

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

CRIMINAL WRIT PETITION NO.278 OF 2022

PETITIONER : Naseem @ Nasimoddin Moseenoddin
Jamadar,
Aged about 38 years, Occ - Labour,
R/o Dharulives, Akot Dist Akola At
Present Central Prison, Aurangabad.

..VERSUS..

RESPONDENTS : 1. State of Maharashtra,
Through its Secretary, Home
Department (Special) Mantralaya,
Mumbai.

2. The Collector/District Magistrate,
Akola, Dist Akola.

Shri M. N. Ali, Advocate for the Petitioner.
Shri M. J. Khan, APP for the Respondent nos.1 and 2.

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

DATE : **11th AUGUST, 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 petition, the Petitioner has challenged order dated 27.12.2021, passed by the Respondent no.2 - Collector/District Magistrate, Akola, under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug offenders, dangerous persons and Video Pirates Act, 1981 (for short, "the MPDA Act"), whereby the Petitioner has been detained for a period of one year. Order dated 04.02.2022, passed by the Respondent no.1 – Secretary, Home Department (Special) is also challenged, whereby the order of detention passed by the Respondent no.2 stood confirmed.

3. Although there are various grounds of challenge raised in the present writ petition, Shri M. N. Ali, learned counsel appearing for the petitioner highlighted that a perusal of the impugned detention order, would show that reference is made to as many as five crimes registered against the Petitioner. Although, specific reference is made to three crimes, in a table stated in paragraph 3 of the impugned detention order, reference is made to all the five crimes and in paragraph 10 of the impugned detention order, it is specifically observed that

the detaining authority was aware that the Petitioner was enlarged on bail in all the cases.

4. It was submitted that in crimes at serial nos.1 and 2 in the chart in paragraph 3 of the detention order, the Petitioner was issued notices under Section 41-A of the Criminal Procedure Code (Cr.P.C.), but he was not put under arrest. Insofar as crimes at serial nos.3 to 5 are concerned, the Petitioner was arrested and subsequently released on bail. Insofar as crime at serial no.3 is concerned i.e. Crime No.910 of 2021, only the operative portion of the bail order was placed before the detaining authority and admittedly, insofar as crimes at serial nos.4 and 5 i.e. Crime nos.232 of 2020 and 149 of 2015 are concerned, neither the bail applications nor the bail orders passed in favour of the Petitioner, were placed before the detaining authority. It was further submitted that non supply of the bail orders to the detaining authority vitiated the subjective satisfaction of the authority, while issuing the impugned detention order. The learned counsel appearing for the Petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of *Rushikesh Tanaji Bhoite ..Vrs.. State of*

Maharashtra and others, 2012 ALL SCR 1373 and the judgments of this Court in the cases of Harish @ Sarjerao Baban Takele ..Vrs.. The District Magistrate, Sangli and others, 2018 ALL MR (Cri) 516, Ratnamala Mukund Balkhande ..Vrs.. State of Maharashtra and others, (judgment and order dated 01.07.2022, passed in Criminal Writ Petition No.820 of 2021) and Shakir Khan Zakir Khan ..Vrs.. State of Maharashtra and another (judgment and order dated 14.07.2022, passed in Criminal Writ Petition No.916 of 2021).

5. Shri M. J. Khan, learned Assistant Public Prosecutor for the Respondents opposed the contentions raised on behalf of the Petitioner and invited attention of this Court to Section 5-A of the MPDA Act, submitting that even if one of the grounds of the detention order could be said to be unsustainable, the entire detention order need not be set aside, if it could be sustained on other grounds, which would be severed from the ground on which, this Court was in favour of the Petitioner. It was further submitted that there was no prejudice demonstrated by the Petitioner, due to the fact that the bail orders were not placed before the detaining authority,

when the impugned detention order was issued. On this basis, it was submitted that the detention order did not deserve interference, particularly looking to the crime history of the Petitioner before this Court.

6. We have heard the learned counsel for the rival parties and we have perused the material on record. Before advertng to the particular facts of the present case, it would be appropriate to refer to the position of law as regards the specific ground of challenge raised on behalf of the Petitioner.

7. In the case of **Rushikesh Tanaji Bhoite .Vrs.. State of Maharashtra and others** (supra), the Hon'ble Supreme Court had the occasion of considering the effect of non supply of vital material, including bail orders to the detaining authority. The Hon'ble Supreme Court observed that when a detenu is released on bail and he is enjoying his freedom under an order passed by Competent Court at the time of passing of the detention order, then such a bail order must be placed before the detaining authority to enable it to reach proper satisfaction for issuance of such detention order. In the said case, the

Hon'ble Supreme Court found that the bail order was indeed not placed before the detaining authority and a finding was rendered that non placing and non consideration of bail order had vitiated the subjective decision of the detaining authority, while issuing the detention order.

8. In the case of **Harish @ Sarjerao Baban Takele ..Vrs.. The District Magistrate, Sangli and others** (supra) the Division Bench of this Court relied upon the said position of law laid down by the Hon'ble Supreme Court in the case of **Rushikesh Tanaji Bhoite ..Vrs.. State of Maharashtra and others** (supra) and the detention order was set aside.

9. In the case of **Ratnamala Mukund Balhande ..Vrs.. State of Maharashtra and others** (supra), the Division Bench of this Court, not only held that placing of bail order is necessary before the detaining authority, but, it was specifically held that merely placing operative portion of bail order would not suffice. It was held in the said judgment as follows :

“12. As regards consideration of the operative part of the bail order in Crime No.810 of 2021, we are of the

opinion that consideration of the reasons of the bail order is what matters and not the consideration of the operative order containing only the directions for release of a person on bail on certain conditions. The reason is obvious. Grounds of bail stated by the competent Court reflect upon *prima facie* the nature and extent of involvement of the detenu in the crime, and thus they are vital for reaching subjective satisfaction by the detaining authority. In the case of **Sunil Pandharinath Dhotre Vs. The Commissioner of Police, Nashik and ors.** reported in **2021 ALL MR (Cri.) 2859**, the detaining authority had only considered the operative part of the bail order of the detenu. The Division Bench of took the view that the order passed by the learned Sessions Judge while releasing the detenu on bail was a wider piece of evidence and therefore, it ought to have been forwarded to the detaining authority by sponsoring authority. In holding so, it reiterated the view taken by another Co-ordinate Bench in the case of **Mukesh @ Mukya Ramesh Desaiakar Vs. Vivke Phansalkar and ors. in Writ Petition no.194 of 2020**, wherein it is held that detailed order passed by the learned Sessions Judge, Kalyan while releasing the detenu was a wider piece of evidence and it ought to have been forwarded to the detaining authority by the sponsoring authority.

13. We are thus of the view that merely supply operative part of the bail order to the detaining authority together with bail application was not enough in this case. It was necessary for the sponsoring authority to place

before the detaining authority, copy of the bail order containing reasons stated by the concerned Court for releasing the detenu on bail, as the grounds on which and the reasons for which the detenu was released on bail constituted relevant material for the detaining authority to reach the requisite satisfaction. It then follows that the subjective satisfaction reached by the detaining authority in the present case being based upon non consideration of the relevant material is bad in law.”

10. The said position of law was followed by the Division Bench of this Court in the case of **Shakir Khan Zakir Khan .Vrs.. State of Maharashtra and another** (supra). It is relevant that while holding in favour of the detenues in the aforesaid matter, the Division Bench of this Court also referred to an earlier judgment in the case of *Elizabeth Ranibhai Prabhudas Gaikwad .Vrs.. The State of Maharashtra and another, 2021 ALL MR (Cri.) 1394*, wherein it was held that there ought not to be any mismatch or unexplained inconsistency between the order passed by one authority granting bail and the order passed by another authority directing detention of that person for the very criminal activity.

11. Thus, it is clear that, not only the bail orders issued in favour of the detenu need to be placed before the detaining authority pertaining to crimes that are taken into consideration, while issuing the detention order, but placing of only the operative portion of the bail order is not sufficient.

12. In the present case, in paragraph 3 of the impugned detention order, the detaining authority has referred to as many as five cases registered and pending against the Petitioner (detenu). In paragraph 4 of the detention order, specific reference is made to Crime Nos.970 of 2021, 969 of 2021 and 910 of 2021. Insofar as Crime Nos.970 of 2021 and 969 of 2021, the detaining authority has indeed recorded that the Petitioner was not arrested and he was released on issuance of a warrant letter.

13. Insofar as Crime No.910 of 2021 is concerned, the detaining authority did refer to the fact that the Petitioner had applied for bail and he was indeed granted bail on 27.09.2021. But, it is an admitted position that even with regard to the said crime registered against the Petitioner, only operative portion of

the bail order was placed before the detaining authority. It is significant that in paragraph 10 of the impugned detention order, the detaining authority expressed the fact that it was aware that the “Petitioner was on bail in all above cases”. The aforesaid observation by the detaining authority clearly shows that apart from referring to the specific three crimes registered against the Petitioner in paragraph 4 of the impugned detention order, reference was made to the fact that the Petitioner was on bail in all the five cases in respect of which, reference was made on paragraph 3 of the detention order.

14. We are of the opinion that in these circumstances, it was mandatory for the sponsoring authority to place before the detaining authority bail orders in all the cases in which, the Petitioner was released on bail, including one case in which, he is facing prosecution for offence under Section 302 of the IPC. Merely placing operative portion of the bail order pertaining to Crime No.910 of 2021, also did not satisfy the requirements of law, as laid down by the Hon’ble Supreme Court and this Court in the above mentioned cases.

15. Insofar as reference to Section 5-A of the MPDA Act is concerned, we are not in agreement with the contention raised by the learned APP, for the reason that the admitted facts of the present case clearly show that the entire detention order passed by the Respondent no.2 stood vitiated due to non supply and non consideration of the bail orders passed in favour of the Petitioner. The entire order stood vitiated and there is no question of severing one ground from the other, to sustain the detention order passed by the Respondent no.2.

16. In view of the above, we are of the opinion that the writ petition deserves to be allowed and both the impugned orders deserve to be set aside.

17. Accordingly, criminal writ petition is allowed in terms of prayer Clauses (i) and (ii), which read as follows :

“(i) Pass any appropriate writ order or direction and thereby quash and set aside the impugned order dated 27.12.2021 (annexure No.I) passed by Respondent No.2, Collector/District Magistrate, Akola.

(ii) Pass any appropriate writ order or direction and thereby quash and set aside the impugned order passed by Respondent No.1 Secretary, Home Department (Special) Mantralaya, Mumbai (Annexure-II) dated 4.02.2022.”

18. The Petitioner shall be released from detention forthwith.

19. Authorities to act upon steno copy of this order.

20. Rule is made absolute in above terms.

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

TAMBE