstances in which the offences were committed. The Detaining Authority referred to the fact that the Petitioner applied for bail in respect of C.R. No. 139 of

2021. On 1 June 2021, the Petitioner had applied for bail before the Sessions Court, Pune, which was granted on 26 July 2021. Thereafter, the Detaining Authority also noted that in respect of C.R. No. 140 of 2021, the Petitioner had applied for bail before the Sessions Court on 29 June 2021, which was granted on 19 July 2021. The Detaining Authority also relied upon the statements of two witnesses, Witness 'A' and Witness 'B', recorded in-camera. After considering this material on record, the Detaining Authority formed a subjective satisfaction that the activities of the Petitioner are prejudicial to the public order in future, and it is necessary to detain the Petitioner under the MPDA Act to prevent him from acting in such a prejudicial manner in future. Accordingly, the Detaining Authority passed the impugned order of detention. The Petitioner is before us challenging this order.

3. We have heard Mr.Bidkar, learned Counsel for the Petitioner and Ms. M.H. Mhatre, learned APP for the State.

4. The learned Counsel for the Petitioner had candidly stated that he is not familiar with this branch of law, and therefore, we had requested Ms. Jayshree Tripathi to assist the Court as an Amicus Curiae.

5. The Petitioner has pressed sole ground before us; that is, the complete copy of the order passed by learned Sessions Judge granting bail to the Petitioner in respect of C.R. No. 140 of 2021 was not forwarded by the Sponsoring Authority to the Detaining Authority. It was submitted that non-consideration of this vital document had vitiated the subjective satisfaction. The learned Counsel relied upon the following case laws in support of the proposition. (i) *Lakhan Rohidas Jagtap Vs. The Commissioner of Police, Pune & Ors.*¹; (ii) *Hrishi @ Sarjerao Baban Takele V/s. The District Magistrate, Sangli & Ors.*²; (iii) *Vishal Waman Mhatre Vs. The Commissioner of Police & Ors.*³; (iv) *Rushikesh Tanaji Bhoite v. State of Maharashtra & Ors.*⁴; (v) *Abdul Sathar Ibrahim Manik v. Union of India and others*⁵; (vi) *V.C.Mohan Versus Union of India and Others*⁶; and (vii) *Ashadevi v. K. Shivraj and another*⁷. It was contended that the bail order and application for bail constitute vital documents and they must be placed before the Detaining Authority, and if they not considered, the subjective satisfaction of the Detaining Authority will be vitiated. The Petitioner contended that the very fact situation of only the operative portion of the bail order being placed before the Detaining Authority and not reasons in

1 2019 ALL MR (Cri) 5261

2 Bombay High Court Criminal Writ Petition No. 388 of 2017 dated 14 June 2017

3 2013 ALL MR (Cri) 42

4 2012 CRI. L.J. 1334

5 1991 CRI. L.J. 3291

6 (2002) 3 Supreme Court Cases 451

7 AIR 1979 SUPREME COURT 447

support, was squarely considered by the Division Bench in the case of *Lakhan Rohidas Jagtap (supra)*, and the Division Bench found that not placing a complete text of the order granting bail to the detenu vitiated the subjective satisfaction of the Detaining Authority, and the order of detention was quashed on that ground.

6. The learned APP relied upon the decision of the Division Bench of this Court in the case of *Salauddin Imamuddin Ansari & Anr. Vs. The State of Maharashtra & Ors.*⁸ and contended that it is not an absolute position of law that an order granting bail to the detenu and bail application must be placed before the Detaining Authority, and it is sufficient if the Detaining Authority was aware that the Petitioner was granted bail. It was submitted that in any case, the operative portion granting bail was placed on record of the Detaining Authority.

7. We intend to approach the controversy from a different angle. We do intend to enter into the debate on legal proposition whether it is mandatory in all circumstances to place the application for bail made by the detenu and bail orders before the detaining authority or not. It cannot be disputed, and it is not disputed that if the vital document which affects the subjective satisfaction of the Detaining Authority is not placed

⁸ 2020 ALL MR (Cri) 1641

before it by the Sponsoring Authority, then subjective satisfaction would be vitiated. In the present case, the reasoned order granting bail to the petitioner was a vital document for the reasons given below.

8. The order granting bail to the Petitioner dated 19 July 2021 is of four pages, and the reasons part, as stated earlier, was not placed before the Detaining Authority. What is pertinent in this case is that while granting bail to the Petitioner, the learned Additional Sessions Judge, Pune, has recorded *prima facie* opinion that the Petitioner requires treatment for mental illness. This aspect was not placed before the Detaining Authority because a reasoned bail order was not before the Detaining Authority. The *prima facie* observation while granting bail that the Petitioner needs treatment for mental illness was important and therefore, the reasoned copy of the order of bail with this observation of the learned Judge, should have been placed before the Detaining Authority.

9. Had this observation that the Petitioner requires treatment for mental illness been placed before the Detaining Authority, the Detaining Authority could have taken a different decision. Therefore, the reasoned copy of the order granting bail was a vital document in this case.

10. In light of this position, the order of detention cannot be legally sustained, and it is liable to be quashed and set aside.

11. As a result, the petition is allowed. Rule is made absolute in terms of prayer clause (a); that is, the order of detention dated 15 September 2021 is quashed and set aside. The Petitioner is set forth at liberty unless required in any other case.

12. The assistance rendered by Ms.Tripathi, the learned Amicus Curie to the Court is appreciated.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

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