

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL WRIT PETITION NO. 269 OF 2022

Kasam Kalu Nimsurwale
Vs.
State of Maharashtra and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.V. Sirpurkar, Advocate for petitioner.
Mr. S.S. Doifode, APP for respondents/State.

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

DATE : 26.07.2022.

By this petition, the petitioner has challenged order dated 07.01.2022, passed by the respondent No.2, under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981, (MPDA Act), whereby the petitioner was placed under detention for period of 12 months. The petitioner also challenged a subsequent order dated 04.03.2022, passed by the respondent No.1, whereby the detention order was confirmed.

2. Mr. Sangram Sirpurkar, learned counsel appearing for the petitioner raised a contention that the detention orders stood vitiated, because an important fact was not brought to the notice of respondent No.2, concerning two specific offences that formed the basis for issuance of the detention order. Attention of this Court was invited to paragraph 5 of the impugned detention order, wherein references made to C.R.Nos.636/2021, 801/2021 for offences registered under Section 65(E) of the Maharashtra Prohibition Act, 1949. It is submitted that while the detention order records that in the context of both these offences notice as per Section 41(1)(a) of the Cr.P.C. was issued to the petitioner, it is not placed before the detaining authority i.e. respondent No.2, that in both these cases, the Investigating Authority did not even deem it fit to arrest the petitioner. On this ground, it is submitted that the detention order deserves to be quashed and set aside.

3. On the other hand, Mr. Doifode, learned APP appearing on behalf of respondents submitted that there are as many as 16 such offences registered against the petitioner under the provisions of the Maharashtra Prohibition Act, 1949, and that the

petitioner is a habitual offender and a nuisance for the society. It is submitted that the fact regarding issuance of notice under Section 41(1)(a) of the Cr.P.C. is recorded in the impugned detention order and therefore, it cannot be said that the respondent No.2-detaining authority was not aware about the facts of the cases.

4. In this connection, reliance placed by the learned counsel appearing for the petitioner on two judgments of the Division Bench of this Court is justified. In both the cases i.e. *Vasudev Mahadev Surve vs. State of Maharashtra and anr. (Judgment and order dated 16.12.2021 passed in Criminal Writ Petition No. 592 of 2021)* and *Hanif Karim Lahuwale vs. State of Maharashtra and others (Judgment and order dated 28.06.2022 passed in Criminal Writ Petition No.75 of 2022)*, in identical circumstances, it was held that when the police authorities did not even deem it necessary or appropriate to arrest the petitioner herein for offences on which reliance was placed in the impugned detention orders, and this fact was not placed before the detaining authority, the detention orders stood vitiated and deserved to be quashed.

5. A perusal of the impugned detention order does not demonstrate as to whether the fact that the police authority did not deem it necessary to even arrest the petitioner for the very same offences, was brought to the notice of the said authorities. Therefore, the position as reflected in the said judgments of the Division Benches applies to the facts of the present case also and the petitioner has made out a case for interference with the impugned orders.

6. In view of the above, the writ petition is allowed in terms of the prayer clause (i), which reads as follows :-

“(i) Quash and set aside the impugned order dated 04.03.2022 passed by Section Officer to the Government of Maharashtra, Home Department (Special), Mumbai i.e. respondent No.1 at (ANNEXURE-IV) in MPDA-122/c.r. 14/Spl.3B and further quash and set aside detention dated 07.01.2022 bearing No.Desk-2/HA/HOME/ WS-12/2022 (Annexure-I) by respondent No.2 i.e. District Magistrate, Washim and further release the applicant from Nagpur District Prison, Nagpur.”

7. The Writ Petition is allowed in above terms.

JUDGE

JUDGE