

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1040 CRIMINAL WRIT PETITION NO.1191 OF 2023

NIKHIL @ PIYA SUNIL KUDE
VERSUS
THE DISTRICT MAGISTRATE, JALGAON AND OTHERS

...
Advocate for Petitioner : Mr. Yogesh A. Jadhav
APP for Respondents : Mr. P.N. Kutti

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**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 2nd NOVEMBER, 2023.**

PER COURT:-

The challenge in this petition is to the order of detention of the petitioner passed under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter for the sake of brevity referred to as “the M.P.D.A. Act”). The order of detention has been passed by the District Magistrate, Jalgaon. The same has been confirmed by the Home Department of the State of Maharashtra. The period of detention is for 12 months. The petitioner has been detained on the ground of his activities as sand smuggler, were prejudicial to maintenance of public order.

2. The challenge is on many grounds, such as representation preferred by the petitioner to have not been decided by the detaining authority, he had not been supplied with the impugned detention

order within stipulated period of 5 days from the date of detention. Besides non supply of in camera statements of the witnesses, relied on for passing order impugned herein. The subjective satisfaction of the authority concerned has also been taken exception to.

3. Learned A.P.P. tried to defend the order of detention. He brings to our notice each and every page of compilation of documents produced by him to suggest that all documents in the compilation bear signatures of the petitioner, acknowledging receipt of all those documents. He also adverts our attention to the order dated 26.7.2023 passed by the Home department, indicating the petitioner's representation to have been turned down.

4. So far as the ground of non supply of documents is concerned, the said ground has been specifically averred in the petition. In the affidavit in reply, although the said ground has been dealt with stating the petitioner to have been supplied with each and every documents, when the envelopes are referred to the learned A.P.P. he is unable to point out the petitioner's signature in acknowledgment of receipt of in camera statements. The sealed covers containing in camera statements have been placed before us. None of the covers bears signature of the petitioner acknowledging receipt thereof. The petitioner has also placed on record entire bunch of documents relied on in support of detention order. Pages 48 and 49 are photo copies of the front portion of the sealed covers and

nothing more. As such, we have every reason to observe that the detaining authority to have not supplied the petitioner with in camera statements, which have been relied upon for passing the order impugned herein. Non supply of said documents (grounds of detention) necessarily affect the right of the petitioner under Article 22(5) of the Constitution of India to make effective representation against the order of detention. Since the fundamental right has been affected by non supply of in camera statements, the order impugned herein is liable to be set aside on the said sole ground. The petition therefore, succeeds.

5. In view of the above, the writ petition is allowed in terms of prayer clause "C".

6. The order of detention dated 17.7.2023 bearing No. Cr.P/KaVi/MPDA/59/2023 passed under Section 3 of the M.P.D.A. Act is hereby quashed and set aside. The petitioner be set at liberty forthwith if not required in any other case.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)

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