

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

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CRIMINAL WRIT PETITION NO. 73/2022
WITH
CRIMINAL WRIT PETITION NO. 279/2022
WITH
CRIMINAL WRIT PETITION NO.288/2022

1) **CRIMINAL WRIT PETITION NO. 73/2022**

Smt. Bismilah wd/o Sheikh Rahim
Aged 42 years, occu: housewife
R/o Plot No.55, Raut Nagar,
Near Water Tank Police Station Wathoda
Nagpur.

Sheikh Faijan s/o Sheikh Rahim
Aged 22 years, occu: Auto Driver
R/o Plot No55, Raut Nagar,
Near Water Tank, Police Station
Wathoda, Nagpur
(At present, Central Prison
Nagpur Dist. Nagpur.)

.. Petitioner
(Detenue)

versus

1) The State of Maharashtra
Through Secretary (Special)
Mantralaya, Mumbai 440 032.

2) The Commissioner of Police
Nagpur City Nagpur.

..Respondents

Mr.R. Siddharth, Advocate for the petitioner
Mr. M.K. Pathan, APP for the respondents

2) CRIMINAL WRIT PETITION NO. 279 / 2022

Pawan @ Paidal s/o Shishupal Pariwale
Aged about 27 years, occu: Private
R/o Naik Plot, Kandali,
Paratwada, Tq.Achalpur
Dist. Amravati.

.. Petitioner

versus

1) The State of Maharashtra
Through Home Department
(Special) Mantralaya, Madam Kama Road
Mumbai 440 032.

2) The Principal Secretary to
Government of Maharashtra
Home Department (Special)
Mantralaya, Madam Kama Road
Mumbai 440 032.

3) The Collector & District Magistrate
Amravati, Tq. & Dist. Amravati.

.. Respondents

Mr.PR. Agrawal, Advocate for the petitioner
Mr. M.J. Khan, APP for the respondents

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3) CRIMINAL WRIT PETITION NO. 288/2022

Shahzad Khan s/o Arif Khan
Aged 26 years, occu: Pvt.work
R/o Khair Mohammad Plot
Dapki Road, Akola Dist. Akola
(Presently Central prison,
Yerwada, Pune).

.. Petitioner

versus

1) State of Maharashtra
Through Advisory Board of
Government of Maharashtra
Home Department (Special),
second floor,
Main Building, Mantralaya,
Mumbai-32.

2) Office of the Collector and
District Magistrate, Akola.

..Respondents

Mr.A.K.Bhangde, Advocate for the petitioner
Mr. M.J. Khan, APP for the respondents

CORAM: ROHIT B. DEO & ANIL L.PANSARE, JJ.

DATE OF RESERVING : 04/10/2022

DATE OF PRONOUNCEMENT: 21/10/2022

JUDGMENT: (Per: ANIL L.PANSARE, J.)

Heard learned counsel for the respective parties at length.

2. Rule. Rule made returnable forthwith. Heard finally.

3. By these petitions, the petitioners have prayed for quashing and setting aside the orders of detention passed by the respondent-authorities in respective petitions. The orders impugned are passed under sub-section (2) of 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 (Amendment of 2015) (Mah. LV of 1981) (hereinafter referred to as the 'MPDA Act').

4. The common thread of arguments is that the respondent-authorities, while passing the impugned detention orders have failed to record subjective satisfaction that the witnesses 'A' and 'B' whose statements have been recorded in-camera, were not willing to come forward and depose because of fear of the respective petitioners. The petitioners have relied upon the following judgments passed by the coordinate Benches of this Court.

- i) 2017 (3) Mh.L.J. Cri.L.J. 475: {Rajkumar Jaiswal vs. State of Maharashtra and others;
- ii) 2022 ALL MR (Cri) 2561 : {Sk. Yetal vs. State of Maharashtra and another}
- iii) Sanjay Ramlal Sahu vs. State of Maharashtra & another (Cri.W.P. No. 768/2015 decided on 1.2.2016).

5. The coordinate Benches of this Court in the above-referred petitions, have set aside the detention orders on the ground that the subjective satisfaction has not been recorded by the detaining authority, either of the correctness of verification exercise carried out by the Sub-divisional Police officer or of the unwillingness (out of fear of the respective petitioners) of the in-camera witnesses to come forward and depose.

5. The argument is that despite the aforesaid consistent view taken by this court, the detaining authority in the impugned orders have not recorded their subjective satisfaction on the above points.

6. We have gone through the impugned orders in the light of the aforesaid submissions canvassed before us, only to find that there is substance in the argument. Firstly, the concerned SDPO or the Assistant Commissioner of Police who have verified the correctness and truthfulness of the incident narrated by the in-camera witnesses, have not enquired and satisfied themselves on the point whether witnesses are

unwilling to come forward and depose because of the fear of the petitioners. Secondly, the detaining authorities who have passed the impugned orders have not interacted with the verifying authority *viz.* the SDPO or the ACP for recording their subjective satisfaction on the truthfulness or correctness of the incident stated by the witnesses so also of their unwillingness to come forward and depose because of the fear of the petitioners. The impugned orders, therefore, do not comply the dictum of the judgments passed by this Court.

7. We find no reason to take a different view in the instant matters inasmuch as the respondents have not placed before us any ruling to the contrary or any other material that would require us to take a different view in the matter.

8. In the result, we proceed to pass following order :-

ORDER

- (a) Criminal Writ Petitions are allowed.
- (b) The impugned orders of detention passed in all three petitions, are quashed and set aside.

(c) The petitioners be set at liberty forthwith, if not required by the Police in any other case.

Rule is made absolute in the aforesaid terms.

[ANIL L. PANSARE,J.]

[ROHIT B. DEO,J.]

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