

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.914/2021

Prashant Bharat Datar,
Aged about 42 Yrs., Occ. Labour,
R/o Rani Amravati, Tah, Bahulgaon,
Dist. Yavatmal.

At present District Prison, Yavatmal.

... Petitioner

- Versus -

1. State of Maharashtra,
through it's Secretary,
Home Department (Special)
Mantralaya, Mumbai.

2. The Collector/Magistrate,
Yavatmal, Dist. Yavatmal.

... Respondents

Mr. M.N. Ali, Advocate for the Petitioner.

Mr. S.S. Doifode, A.P.P. for Respondent Nos.1 and 2.

CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.

DATE : 7.7.2022

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

Heard Mr. M.N. Ali, Advocate for the petitioner and Mr. S.S. Doifode, A.P.P. for respondent Nos.1 and 2.

2. Although it is argued by learned A.P.P. that there is no merit in the petition, considering the statements of confidential witnesses 'A' and 'B', we find merit in the submission of learned counsel for the petitioner that there is no relevant material that is available on record for reaching the subjective satisfaction.

3. In order to issue the order of preventive detention of a person under the provisions 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 it is necessary that the detaining authority finds, upon consideration of the relevant material that ordinary law and order mechanism is not sufficient to control the criminal activity of a

person because of which widespread disturbance of peace and tranquillity among the public is caused.

4. In the present case, the material available on record indicated that in the two crimes, Crime No.244/2021 registered on 9.6.2021 and Crime No.257/2021, registered on 21.6.2021, the Investigating Officer did not think it fit to arrest the petitioner and was satisfied that issuance of a notice under Section 41 of the Code of Criminal Procedure would be sufficient to ensure that the petitioner does not indulge in any further criminal activity and also abides by law. This was inspite of the fact that there were two statements of confidential witnesses recorded in camera on 11.6.2021. These statements were considered by the detaining authority as sufficient for reaching subjective satisfaction that criminal activities of the petitioner were disturbing the public order, forgetting that the petitioner was not arrested and was merely allowed to walk away upon getting notice under Section 41 of the Criminal Procedure Code in a crime which was

registered on 21.6.2021 (Crime No.244/2021) after the statements of confidential witnesses 'A' and 'B' were recorded on 11.6.2021.

5. Apart from what is stated above, the statement of witness 'A' shows that he had filed a complaint at Police Station Babhulgaon on 23.5.2021 against the petitioner when the petitioner had threatened to kill him but, it appears that no crime was registered against the petitioner at Police Station Babhulgaon. This fact has not been considered in any manner by the detaining authority although, it was very much present on record. Then, statement of witness 'B' does not refer to any particular incident nor does it mention in any period of time when any incident worth taking cognizance took place. The statement is only in general terms.

6. Such being the nature of statements of witnesses 'A' and 'B', we do not think and that they could have been considered

as providing any relevant material for the detaining authority to reach its subjective satisfaction in the matter. Thus, we find that this is a case of absence of relevant material and non-consideration of relevant material by the detaining authority in reaching its subjective satisfaction thereby vitiating the impugned order.

7. The petition is, therefore, allowed in terms of prayer clauses (i) and (ii). The petitioner be released forthwith, if not required in any crime. Rule is made absolute in the above terms.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)