

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

CRIMINAL WRIT PETITION NO.141 OF 2022

PETITIONER : Ramesh s/o Kisanrao Dandekar
Aged about 48 years, Occupation –
Private Driver, R/o. Chamediya Nagar,
Yavatmal Tal. and Dist. Yavatmal.

..VERSUS..

RESPONDENTS : 1. State of Maharashtra,
Through Home Department (Special),
2nd Floor, Mantralaya, Mumbai –
400032.
2. District Magistrate,
District – Yavatmal.
3. Sub Divisional Police Officer,
Sub Division Wani, Tah. Yavatmal,
District – Yavatmal.
4. Police Inspector, Police Station
Yavatmal City, District – Yavatmal.

Shri P. V. Navlani, Advocate with Shri R. Siddhartha, Advocate for the Petitioner
Shri S. S. Doifode, Addl. Public Prosecutor for the Respondent Nos.1 to 4.

CORAM : **MANISH PITALE AND**
VALMIKI SA MENEZES, JJ.

DATE : **25th JULY, 2022.**

ORAL JUDGMENT : (PER : MANISH PITALE, J.)

1. **Rule.** Rule made returnable forthwith. The criminal writ petition is heard finally with consent of the learned counsel

appearing for the parties.

2. By this writ petition, the petitioner has challenged order dated 01.12.2021, passed by the Respondent no.2 – District Magistrate, Yavatmal, whereby the son of the Petitioner was detained under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drugs Offenders, Dangerous Persons and Video Pirates Act, 1981 (for short, “the MPDA Act”).

3. The principle ground of challenge raised in the present writ petition is that crucial facts were not brought to notice of the Detaining Authority, when the impugned order was passed. There are other grounds of challenge also raised in the present writ petition, but Shri Navlani, learned counsel for the Petitioner emphasized upon the admitted position that neither bail application nor the order passed thereon concerning Crime No.510 of 2021 were placed before the Detaining Authority and insofar as Crime No.543 of 2021 is concerned, the details thereof as regards bail application preferred on behalf of the detenu and the order passed thereon

were also not placed before the Detaining Authority. It was submitted that these were vital documents that ought to have been placed before the Detaining Authority before reaching satisfaction that the detention order dated 01.12.2021 under Section 3 of the MPDA Act, could be passed against the Petitioner. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of Rushikesh Tanaji Bhoite ..Vrs.. State of Maharashtra and Ors., AIR 2012 SC 890.

4. On the other hand, Shri S. S. Doifode, learned Additional Public Prosecutor appearing for the Respondents submitted that even if the said documents could not be placed before the Detaining Authority, the Petitioner was unable to demonstrate what prejudice the detenu suffered as a consequence of the same. It was submitted that insofar as Crime No.510 of 2021 was concerned, it pertained to minor offences and non supply of documents pertaining to the bail application and order passed thereon was of no consequence and secondly that Crime No.543 of 2021 did concern serious offences, but the detenu himself was aware about the default bail granted and that in any case, the bail application being

filed on his behalf and the order passed thereon were facts about which, the Petitioner was always aware and it did not make any difference to the Detaining Authority proceeding in ignorance thereof.

5. This Court has considered the rival submissions. It is settled law by now that when detention order is passed, since the freedom of an individual is curtailed in extra ordinary circumstances, the detention order has to be scrutinized with that much strictness. In the present case, it is an admitted position that the aforesaid documents were not placed before the Detaining Authority, when the detention order dated 01.12.2021, was passed.

6. A perusal of the detention order itself shows that reference was made to Crime No.510 of 2021 filed under Sections 354, 354-A, 452, 504 and 506 of the Indian Penal Code (IPC), wherein the detenu is an Accused. Reference was also made to Crime No.543 of 2021 under Sections 302, 307, 109, 129-B of the IPC and Sections 3 and 4/25 of the Arms Act, 1959 and Section 3(2)(v) of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is with reference to the said crimes registered against the detenu that the Detaining Authority reached satisfaction, apart from certain witness statements placed before it, while passing the detention order. A perusal of paragraphs 8 and 9 of the impugned order passed by the Detaining Authority would show that there is no reference to bail applications filed by the detenu and the fact that the said applications stood allowed on 29.09.2021, insofar as Crime no.543 of 2021 is concerned and on 01.10.2021 insofar as Crime No.510 of 2021 is concerned. These bail applications and the order passed thereon were prior to the impugned order dated 01.12.2021, passed by the Detaining Authority and therefore, it is found that these vital documents were not placed before the Detaining Authority, when the impugned order was passed.

7. Shri Navlani, learned counsel for the Petitioner is justified in relying upon the judgment of the Hon'ble Supreme Court in the case of *Rushikesh Tanaji Bhoite ..Vrs.. State of Maharashtra and Ors.* (supra). In the said judgment, the Hon'ble Supreme Court has relied upon earlier judgments of

the Hon'ble Supreme Court in the cases of Vijay Narain Singh ..Vrs.. State of Bihar and others, 1984 (3) SCC 14 and Rekha ..Vrs.. State of Tamil Nadu through Secretary to Government and another, 2011 (5) SCC 244. After appreciating the position of law in this regard, the Hon'ble Supreme Court in the aforesaid case of *Rushikesh Tanaji Bhoite ..Vrs.. State of Maharashtra and Ors.* (supra) held in similar circumstances that when bail application and order passed thereon pertaining to the detenu were not placed before the Detaining Authority, the order stood vitiated because the subjective satisfaction of the Detaining Authority was based on material, wherein vital documents were not supplied. In fact, in the following paragraphs, the Hon'ble Supreme Court held as follows :

“7. The admitted position is that detenu was arrested in connection with the above crime on August 15, 2010 and he was released on bail by the Judicial Magistrate, 1st Class, Dharangaon on that very day. One of the conditions imposed in the Order of Bail was that the detenu would appear at Dharangaon Police Station on every Monday between 10.00 a.m. to 12 O'Clock till the charge-sheet was filed. Later on, the detenu made an application before the Judicial Magistrate, 1st Class, Dharangaon seeking relaxation of the above condition. That application was allowed and the above condition was relaxed by the concerned

Judicial Magistrate on January 4, 2011.

8. *It would be, thus, seen that the order releasing the detenu on bail in the crime registered on August 14, 2010 and the order relaxing the bail condition were passed by the judicial Magistrate, 1st Class, Dharangaon much before the issuance of detention order dated January 10, 2011. However, the detention order or the grounds supplied to the detenu do not show that the detaining authority was aware of the bail order granted in favour of the detenu on August 15, 2010.*

9. *In a case where detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.*

10. *In the present case, since the order of bail dated August 15, 2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority.”*

8. In view of the above position of law, we are of the view that the Petitioner has made out a case for interference

with the impugned order.

9. Accordingly, the criminal writ petition is **allowed**. The impugned order dated 01.12.2021 passed by the Respondent No.2 – District Magistrate, Yavatmal - Detaining Authority, is quashed and set aside. Consequently, the order dated 05.01.2022 passed by the Respondent No.1 – Home Department (Special) is also quashed and set aside. Consequently, the detenu i.e. Ashish @ Bagira s/o. Ramesh Dandekar, be released forthwith.

10. Rule made absolute in the aforesaid terms.

(VALMIKI SA MENEZES, J.) (MANISH PITALE, J.)

TAMBE