

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

CRIMINAL WRIT PETITION NO. 264 OF 2022

Mr. Vitthal Manohar Kogde (in Jail)
Age 22 years, R/o. Sukali,
Taluka Barshitakli, Dist. Akola

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.. Petitioner

Versus

1. State of Maharashtra
Through its Secretary, Department of
Home, Mantralaya, Mumbai - 32

2. District Magistrate,
Akola, Dist. Akola.

3. Police Station Officer,
Police Station Barshitakli,
Akola, Dist. Akola.

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.. Respondents

Mr. R.R. Vyas, Advocate for petitioner.
Mr. S.S. Doifode, APP for respondents.

CORAM : MANISH PITALE, AND
G.A. SANAP, JJ.

DATE : 17/08/2022

ORAL JUDGMENT: [PER : Manish Pitale, J.]

By this writ petition, the petitioner has challenged detention order dated 27.12.2021, passed by the respondent No.2 – District Magistrate, Akola and subsequent order dated 04.02.2022, passed by the respondent No.1 – State, confirming the detention order

passed by the respondent No.2. The said order was passed under Section 3 of 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, (hereinafter referred to as “the MPDA Act”).

(2) Mr. Vyas, learned counsel appearing for the petitioner submitted that the detention order stood vitiated for the reason that the detaining authority – respondent No.2 recorded in the impugned detention order that it was aware of the fact that the petitioner was on bail in all the cases that found mention in the detention order. It was brought to our notice that total five criminal proceedings registered against the petitioner were taken into consideration and specific reliance was placed on two such proceedings along with in-camera statements of witnesses, while issuing the detention order. It was submitted that while the bail order pertaining to the criminal proceeding at Serial No.5 in paragraph 3 of the detention order was placed before the detaining authority, as regards the criminal proceedings at serial Nos.1 to 3 in the said paragraph, neither the bail applications nor the bail orders were placed

before the detaining authority. According to the learned counsel for the petitioner, this vitiated the detention order in the light of settled position of law laid down by the Hon'ble Supreme Court in the case of ***Rushikesh Tannaji Bhoite Vs. State of Maharashtra and Ors., (2012) 2 SCC 72*** and subsequent judgments.

(3) It was further submitted that the detention order also stood vitiated for the reason that translations of relevant documents were not supplied to the petitioner, particularly injury report and report of medical examination of the victim in respect of specific offence, which was taken into consideration by the detaining authority while issuing the impugned detention order. On this basis, it was submitted that the petition deserved to be allowed.

(4) Mr. Doifode, learned APP appearing for the respondent Nos.1 to 3 submitted that insofar as the non-supply translations of various documents is concerned, the petitioner was not entitled to raise the said ground for the reason that no prejudice was suffered by the petitioner, in the light of the fact that he chose not to prefer any representation. Having not submitted a representation, it could not lie in the mouth of the petitioner to say that he was

prejudiced by non-supply of translations of some of the documents. Insofar as the aspect of failure of placing bail orders before the detaining authority is concerned, it was submitted that specific reliance in paragraph 4 of impugned detention order was placed on two proceedings, in one of which the petitioner was released on bail and a copy of the bail order was admittedly placed before the detaining authority.

(5) We have heard the learned counsel for the rival parties in the backdrop of the material available on record. We find that the aspect of non-supply of translations of the aforesaid documents may not necessarily accrue to the benefit of the petitioner, for the reason that he did not choose to submit a representation. In the absence of any prejudice demonstrated in that regard, the learned APP is justified in contending that it cannot lie in the mouth of the petitioner that non-supply of translations had caused prejudice, in the peculiar facts and circumstances of the present case.

(6) But, insofar as ground pertaining to failure to place the bail orders before the detaining authority is concerned, we are of the view opinion that there is substance in the contention raised on

behalf of the petitioner. A perusal of the detention order shows that in paragraph 3 thereof, the detaining authority has referred to five criminal proceedings. In paragraph 4, the detaining authority has relied upon proceedings at serial Nos.4 and 5 and there is no dispute about the fact that the bail order pertaining to the proceedings at serial No.4 was indeed to place before the detaining authority. But, it is significant that in paragraph 10, the detaining authority while recording subjective satisfaction has specifically recorded that “I am aware that now you are on bail in all above cases”.

(7) The aforesaid sentence clearly gives an impression that although in paragraph 4 of the impugned detention order reference was made to the criminal proceedings at serial Nos.4 and 5, the detaining authority stated its awareness about the petitioner being released on bail in all the criminal proceedings finding reference in paragraph 3 of the detention order. In the criminal proceedings at serial Nos.1 to 3, the petitioner was released on bail and admittedly copies of the bail orders pertaining to the said proceedings were not placed before the detaining authority. This vitiated the subjective satisfaction as per the law laid down by the Supreme Court in the case of *Rushikesh Bhoite* (supra).

(8) The learned counsel appearing for the petitioner is also justified in relying upon the recent judgment of the Supreme Court in the *Mallada K Sri Ram Vs. State of Telangana and Ors., (2022) SCC Online SC 424*, wherein the Supreme Court has emphasized upon the stringent test to be applied while considering the validity of such detention orders for the reason that the powers of preventive detention are exceptional and even draconian. Applying the stringent standards laid down by the Supreme Court in the aforementioned judgments, this Court is of the opinion that the petitioner has indeed made out case for interference in the impugned detention order.

(9) Another aspect of the matter is that as per the material available on record, with reference to the criminal proceedings initiated against the petitioner, the concerned authorities had also initiated proceedings for externment by issuing notice dated 31.07.2021. It appears that the said initiation of the proceedings did not lead to any order of externment against the petitioner and yet, on 20.12.2021, the present proceeding leading to the impugned detention order was initiated. The said procedure adopted by the respondents

further demonstrates that the impugned detention order deserves interference.

(10) In view of the above, the petition is allowed in terms of prayer, which reads as follow:

“quash and set aside order dated 04/02/2022 (Annexure I) passed by respondent No.1, Secretary, Department of Home, Mantralaya, Mumbai-32 so also order dated 27/12/2021 (Annexure II) bearing No.619/2021 passed by respondent No.2, District Magistrate, Akola, Dist. Akola in the interest of justice.”

(11) Accordingly, the petitioner shall be released from detention forthwith.

(12) Rule made absolute in above terms.

[G.A.SANAP, J.]

[MANISH PITALE J.]

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