

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 888 OF 2023

Shaikh Shaharooq Shaikh Hasan
Age: 26 years, Occu.: Labour,
R/o Imamwada, Raver,
Tq. Raver, Dist. Jalgaon

..PETITIONER

VERSUS

1. State of Maharashtra
Through its Secretary,
Home Department (Special),
Mantralaya, Mumbai
2. The District Magistrate,
Collector Office, Jalgaon
3. The Superintendent,
Central Prison, Thane

..RESPONDENTS

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Mr. A.J. Patil, Advocate for petitioner
Mr. A.R. Kale, A.P.P. for respondents
Mr. Rupesh Jaiswal, Advocate appointed to assist the Court

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ**
RESERVED ON : 12th OCTOBER, 2023
PRONOUNCED ON : 23rd OCTOBER, 2023

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. The challenge in this petition, under Article 226 of the Constitution of India, is to the order dated 28th April, 2023 passed by Respondent No.2 – District Magistrate, Jalgaon in Dandapra/KAVI/MPDA/49/2023 thereby detaining the petitioner under Section 3 of the Maharashtra

Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Robber and Black Marketing of Essential Commodities Act, 1981 ('M.P.D.A. Act'). The said order of detention is confirmed by Respondent No.1 – Home Department, State of Maharashtra. The period of detention is for twelve months with effect from the date of detention i.e. 29th April, 2023. Detention of the petitioner is on the ground of he being a dangerous person and his activities as such, being prejudicial for maintaining public order.

2. Learned counsel for the petitioner would submit that there was breach of mandatory provisions of M.P.D.A. Act. The detaining authority has not applied its mind while passing the order. The material relied on to pass the order of detention did not have potential to find the activities of the petitioner to be prejudicial for maintaining public order.

3. We also appointed Mr. Rupesh Jaiswal, learned counsel, to assist this Court in this matter. He reiterated the submissions made by learned counsel for the petitioner. According to him, the impugned order has been challenged mainly on the following grounds :-

- i) The petitioner to have not been supplied with translated copies of bail order, medico-legal certificate, F.I.R. and other documents in the language known to him.

- ii) There is delay of more than five days in supplying of grounds of detention to the petitioner.
- iii) There is delay in forwarding report of detention to the State Government.
- iv) There is delay in passing the detention order.

4. Learned counsel for the petitioner was candid to submit that the fourth ground has not been specifically raised in the writ petition. Delay, long or short in passing the detention order needs to be explained by the detaining authority. Since the said ground has not been raised in the writ petition, the respondent – authority did not have an opportunity to respond thereto. We, therefore, do not entertain fourth ground of challenge.

5. Before advertng to address the other grounds of challenge, it is necessary to advert to certain provisions of M.P.D.A. Act. The preamble reads thus :-

“An Act to provide for preventive detention of Slumlords, Bootleggers, Drug-offenders, Dangerous persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing of Essential Commodities for preventing their dangerous activities prejudicial to the maintenance of public order.

WHEREAS public order was adversely affected every now and then by the dangerous activities of certain persons, who are known as Slumlords, Bootleggers and Drug-offenders;

AND WHEREAS both Houses of the State Legislature were not in session;

AND WHEREAS having regard to the resources and influence of the persons by whom, the large scale on which, and the manner in which, the dangerous activities were being clandestinely organised and carried on in violation of law by them, as Slumlords, Bootleggers or Drug-offenders in the State of Maharashtra, and particularly in its urban areas, the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to have a special law in this State to provide for preventive detention of these three classes of persons and for matters connected therewith and, therefore, promulgated the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-offenders Ordinance, 1981, on the 11th June 1981;”

Section 2(a-iv) defines the term, “acting in any manner prejudicial to the maintenance of public order” as –

“in the case of a dangerous person, when he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order;

Section 2 (b-i) defines the term “dangerous person as -

“dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or

any of the offences punishable under Chapter V of the Arms Act, 1959;”

Section 3 of the M.P.D.A. Act reads thus -

“3(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section :

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed six months but the State Government may, if satisfied as aforesaid that it is necessary so to amend such order to extend such period from time to time by any period not exceeding six months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making

thereof, unless, in the meantime, it has been approved by the State Government.”

Section 8 is as under -

“8(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.”

Ground No.(ii)

6. As stated above, Section 8 of the M.P.D.A. Act mandates that the detaining authority, as soon as may be, but not later than five days from the date of detention, communicate to the detenu the grounds on which the order of detention has been made.

7. The petitioner has come with a case of having been taken into custody and detained with effect from 28th April, 2023. It is also his case of having been supplied with grounds of detention on 03rd May, 2023. If we take the petitioner’s case as it is, there may appear to be breach of mandate of Section 8 of the M.P.D.A. Act. The petitioner, however fails to make out a case of having been detained with effect from 28th April, 2023.

8. Our attentions has, on the other hand, been drawn to the panchanama dated 29th April, 2023, wherein the petitioner was taken into custody in enforcement of his order of detention. The same suggests the petitioner came to be detained on 29th April, 2023. The order of his detention would indicate that it was on the last day of statutory mandatory period of five days he was communicated the grounds of his detention. It is reiterated that Section 8 of the M.P.D.A. Act mandates that the grounds of detention must be communicated not later than five days from the date of detention. When the petitioner has been communicated with the grounds of his detention on the fifth day from the date of his detention, we do not find there being a breach of mandatory provisions of Section 8. The challenge on this ground, therefore, fails.

Ground No.(iii)

9. Learned counsel for the petitioner would submit that order of detention has been submitted to the State Government on 03rd May, 2023. Section 3(3) mandates that the detaining authority shall forthwith report the order of detention to the State Government, together with the grounds on which the order has been made. The word, “forthwith” was the subject matter of interpretation by the Apex Court in case of *Hetchin Haokip Vs. State of Manipur and Ors. (2018) 9 SCC 562*. In paragraph 12 of the said judgment it has been observed thus :-

“12. From the above cases, the position that emerges is that “forthwith”, under Section 3(4), does not mean instantaneous, but without undue delay and within reasonable time. Whether the authority passing the detention order reported the detention to the State Government within reasonable time and without undue delay, is to be ascertained from the facts of the case. In Keshav Nilkanth Joglekar Vs. Commissioner of Police, AIR 1957 SC 28, there was a delay of eight days by the Police Commissioner, in sending the report to the State Government. However, the Court found that the reasons for the delay were reasonable, since the Commissioner and his team were occupied in maintaining law and order during a particularly tense time in Mumbai.”

10. It is true that the affidavit-in-reply is silent to explain the delay of five days in reporting the order of detention alongwith reasons therefor to the State Government. Our attention has, however been drawn to the calendar of months April and May. There were three holidays between the date of detention and the date on which the order of detention was communicated to the State Government. It is, therefore, to be observed that the order of detention has been communicated to the State Government on 2nd / 3rd day. It takes at least a day's time to send such order through the messenger from Aurangabad to the office of Respondent No.1 in Mumbai. We, therefore, do not find it to be a case of delay in communicating the order of detention to Respondent No.1. This ground of challenge too fails.

Ground no.(i)

11. According to learned counsel for the petitioner, the petitioner is Hindi speaking. Some of the documents relied on for passing the order of detention were in English. The petitioner has not been supplied with translated copies thereof, either in Hindi or Urdu. The petitioner relied on his school leaving certificate. It suggests that he had taken education in Urdu medium school. He left the school after passing of standard four examination. His arrest panchanama dated 29th April, 2023 indicates him to have been conversant with languages, Marathi and Hindi. The order of detention and the grounds alongwith almost all papers relating thereto are all in Marathi language. The petitioner, therefore, cannot be heard to say that he ought to have been supplied with grounds of detention and all the papers relied on with their translation in Hindi. No doubt, the judgments in case of ***Lallubhai Jogibhai Patel Vs. Union of India, 1981 AIR (SC) 728*** and ***Ibrahim Ahmad Batti Vs. State of Gujarat, 1982 AIR 1500*** suggest that the grounds of detention and all the papers relied on for passing the order of detention need to be communicated to the detenu in the language known to him. Failure to do so would be a breach of Article 22(5) of the Constitution of India, fundamental right of the petitioner. Same reads thus -

“22. Protection against arrest and detention in certain cases.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such

person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.”

Whether there is breach of Article 22(5) of the Constitution of India is a question of fact. It has already been observed hereinabove that the petitioner admits to have been conversant with Marathi language. Although order of detention is in English, Marathi translation thereof alongwith almost all the papers (Exh.2) relied on in support of grounds of detention are in Marathi. Our attention has been drawn to paragraph no.7 of the order of detention, which reads as under :-

“7) On perusal of the documents placed before me I am satisfied that there are various criminal cases registered under Chapter XVI and XVII of Penal Code for various sections and other enactments against you in Raver Police Station of Jalgaon district. The said offences are of serious nature against the personal safety and property of citizens. Due to these offences there is fear in the mind of common people. Even after arrest and release on bail you along with your henchmen repeat your indulgence in criminal activities. Hence, to dissuade you from above criminal activities preventive actions under Section 110 of Criminal Procedure code, 1973 as well as preventive action under Section 151(3) of Criminal Procedure Code have been taken against you and you were put in judicial custody for one day. You were externed from Raver Taluka for a period of four days as per the provisions of Section 144(2) of Criminal Procedure Code, 1973. However, there is no improvement in your criminal activities and you

consistently indulge in your notorious criminal activities. Hence, it is necessary to curb your criminal activities.”

12. Article 22(5) was subject of interpretation many a time. As seen above in case of Laalubhai Patel (supra) the grounds of detention and all the papers relied on for passing the order of detention need to be communicated to the detenu in the language known to him. In the case in hand, true, almost all the documents relied on have been provided to the petitioner in Marathi language. The petitioner admits to have been conversant with Marathi. Aforementioned paragraph no.7 of the order of detention however indicates the detaining authority has relied on the proceeding under Section 151(3) of Cr.P.C. and his consequential detention for certain period. In the order of detention it has been observed that the petitioner was in the custody for one day in a proceeding under Section 151(3) of the Cr.P.C. A bunch of documents supplied to the petitioner is before us. We come across the order of detention dated 31st August, 2022 passed by the Judicial Magistrate First Class, Raver detaining the petitioner for a period of ten days. Then there is order of 10th September, 2022 passed by the very Magistrate releasing the petitioner from detention. The said detention order was passed by the holiday remand Court. Both those orders are in English. There is nothing to indicate the petitioner to have been supplied with copies of those two orders in the language with which the petitioner is conversant. When the order indicates the petitioner was detained for ten days, in fact, the detaining

authority observed that he was detained for a period of one day. It is reiterated that this order of detention (under Section 151(3) of Cr.P.C.) was one of the grounds heavily relied on for passing the order impugned herein. By non supplying of the said orders in the language known to the petitioner necessarily constituted a breach of the petitioner's fundamental right under Article 22(5) of the Constitution of India to prefer effective representation against the order of his detention. There is no question of ascertaining whether the petitioner has suffered any prejudice by non supplying of copies of those documents in the language known to the petitioner. In our view, therefore, the order impugned herein is liable to be set aside on the ground of non compliance of Article 22(5) of the Constitution of India.

13. In view of above, criminal writ petition is allowed in terms of prayer clause [B].

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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