

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1745 OF 2022

Avinash @ Balu Atmaram More,
Age : 47 years, Occu : Agriculture,
R/o - Anjanvati, Tq. & Dist. Beed

.. Petitioner

Versus

- 1] State of Maharashtra
Through Deputy Secretary,
Home Department (Special), Mantralaya,
Mumbai - 400 032
- 2] The State of Maharashtra
Through District Magistrate / The Collector,
Beed
- 3] The State of Maharashtra
Through Superintendent,
Central Jail, Aurangabad
- 4] The Assistant Police Inspector,
Neknoor Police Station,
Tq. and Dist. Beed

.. Respondents

...

Mr. Saisagar A. Ambilwade, Advocate for the petitioner
Mr. M.M. Nerlikar, A.P.P. for the respondent - State

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**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

**RESERVED ON : 19 APRIL 2023
PRONOUNCED ON : 21 APRIL 2023**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. At the request of both the sides, the matter is heard finally at the stage of admission.

3. The petitioner is challenging the order of his detention passed under section 3(2) of the 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 (hereinafter **MPDA Act**) dated 07-06-2022.

4. The learned advocate Mr. Ambilwade for the petitioner would submit that the impugned order is grossly illegal on variety of grounds. The subjective satisfaction arrived at by the detaining authority is not based on proper appreciation of the circumstances and the material. Though the statements of couple of individuals have been recorded in-camera, the detaining authority has not verified the correctness of their statements and has not even verified if really they were not willing to testify. The offence which forms the basis for the authorities to initiate action under the MPDA Act was an agitation for a public cause. There is even delay in recording the in-camera statements. The offence was registered on 09-12-2021. The statements of these witnesses were recorded on 09-05-2022 and 12-05-2022, after lapse of more than six months and these circumstances would be fatal.

5. Mr. Ambilwade would further submit that the order of bail granted to the petitioner in that crime was also not placed before the detaining authority which lapse has been consistently held to be going to the root of the validity of the detention order. Even the timeline prescribed for placing the matter before the advisory board was not strictly adhered to and the order be quashed and set aside.

6. Per contra, the learned A.P.P. Mr. Nerlikar by referring to the affidavit in reply submitted that there was enough material before the detaining authority to demonstrate that the petitioner was a dangerous person. The authority has reached a subjective satisfaction on the basis of material by applying mind. The two witnesses have expressly stated about petitioner's terror and have quoted individual incidents. Their statements have been got verified by the detaining authority through his subordinate officer of the rank of Sub Divisional Police Officer.

7. Mr. Nerlikar would further submit that the timeline provided under the different provisions of the MPDA Act has been strictly followed. There is a specific reference in the impugned order indicating as to how in spite of grant of bail, there is every possibility of petitioner indulging in dangerous activities as is mentioned in paragraph no. 8 which shows that the fact of release on bail was also considered.

8. We have carefully considered the rival submissions and perused the papers.

9. As far as the ground regarding legality of the satisfaction recorded by the detaining authority on the basis of the statements of couple of witnesses recorded in-camera, it does appear that both these witnesses mentioned about the individual incidents that had taken place with them wherein the petitioner threatened them. The record also demonstrates that the fact of such recording of the statements and the apprehension expressed by the witnesses has been duly verified by the detaining authority through the Sub Divisional Police Officer as appearing from the endorsement below those statements.

10. However, this Court in the matter of **Pratap Ajay Kharate Vs. The State of Maharashtra** (Criminal writ petition no. 531 of 2021 decided on 28-10-2021 - Nagpur Bench) **Sanjay Ramlal Shahu Vs. State of Maharashtra** (Criminal writ petition no. 768 of 2015 decided on 01-12-2016 – Nagpur Bench) both of which have been subsequently relied upon in **Shaikh Yetal Vs. State of Maharashtra and others; 2022 All. M.R. (Cri.) 2561** (Criminal writ petition no. 627 of 2021 – Nagpur Bench) have taken consistent view that it is not sufficient for the detaining authority to record the satisfaction about the perception entertained by the witnesses, but it is also expected that the detaining authority must also record a satisfaction that indeed the

witnesses were not willing to testify should a prosecution be launched against the petitioner. Following observations in paragraph nos. 5 to 8 in the matter of **Sanjay Ramlal Shahu** (supra) are relevant :-

“5. Shri Nandeshwar, learned Counsel however has urged that subjective satisfaction required to be reached is about the unwillingness of such person to come forth to give any statement. He submits that thus, identity of this person is kept secret so as to extend him necessary protection. As identity is kept secret, and therefore, the person like petitioner whose liberty is at stake, does not get an effective opportunity to traverse those statements, requirement of recording subjective satisfaction is mandatory. According to him, the Police Commissioner no where expressly finds that the persons whose in-camera statements are relied upon by him have expressed un-willingness to come forward to depose against the petitioner or that because of terror allegedly spread by the petitioner in the locality, other persons are not ready and willing to come forward to give any statement or report.

6. Perusal of copies of in-camera statements made available to petitioner by the detaining authority show that statements are dated 09.04.2015, and the same have been verified lateron by the Assistant Commissioner of Police, Sakkardara Region, Sakkardara on 06.06.2015. The said verification shows that the person whose in-camera statement was recorded appeared before the Assistant Commissioner of Police on 06.06.2015, and his statement recorded earlier on 09.04.2015, was read over to him and he accepted that it was correctly recorded and also accepted his signature upon it. Thereafter, it is mentioned that the spot was visited by the Assistant Commissioner of Police and the event, as recorded, was verified from the traders in the locality. The Authority (ACP), then mentions that he was satisfied that such an event had happened. It is further mentioned that the terror of petitioner in the locality was perceived by him. Both the reverifications are on same lines.

7. The original records are produced by the learned Addl. P.P. before us. Perusal of in-camera statements taken out from sealed envelope shows that the same do not bear any counter signature of the Police Commissioner to show that the Police Commissioner has gone through those statements or its verification. It is no doubt true that the contents thereof are produced in paragraphs mentioned supra, but, fact of or effect of verification has not been even mentioned.

8. Reproduction of contents of those statements cannot show subjective satisfaction envisaged in law. The subjective satisfaction has to be about unwillingness of such persons to come forward and to give statement against the petitioner. There is no whisper about this aspect in the impugned order. The records also do not show that any effort was made by the Police Commissioner to have a dialog in this regard with the Assistant Commissioner of Police. The impugned order which is based upon such in-camera statements is, therefore, bad in law."

11. The impugned order does not expressly record satisfaction of the detaining authority about unwillingness of the witnesses to testify should a prosecution be launched against the petitioner but only records satisfaction regarding verification of the genuineness of the individual incidents. Consequently, in the absence of recording such satisfaction regarding unwillingness of the witnesses to testify, this ground for challenging the impugned detention order sustains.

12. As far as the next ground regarding not placing of the order of bail granted in favour of the petitioner in the crime which forms the basis for initiation of the action of preventive detention, again, the law is well settled. In the matter of ***Rushikesh Tanaji Bhoite Vs. State of Maharashtra and others; 2012 Cri. L.J. 1334***, the Supreme Court has expressly held that non placing of the order granting bail and non consideration of the material has been held to be sufficient to vitiate the subjective satisfaction of the detaining authority.

13. Mr. Nerlikar attempted to salvage some ground by pointing out that in paragraph no. 8 of the order of detention, the detaining authority has expressly mentioned as to how in spite of grant of bail it is unlikely to abate the activities of the petitioner prejudicial to the maintenance of public order. Paragraph no. 8 reads as under :-

“8. I have carefully gone through the material placed before me and I am subjectively satisfied that you are acting in a manner prejudicial to the maintenance of public order. It is also seen that after releasing on bail you are involving in committing the such type of offences therefore it is necessary to detain you.”

A bare look at these observations would merely demonstrate that the detaining authority recorded the satisfaction about the fact that there is every possibility of petitioner involving in similar type of offences and would act in a manner prejudicial to the maintenance of public order, even after release on bail.

14. In our view, these observations do not fulfil the requirement of law as laid down in the matter of **Rushikesh Bhoite** (supra) of placing the order of bail before the detaining authority and latter's application of mind to the grounds on which the bail has been granted. Consequently, this ground also sustains and would go to the root of the legality of the detention order.

15. This brings us to the next ground regarding strict adherence to the timeline prescribed under the MPDA Act. To begin

with it would be apt to refer to the observations of the Supreme Court in the matter of ***Mrs. T. Devaki Vs. Govt. Of Tamil Nadu and others;*** ***AIR 1990 SC 1086***, in paragraph nos. 9 and 10, which read as under :-

“9. Section 3(3) requires that where detention is made by the delegate of the State Government, namely, the District Magistrate or the Commissioner of Police, they should report the fact to the State Government together with the grounds on which the order may have been made and such other particulars as, in their opinion, may have a bearing on the matter. A detention order made by a District Magistrate or Commissioner of Police in exercise of their delegated authority does not remain in force for more than twelve days after the making thereof, unless in the meantime the detention order is approved by the State Government. Section 3 requires the detaining authority to communicate to the detenu, grounds on which, the order is made within five days from the date of detention to enable the detenu to make representation against the order to the State Government. Section 10 requires the State Government to place before the Advisory Board the detention order and the grounds on which such order may have been made alongwith the representation made by the detenu as well as the report of the officers made under Section 3(3) of the Act within three weeks from the date of detention. Under Section 11 the Advisory Board is required to consider the materials placed before it and after hearing the detenu, to submit its report to the State Government within seven weeks from the date of detention of the person concerned. In a case where the Advisory Board forms opinion, that there was no sufficient cause for the detention the State Government shall revoke the detention order but if in its opinion sufficient cause was made out, the State Government may confirm the detention order and continue the detention of the person concerned for such period not exceeding the maximum period as specified in Section 13 of the Act. Section 13 provides the maximum period for which a person can be detained in pursuance of any detention order made and confirmed under the Act. According to this provision the maximum period of detention shall be twelve months from the date of detention. The State Government has, however, power to revoke detention order at any time, it may think proper.

10. Provisions of the aforesaid sections are inbuilt safeguards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the order of detention is confirmed by the State Government, maximum period

for which a detenu shall be detained cannot exceed 12 months from the date of detention. The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. The expression "the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order" occurring in subsection (2) of S. 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The Legislature has taken care to entrust the power of detention to the State Government, as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed for a period of three months and it shall be specified in the order of delegation. But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. The period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification."

We need not delve deep. Absence of strict adherence to the timeline prescribed would go to the root of the legality of the detention order. One need not over-emphasize.

16. Section 10 of the MPDA Act reads as under :-

"10. Reference to Advisory Board -

*In every case where a detention order has been made under this Act, the State Government shall, within three weeks from the date of detention of a person under the order, **place before the Advisory Board** constituted by it under section 9 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under sub-section (3) of section 3."*
(emphasis supplied)

A plain reading of this provision and particularly the words in bold would indicate that State government has to place before the advisory board the detention order and the grounds on which such order is passed together with the representation of the detainee as well as the report of the officers under section 3(3) of the MPDA Act within three weeks from the date of detention.

17. There is no dispute about the fact that though the impugned order of detention was passed on 07-06-2022, the petitioner was actually detained on 11-06-2022. The affidavit in reply does not expressly mention the date on which the order of detention together with the grounds and other annexures mentioned herein-above was placed before the advisory board as is required by section 10 of the MPDA Act. We had requested the learned A.P.P. to ascertain the fact. On instructions, he submits that such compliance was made and the matter was placed before the advisory board on 07-07-2022. Which means it was so placed before the advisory board beyond three weeks from the date of detention. If this is so, there is a gross violation of the provision of section 10 of the MPDA Act.

18. Mr. Nerlikar would strenuously submit that considering the heading of section 10, reference to the advisory board is contemplated and the provision should be interpreted by bearing in mind the heading. The word 'placing' used in the provision would comprehend sending of

the detention order along with the grounds and other annexures to the advisory board. According to him it is not necessary that the matter is actually placed before the advisory board within three weeks. Even such transmission of the papers would be due compliance. He placed reliance on the decision in the matter of ***Bhinka and others V. Charan Singh; 1959 AIR (SC) 960***. Mr. Nerlikar submitted that, if the provision together with the heading are considered harmoniously, the interpretation which he suggested was deducible.

19. Though ingenious, we cannot accept the submission for the simple reason that there is no ambiguity in the substantive provision of section 10 of the MPDA Act so that any aid can be had from the head note. The provision clearly requires placing of the detention order before the advisory board and not its mere transmission. In ***Bhinka*** (supra), it has been clearly laid down that only if there is any doubt in the interpretation of the words in the section that the heading helps to resolve the doubt. When section 10 of the MPDA Act is clear and unambiguous, we cannot refer to the heading, to interpret the provision as is submitted by Mr. Nerlikar.

20. The upshot, for various reasons as discussed and concluded herein-above, the impugned order is not sustainable in law and is liable to be quashed and set aside.

21. Criminal Writ petition is allowed.
22. The impugned order of detention is quashed and set aside.
23. The petitioner shall be released forthwith if not required to be detained in any other matter.
24. Rule is made absolute.

[ABHAY S. WAGHWASE]
JUDGE

arp/

[MANGESH S. PATIL]
JUDGE