

IN THE HIGH COURT OF JUDICATURE AT BOMBAYNAGPUR BENCH : NAGPURCRIMINAL WRIT PETITION NO.151 OF 2022

Neha w/o Sagar Telange,
aged about 20 years, occupation :
household, Sambhaji Kasar
Mohalla, Maskasath, Nagpur.

Detenu : Sagar @ Bhanja s/o Mangal
Telange, aged 20 years, r/o Sambhaji
Kasar Mohalla, Maskasath, Police
Station, Panchpaoli, Nagpur City.

... Petitioner

- Versus -

1) State of Maharashtra, through
its Secretary, Home Department
(Special), Mantralaya, Mumbai.

2) The Commissioner of Police,
Nagpur City, Nagpur.

3) Superintendent of Prison,
Central Prison, Nagpur.

... Respondents

Shri M.N. Ali, Advocate for petitioner.

Shri M.K. Pathan, Additional Public Prosecutor for respondents.

CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.

DATED : JULY 12, 2022

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

Heard Shri Ali, learned Counsel for the petitioner and Shri Pathan, learned Additional Public Prosecutor for the respondents.

2) Rule. The rule is made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

3) Shri Ali, learned Counsel for the petitioner, submits that the detention order dated 16/10/2021 has been passed after delay of about five months six days from 10/5/2021 – the date on which last crime being Crime No.274/2021 was registered against the detenu. He further submits that even though the detenu was released on bail in Crime No.233/2021, only operative bail order was placed before the Detaining Authority and no reasoned bail order was placed before the Detaining Authority. He also submits that there could have been no subjective satisfaction reached by the Detaining Authority regarding witnesses speaking truth for the reason that the in-camera statements were recorded on

25/8/2021 and 26/8/2021 while they were verified much later on 21/9/2021.

4) Shri Ali, learned Counsel for the petitioner, relying upon the decisions in the cases of Niyazuddin @ Sonu Sirajuddin Ansari vs. State of Maharashtra and another (2013 ALL MR (Cri) 3870) and Mohamad Ishaq Mohamad Ismail Shaikh vs. Shri Sanjay Barve and others (2020 ALL MR (Cri) 1930) further submits that the explanation given in the reply of the respondents cannot be considered for justifying the delay occurred in passing of the detention order belatedly and that the in-camera statements recorded after detenu was released on bail would invariably show the deliberate attempt on the part of the Detaining Authority to artificially fill up the gap between last criminal activity of the detenu and the date of passing of the detention order.

5) Shri Pathan, learned Additional Public Prosecutor for the respondents, submits that the in-camera statements indicate certain incidents, which provide live link between the criminal

activities of the detenu and the object sought to be achieved by the detention order. He further submits that in Crime No.233/2021, the detenu was released only on interim bail and now it is admitted by the learned Counsel for the petitioner that later on regular bail was denied to the detenu. It is further pointed out that the material provided by the in-camera statements of confidential witnesses, which co-related with the criminal activities of the detenu, would only show that the detenu is a criminal and could not be brought under control through ordinary machinery of law and some drastic action was required to be taken in order to desist him from continuing with his criminal activities, which were likely to disturb the maintenance of law and order.

6) Shri Pathan, learned Additional Public Prosecutor for the respondents, further submits that the aforesaid cases have basically turned on the facts involved therein and their facts being different from the facts of the present case could not be considered to be laying down any binding precedent in the matter.

7) On going through the impugned order, paper book of the petition and the material placed before us by the learned Additional Public Prosecutor, we are satisfied that the subjective satisfaction reached by the Detaining Authority is in accordance with provisions of law applicable to such cases. It is well settled that power of judicial review of this Court is not available for substituting the subjective satisfaction reached by the Detaining Authority just because another view is possible. It is equally well settled that it is not for this Court in exercise of power of judicial review to examine adequacy or otherwise of the material placed before the Detaining Authority. This Court can interfere with the discretion exercised by the Detaining Authority only when the Detaining Authority considers irrelevant material or ignores relevant material or takes a view, which is impossible or perverse. These are the principles of Wednesbury unreasonableness on the basis of which this Court is required to judicially review the legality, correctness or otherwise of the preventive detention order. We do not find that any of these principles has been breached by

the Detaining Authority in reaching its subjective satisfaction in the matter.

8) Speaking about aspect of live link because there has been delay of more than five months in passing the impugned order by the Detaining Authority, we must say that the delay has been well explained and gap is filled by the further criminal activities of the detenu. There is also an explanation provided by the confidential witnesses whose statements have been recorded by the concerned Police Inspector as to why these criminal activities did not result in registration of any crime. Both these statements refer to the incidents of August 2021 and they also disclose the places where the incidents took place. The confidential witnesses have also stated that they were so frightened because of the deathly threats given by the detenu that they did not come forward to formally file complaints against the detenu with the concerned Police Station. Ultimately when they were approached by the concerned Police Inspector and assured of their safety and also confidentiality of their identity that they

disclosed further details of the criminal activities of the detenu, resulting in disturbance of public order. Not only these statements explain the delay, which has occurred, but they also fill up the gap, which was left between the last criminal activity of the detenu in Crime No.274/2021 registered on 10/5/2021 against him and the date on which detention order was passed, i.e. 16/10/2021.

9) We also find that the statements of confidential witnesses have been duly verified by the concerned Assistant Commissioner of Police, Lakadganj Division, Nagpur, who was independent from the Officer, who recorded the in-camera statements. They were verified by him on 25/9/2021. There is no law, which mandates that it is only the Detaining Authority, which must personally verify the genuineness of the statements of the confidential witnesses. The delay in verification of in-camera statements could be a relevant factor only when it is demonstrated by the detenu that grave prejudice has been caused to him by such belated verification. That is not the case here.

10) There is also third objection taken by the learned Counsel for the petitioner, i.e. only copy of the operative bail order was placed before the Detaining Authority in Crime No.233/2021 and not the full reasoned order. We must say that the operative bail order, which was placed before the Detaining Authority, was the order whereby the detenu was granted only interim bail. Therefore, even if reasoned bail order granting interim bail to the detenu had been placed before the Detaining Authority, it would not constitute any relevant material for the Detaining Authority to be considered for reaching appropriate satisfaction. It is only the final reasoned bail order, which constitutes relevant material in such matters. The final reasoned order that was passed after the interim bail order was granted was of rejection of bail temporarily granted to the detenu. Therefore, we are of the view that this objection taken on behalf of the petitioner is devoid of any merit.

11) We agree with the submissions of the learned Additional Public Prosecutor for the respondents about aforesaid two cases relied upon by the learned Counsel for the petitioner. Both these cases have been decided on the basis of the facts specially involved in those cases and the facts of the present case are quite different from the facts involved in those cases. Therefore, both these cases would not be helpful to the petitioner. Learned Additional Public Prosecutor points out that explanation for the delay occurred in belatedly passing of the detention order is given in State's reply. But, the settled law is that it must have been mentioned in the detention order itself and if it is not there, subsequent explanation given in the affidavit-in-reply filed by the respondents cannot be considered by this Court. This is the law settled by the Apex Court way back in the year 1978 in the case of *Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others* (AIR 1978 SC 851).

12) We may also add here that in the case of **Mohamad Ishaq Mohamad Ismail Shaikh** (supra), the detenu was bailed out on 6/7/2019 and the in-camera statements were recorded almost immediately thereafter, i.e. on 16/7/2019 and 24/7/2019. This short gap between date of release of the detenu on bail and the dates on which in-camera statements were recorded was too blatant to explain away the charge that they were recorded only to fill up the gap between the last criminal activity and date on which the detention order was passed. The facts of the instant case, however, are quite different. The detenu was released on interim bail in Crime No.233/2021 on 6/5/2021. He was also released on bail in Crime No.274/2021 on 19/5/2021. But, there was no recording of in-camera statements immediately thereafter. The in-camera statements were recorded on 25/8/2021 and 26/8/2021. Had the Detaining Authority's intention to somehow or other detain the detenu, the in-camera statements of the witnesses would have been recorded immediately after the release of detenu on bail in two crimes in the month of May 2021, but

that is not the case here. Therefore, the facts of the present case would show that no assistance could be taken from the said case.

13) For the reasons stated above, we find that there is hardly any scope to make interference with the satisfaction reached appropriately by the Detaining Authority in the present case and this satisfaction on which rests the impugned order cannot be found to be bad in law. There is no merit in the petition. The petition stands dismissed. Rule is discharged. No costs.

JUDGE

JUDGE

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