

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

CRIMINAL WRIT PETITION NO. 419 OF 2022

Zamiruddin s/o Alimuddin @ Jammu
Alimuddin, Aged about 23 years,
Occ.: Labour, R/o. Barde Plot,
Nr. Taha Masjid, Akot, Dist. Akola

} .. Petitioner

Versus

1. The State of Maharashtra
Home Department (Special), Through its
Section Officer, Second Floor, Main
Building, Mantralaya, Mumbai – 32
 2. Collector and District Magistrate,
Akola, Dist. Akola.
- } .. Respondents

Mr. Sagar Katkar, Advocate for Petitioner.

Mr. S.S. Doifode, APP for Respondent Nos.1 & 2.

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

RESERVED ON : 11/08/2022

PRONOUNCED ON : 29/08/2022

JUDGMENT : [PER : VALMIKI SA MENEZES, J.]

Rule. Heard finally by consent of the learned counsel
for the parties.

(2) By this writ petition, the Petitioner before us has impugned order dated 05.01.2022, passed by the Section Officer to the Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai i.e. Respondent No.1 in a proceeding in MPDA No.1121/CR.371/Spl.-3B, which confirms detention order dated 25.11.2021 bearing No.DESK-2/HA/HOME/WS-539/2021 passed by the District Magistrate, Akola i.e. Respondent No.2 herein, authorizing the detention of the Petitioner for a period of twelve months.

(3) It is the case of the Petitioner that he was detained by the District Magistrate, Akola, under the provisions of Section 3(1) of the 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 (for short 'of the Act of 1981'), by the detention order dated 08.11.2021 passed by Respondent No.2 on the grounds which were made known to him through a family member, without actually supplying the same to the Petitioner to enable him to file an objection before the said Authority.

It is further the case of the Petitioner that after he was made aware of the order dated 08.11.2021, he made a representation before the Respondent No.1 – Advisory Board of the Government of

Maharashtra on 10.12.2021, wherein he has placed before the said Authority, crucial facts, amongst which he placed details of orders of bail passed in pending Criminal cases against the detenu; he further argued that the representation also elucidates the fact that at least two of the criminal cases in which Charge-Sheets were filed against the detenu before the concerned Criminal Courts, had culminated in acquittal of the detenu, one of which was passed before order dated 08.11.2021 was passed by the District Magistrate, and the other order of acquittal, was passed prior to the pronouncement of the order of confirmation dated 05.01.2022 by the Respondent No.1.

(4) He further argued that none of these orders had been considered or even referred to in the impugned order dated 05.01.2022 by the Respondent No.1, thus, vitiating the entire process of satisfaction being recorded by the Detaining Authority, since, the Detaining Authority did not advert to the findings in the above referred orders granting bail or judgments of acquittal. On these facts pleaded in the petition, Shri Sagar Katkar, learned counsel for the Petitioner submits that grounds for detention of the Petitioner, more specifically contained in paragraph 3 thereof and detailed in a chart containing ten criminal cases filed against the Petitioner were not sustainable. He took us through the record of

three of those criminal cases at Serial Nos.3, 7 and 9 of the said chart, wherein orders of bail releasing the Petitioner have been passed by the concerned Criminal Courts, specifying the reasons for release of the detenu in the said orders. He further submits that none of these orders were placed by the sponsoring Authority before the District Magistrate, to enable him to refer to their contents and to the reasons stated therein for release of the detenu, to enable the Authority to come to a proper satisfaction that notwithstanding the reasons stated in the bail orders, the detention of the Petitioner would actually be required.

(5) He further submitted that in two other criminal cases referred to in the detention order dated 08.11.2021, more specifically those at serial Nos.8 and 10 of the said chart referred to in paragraph 3 of the detention order, the concerned Criminal Courts had acquitted the detenu; he took us through the representation filed before the Advisory Board on 10.12.2021 by the Petitioner under Section 3(3) of the said Act, wherein he points out that the Police Authorities, while applying for the detention of the Petitioner, had neither brought to the notice of the Detaining Authority, nor to the notice of the Respondent No.1 confirming Authority, the fact that the Petitioner had been acquitted of charges in at least two of the criminal cases referred to in the impugned order. He

further submits that applying the ratio of the judgments passed by this Court in *Ratnamala Mukund Balkhande Vs. State of Maharashtra and Ors.*, in Criminal Writ Petition No.820/2021 by its judgment dated 01.07.2022, in *Shakir Khan Zakir Khan Vs. State of Maharashtra and anr.*, passed in Criminal Writ Petition No.916/2021 by its judgment dated 14.07.2022 and in *Hrishi @ Sarjerao Baban Takele Vs. The District Magistrate, Sangli and Ors.*, reported in *(2018) ALL M.R. (Cri.) 516*, the impugned order stands vitiated for non-consideration of the reasons stated by the Competent Criminal Courts while acquitting or granting bail to the Petitioner, as the case may be, in the various criminal cases referred to in the impugned order passed by the District Magistrate.

(6) It is further submitted that a Division Bench of this Court in judgment dated 27.10.2021 passed in Criminal Writ Petition No.477/2021 in the case of *Indragol Debaji Ramchawre Vs. The State of Maharashtra and anr.*, whilst referring to the judgment of the Hon'ble Supreme Court rendered in *Elizabeth Ranibhai Prabhudas Gaikwad Vs. State of Maharashtra and anr.* reported in *2021 All.M.R. (Criminal) 1394*, has specifically laid down that non-consideration of the bail orders or non-communication of bail orders to the Detaining Authority would vitiate the detention orders passed against the Petitioner.

(7) *Per contra*, Shri S.S.Doifode, learned Assistant Public Prosecutor appearing for Respondent Nos.1 and 2, supporting the impugned orders, contended that, though it may be true that the concerned orders granting bail to the Petitioner may not have been placed before the District Magistrate for consideration of the reasoning contained in the said orders he contended that there is a reference in paragraph 10 of the order passed by the District Magistrate that he was aware that the Petitioner was released on bail in all the ten cases referred to in paragraph 3 of the impugned order, and on that basis, the satisfaction recorded by the Authority on being aware of the orders of bail, could not have been said to be vitiated for non-consideration of such orders.

(8) We have considered the submissions of the learned counsel appearing for the parties and we have gone through the entire record of the petition. In *Hrishi @ Sarjerao Baban Takele* (supra) and more particularly paragraph 8 and 9 thereof, a Division Bench of this Court, after referring to a judgment of the Hon'ble Supreme Court in the case of *Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Ors.* reported in **2012 ALL SCR 1373**, has held that non-placement of detailed order of anticipatory bail granted to the detenu or even not furnishing a copy thereof, vitiates the entire order of detention.

We quote herein the reasoning of the Hon'ble Supreme Court in ***Hrishi @ Sarjerao Baban Takele*** (supra):

“7. In relation to ground (d) and (i) Mr. Tripathi is relying on the decision of the Supreme Court in the case of Rushikesh Tanaji Bhoite vs. State of Maharashtra & Ors., reported in 2012 Cri.L.J. 1334 : [2012 ALL SCR 1373]. Mr. Tripathi placed reliance on paragraphs 8, 9 and 10 of the said decision. Mr. Tripathi pointed out that in paragraph 8, it is observed as under :

8.....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”

Mr. Tripathi pointed out that in the present case also, the detention order or grounds of detention do not show any awareness of the detaining authority whether the detenu was in custody or was released on bail.

8. Mr. Tripathi pointed out that in the case of Rushikesh Bhoite (2012 ALL SCR 1373) (supra) in paragraphs 9 and 10 of the said decision, it is observed as under:

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.”

(9) In the case of ***Ratnamala Mukund Balkhande*** (supra) cited by the learned counsel for the Petitioner, a Division Bench of this Hon'ble Court, after referring to the judgment of the Hon'ble Supreme

Court in ***Elizabeth Ranibhai Prabhudas Gaikwad*** (supra) and another judgment of the Hon'ble Supreme Court in ***Abdul Sattar Ibrahim Manik Vs. Union of India and Ors. (AIR) 1991 SC 2261***, applying the ratio laid down by the Hon'ble Supreme Court in the said two cases has held as under:

“8. In this case, although, seven crimes registered against the detenu formed the material for reaching the subjective satisfaction of the detaining authority, admittedly, in five of the crimes, in which the detenu was on bail, no bail orders were placed before the detaining authority. This lacuna, in our opinion, has vitiated the satisfaction reached by the detaining authority as it was deprived of opportunity to consider relevant material, though available.

9. Of course, it is submitted by learned APP that these five crimes were only considered as indicative of the previous criminal activity and therefore it was not necessary for the detaining authority to consider the reasons for which the detenu was granted bail in each of these crimes. In our respectful submission the argument cannot be accepted. The law settled by Hon'ble Apex Court in the case of Abdul Sathar Ibrahim Manik (supra), is clear in this regard. Hon'ble Supreme Court has in clear terms observed that in the case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. Hon'ble Supreme Court further held that in such a case, the bail application and the order granting bail must necessarily be placed before the authority and the copies should also be supplied to the detenu. It would then mean that, whenever previous crimes registered against the detenu are considered as indicative of continuous criminal activity of the detenu, the detaining authority must also consider the reasons for which the detenu was granted bail in those previously registered crimes. This is because of the fact that

those reasons would enable the detaining authority to reach proper satisfaction upon knowing existence of prima facie case against the detenu or otherwise in those previously registered crimes. Besides, as held by this Court in the case of Elizabeth Ranibhai Prabhudas Gaikwad (supra) there should not 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. Consideration of the reasons of bail would help the detaining authority bridge the gap, in some cases, between the reasons for which bail was granted and the reasons for which preventive detention is ordered. Thus, we find no substance in the argument of learned APP made in this regard.”

In the case of ***Ratnamala Mukund Balkhande*** (supra) this Court has further held that merely supplying the operative part of a bail order to the Detaining Authority together with the bail application was not enough, to obtain the detention order, and what was necessary for the Detaining Authority to reach the requisite satisfaction as required under Section 3(3) of the said Act, was that it had to necessarily base its consideration on the relevant material, which includes the reasons given by the competent Criminal Court for release of the detenu on the same grounds which now constitute, the grounds for his detention in the impugned order.

The same view was taken in the case of ***Shakir Khan Zakir Khan*** (supra) by a Division Bench of this Court after making reference to the case of ***Ratnamala Mukund Balkhande (supra) and Hanif***

Karim Lалуwale Vs. State of Maharashtra and Ors., in Criminal Writ
Petition No.75/2022 decided on 28.06.2022.

(10) The learned counsel for the Petitioner has cited a judgment of this Court in ***Indragol Debaji Ramchawre*** (supra) wherein this Court after referring to the judgment of the Hon'ble Supreme Court in ***Elizabeth Ranibhai Prabhudas Gaikwad*** (supra) has held :

“15. At this stage, we may clarify that we may not be taken to have laid down some blanket proposition that the furnishing of bail applications or the orders made thereon is a must in every case of preventive detention. Ultimately, this will depend from case to case. In the present case, however, we find that the impugned detention order is purported to be based only on the six pending prosecutions under the Maharashtra Prohibition Act. In all these matters, there is no dispute that the petitioner was enlarged on bail. The terms and conditions subject to which the petitioner was enlarged on bail were, therefore, quite relevant because, as was pointed out by Mr. Sirpurkar that several restrictions were imposed upon the petitioner and the same, have not even been taken into account by the Detaining Authority before purporting to record subjective satisfaction on the necessity of issuing the impugned detention order. In the case, we find that the two decisions referred to above support the case of the petitioner and no good ground has been shown to us to take some contrary view, assuming that we would be competent to do so.”

(11) Applying the ratio laid down by the Hon'ble Supreme Court and by the various judgments of this Court as quoted above we have no doubt in our mind that non-consideration of the three bail orders,

which we presently make reference to, would vitiate the entire process followed by the Detaining Authority as confirmed by Respondent No.1 in the impugned order dated 05.01.2022.

We note that in Crime No.304/2017, referred to at Serial No.9 of the chart detailed by the District Magistrate in paragraph 3 of the impugned order has referred to a pending case against the Petitioner wherein he was actually granted bail by an order dated 12.10.2017 passed by the Judicial Magistrate First Class, Akot, releasing him on certain terms stated therein.

Further, in Crime No.429/2018 referred to at Serial No.5 of the very same chart contained in the impugned order, the Petitioner was released on bail by the concerned Magistrate by order dated 14.12.2018, while in Crime No.404/2019 referred to at Serial No.3 of the same chart, the Petitioner had been released on bail under order dated 14.11.2019. None of the above orders were placed before the District Magistrate for consideration while passing the impugned order.

(12) It is further a matter of record that the Petitioner was acquitted in two other crimes in Crime No.418/2017 at Serial No.8 and in Crime No.164/2017 at Serial No.10 of the chart contained in the order of

the District Magistrate. There is a specific reference made at paragraph 3 of the representation made by the Petitioner before the Respondent No.1 where the number of the Sessions Case and the dates of the order of the acquittal are referred to. The order dated 05.01.2022 passed by the Respondent No.1 is not only cryptic, but also does not refer to any of the material referred to by us in the preceding paragraphs, all of which formed part of the record.

(13) It is thus clear that the impugned orders were passed without perusing all the relevant material, which should have included the reasoned orders of bail and the judgments containing the reasons for acquittal of the Petitioner in at least two cases, all of which find reference in the impugned orders.

(14) The impugned orders are therefore, passed in the face of judgments of the Hon'ble Supreme Court and of this Court specifically laying down the proposition that the orders of detention would be vitiated by non-consideration of the specific material referred to by us in the preceding paragraphs.

(15) For all the above reasons, we allow the Writ Petition No.419/2022 in terms of prayer clause (1) thereof, which reads as under:

“1. Quash and set aside the impugned order dated 05.01.2022 passed by Section Officer to the Government of Maharashtra, Home Department (Special), Mumbai i.e. RespondentNo.1 at (ANNEXURE-III) in MPDA No.1121/CR.371/Spl-3B and further quash and set aside detention order dated 25.11.2021 bearing No.Desk-2/HA/HOME/WS-539/2021 passed by RespondentNo.2 i.e. District Magistrate, Akola and further release the Petitioner from Aurangabad Central Prison, Aurangabad.”

(16) Consequently, the petitioner shall be released from detention forthwith, unless required in any other case. Rule is made absolute in the above terms.

[VALMIKI SA MENEZES, J.]

[MANISH PITALE J.]