

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

CRIMINAL WRIT PETITION NO.820 OF 2021

PETITIONER:-

Ratnamala Mukund Balkhande,
Aged about 52 years, Occupation-
Housewife R/o Apatapa Road, Sant Kabir
Nagar, Akot File, Akola, Dist. Akola.

DETENU

Sachin Mukund Balkhande, Aged 30 yrs,
Occ.Cable Work, R/o Apatapa Road, Sant
Kavir Nagar, Akot File, Akola Dist.Akola
(At present lodged in Nashik Central
Prison, M.H.)

...VERSUS...

RESPONDENTS :-

1. State of Maharashtra, through Home
Department (Special), 2nd Floor,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk, Mumbai-32.
2. The Principal Secretary to the
Government of Maharashtra Home
Department (Special), 2nd Floor,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk, Mumbai-32.
3. The District Magistrate, Akola and
Detaining Authority, Akola.

Mr. P .V. Navlani, counsel for the petitioner.
Mr.S.S.Doifode, APP for respondent

**CORAM : SUNIL B.SHUKRE &
G.A.SANAP, JJ.
DATE : 01.07.2022.**

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.
3. The detenu has been preventively detained vide order dated 04.09.2021 passed by respondent No.3, which has been confirmed by the State. These orders are under challenge in this petition.
4. According to the learned counsel for the petitioner, the detention order is patently illegal as it suffers from basic defects. He points out that several crimes registered against the detenu were considered and it was well known to the detaining authority that in all the seven crimes the detenu was on bail and yet, the reasons of grant of bail were not placed before the detaining authority. He also submits that some documents were not supplied to the detenu. On these grounds he urges that the detention order deserves to be quashed and set aside.

5. Learned APP strongly opposes the petition and submits that out of seven crimes considered by the detaining authority, two crimes were of recent origin and a detailed discussion in respect of the facts of those crimes and the extent of the involvement of the detenu has been made and the effect of his such involvement together with his previous criminal activity has been appropriately considered by the detaining authority. He also submits that the previous criminal activity and the two crimes recently registered against the detenu and the statements of two confidential witnesses sufficiently indicated that the detenu continuously and consistently indulged in criminal activities so much so that ordinary measures of law were not sufficient for putting restraint on him and it was found that his criminal activity was disturbing public order and therefore, the satisfaction reached by the detaining authority is proper and beyond any question.

6. Learned APP further submits that in five of seven crimes, copies of bail orders were not placed before the detaining authority, but, in one of the recent crimes, Crime No.810 of 2021, copy of the bail application as well as copy of the operative bail order was placed before the authority. He further submits that in

another recent crime bearing Crime No.252 of 2021, the detenu was not arrested by the Investigating Officer, but was only given an intimation to remain present before the concerned Court as and when called upon to do so, by that Court, and this intimation was given under Section 41-A of the Code of Criminal Procedure. He, therefore, submits that the requirement of law of placing the bail order before the detaining authority insofar as the recent crimes are concerned, has been substantially fulfilled in this case. He, thus, submits that there is no merit in the petition.

7. We would first deal with the objection that bail orders were not placed before the detaining authority. On this point, the law is very clear. This Court, in the case of **Elizabeth Ranibhai Prabhudas Gaikwad Vs.The State of Maharashtra and anr.** reported in **2021 ALL MR (Cri) 1394**, following the law expounded by the Apex Court in the case of **Abdul Sathar Ibrahim Manik Vs.Union of India and ors** reported in **AIR 1991 SC 2261** held thus:-

“If the Authority does not take into consideration the orders of bail granted to the proposed detenu, it may lead to an anomalous situation whereby one authority of law i.e. Criminal Court thinks it fit to enlarge such a person in criminal offences registered against

*him and the other authority of law considers it necessary that such person is detained in custody because of his criminal activities exhibited by pendency of criminal cases against him. The law does not expect any mismatch between the orders passed by the two law enforcing authorities and therefore, it is necessary that when one authority releases a person on bail, the other authority seeking to detain him again for the same criminal activities, considers the impact of the bail order and reaches to an appropriate conclusion in the matter. This law is expounded by the Apex Court in the case of **Abdul Sattar Ibrahim Manik .vs. Union of India and Others, AIR 1991 SC 2261 : [1991 ALL MR ONLINE 1728 (S.C.)]** which has been followed by another Division Bench in the case of **Paras s/o. Ramprasad Sahu vs. State of Maharashtra and another, 2003 (3) Mh.L.J. 24 : [2003 ALL MR (Cri) 2296]**. In paragraph 8 of this Judgment, the Division Bench has reproduced relevant observations of Supreme Court in the cited case of **Abdul Sattar Ibrahim Manik**. For the sake of convenience, we would like to reproduce the same as under :*

"In a 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 vital ground for ordering detention. In such a case the bail application and the order granting bail

should necessarily be placed before the authority and the copies should be supplied to the detenu."

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.

10. Learned APP has invited our attention to the case of **Lakhan Kisan Tusambad Vs. District Magistrate, Beed and ors.** reported in **2022 ALL MR (Cri)1748**, to support the contention that since previous crimes were considered only for the purpose of demonstrating past crime record, non placing of bail orders in those crimes has not adversely affected the detention order. Let us, therefore, consider this case.

11. In the said case of **Lakhan Kisan** (supra), the Division Bench at Aurangabad, found that the satisfaction reached by the detaining authority was upon consideration of criminal antecedents as well as recent criminal activities of the detainee coupled with two in camera statements and therefore, consideration of one non cognizable offence by the detaining authority was held as not rendering the impugned order of detention as illegal. These facts are quite different from the facts

of the present case. In the said case of **Lakhan Kisan** (supra) the issue was of consideration of criminal activity which had given rise to one non-cognizable offence and other offences, and whereas in the present case, the question related to non-consideration of relevant material in the nature of reasons given by the competent Courts for releasing the detenu on bail in five previous crimes. Consideration of a non-cognizable crime together with other relevant material for reaching a particular conclusion is quite different from non-consideration of relevant material for reaching the requisite satisfaction. Therefore, we do not think that the case of **Lakhan Kisan** (supra) would help the State in justifying the impugned detention order.

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 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 .Vivek 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 supplying 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.

14. About the other crime i.e. Crime No. 252 of 2021, it is an admitted fact that the petitioner was not arrested and was merely intimated to attend the concerned Court as and when called upon to do so under section 41-A of the Code of the Criminal Procedure. It is also an admitted fact that Crime No. 252 of 2021 registered with Police Station Akot File, Akola, was one of the latest crimes and it was alleged to be committed by the detenu in continuation of his previous criminal activity as seen from five crimes registered against him, which were crime Nos. 525 of 2020, 299 of 2020, 293 of 2020, 20 of 2020 and 4 of 2017. Yet the Investigating Officer did not think it fit to arrest the detenu in Crime No. 252 of 2021, which was registered for such offences as 324, 504 and 506 of the Indian Penal Code r/w Section 34 of the

Indian Penal Code. If the Investigating Officer felt no need for arresting the petitioner in this crime, it cannot be accepted that the detenu should have been put under preventive detention for continuing with his criminal activity resulting in registration of Crime No.252 of 2021. The detaining authority, has not considered this important aspect of the matter, and has maintained complete silence on this point. This shows that the impugned detention order belies the decision taken to not arrest the petitioner in Crime No. 252 of 2021. This is yet another reason why we see the impugned detention order as illegal.

15. In the result, we find that the impugned order is perverse and illegal as it fails to take into consideration relevant material and contradicts the decision taken to not arrest the petitioner in recent crime.

16. There is also an objection about non supply of some documents. We do not think it necessary to consider it as we have already found the impugned detention order as bad in law on other grounds.

17. The Writ Petition is, therefore, allowed in terms of prayer clause 'b' which reads as under :-

“(b) upon perusal of same, quash and set aside order bearing No.Desk-2/HA/HOME/WS-415/2021 passed by respondent no.3 District Magistrate, Akola dated 04.09.2021 (Annexure No.I) and also of order bearing No.MPDA-0921/CR-286/Spl-3B passed by respondent No.1 i.e. Home Department (Special) dt.14.10.2021 (Annexure No.V) in the interest of justice”.

18. Rule is made absolute in the above terms.

(G.A.SANAP, J)

(SUNIL B. SHUKRE,J)