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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1032 OF 2023

Nitin Pandurang Jadhav

Age – 33 years

R/o. Karve, Tal. Khanapur

Dist. Sangli

Petitioner

Versus

1 District Magistrate
Sangli

2 The State of Maharashtra
Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department
Mantralaya, Mumbai

3 The Superintendent
Kolhapur Central Jail,
Kalamaba, Kolhapur

Respondents

Ms. Jayshree Tripathi for the Petitioner.

Ms. M. H. Mhatre, APP for the State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 13th JUNE 2023

JUDGMENT (PER : GAURI GODSE, J.) :

1. By this petition, the petitioner challenges the order of detention bearing No.Home-1 /Desk-6/MAG /MPDA/SR/06/2382/2022, dated 23rd December 2022, issued by the Respondent No. 1- District Magistrate, Sangli, in exercise of the powers conferred by sub-section (2) of section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (“**the M.P.D.A. Act**”).

2. On 8th March 2023, the petitioner filed a representation before respondent no. 2 through the jail authorities, praying for revocation of the said order of his detention. The representation made by the petitioner was rejected by respondent no. 2 on 8th March 2023.

3. Perusal of the order of detention shows that the Detaining Authority has relied upon the case registered against the petitioner

on 6th July 2022 for alleged offences punishable under section 188 of the Indian Penal Code and sections 4 and 25 of the Arms Act and the in-camera statements of two witnesses. The Detaining Authority has further referred to an order of externment passed against the petitioner on 28th October 2021.

4. The learned counsel for the petitioner has referred to various grounds raised in the petition; however, has pressed into service ground raised in clause (b) of paragraph 5 of the petition, which reads as under :

(b) The petitioner says and submits that the detaining authority in the grounds of detention furnished to the detenu has given a list of offenses in which the detenu is involved. The detaining authority categorically states in para 2 of the grounds of detention that the order of detention is passed on offenses as mentioned in para 4, which includes C.R. No. 337/2022 along with in camera statements of witness A and B. It is pertinent to note that in the above-mentioned C.R. No. 337 of 2022 the petitioner was given a notice u/sec 41(a)(1) Cr.P.C. and in earlier registered criminal case No. 287/2022 also he was granted bail by the Competent Court of Law on 21.07.2022. The

petitioner says and submits that he was arrested in C.R. No. 106/2022 U/Sec. 395, 327, 417, 120-B, 170 r/w. 34 of I.P.C. registered with Kudal Police Station on 07.06.2022, for which the detenu had applied for bail, however the bail application came to be rejected on 04.11.2022. Therefore, the detention order dated 23.12.2022 was passed against the detenu while he was already in custody in C.R. No. 106/2022. The detaining authority is completely unaware of the fact that the detenu was already in Judicial Custody without availing bail in C.R. No. 106/2022. In the grounds of detention there is no discussion whatsoever about the detenu being in custody in the above mentioned C.R. Law is well settled that if normal Penal laws of the land is sufficient to take care of the prejudicial activities of the detenu, there is no need or necessity to pass a detention order and a valid detention order can be passed against the detenu while he is in custody, provided the detaining authority records his satisfaction firstly about his Awareness that the detenu is in judicial custody. Secondly, the detaining authority is subjectively satisfied that there is real or imminent possibility of detenu's release on bail based on cogent material and that it is absolute imperative to pass a valid detention order as against the petitioner while he is in custody, and Thirdly that after the detenu's release he is likely to revert back to prejudicial activities. Moreover, the

detaining authority is duty bound to express his satisfaction in the grounds of detention which is not done in this case. The satisfaction of the detaining authority is vitiated as the detaining authority has failed to satisfy the pre conditions that needs to be adhered before passing a detention order. The order of detention is therefore illegal and bad in law, liable to be quashed and set aside.

5. Learned counsel for the petitioner submitted that the order of detention shows that the Detaining Authority was unaware that the petitioner was already in custody and thus the same shows complete non application of mind by the Detaining Authority. Learned counsel further submitted that the detention order does not discuss about the petitioner being in custody, even though it is well settled law that if the normal penal laws of the land are sufficient to take care of the prejudicial activities of the detenu, there is no requirement or necessity to pass any detention order.

6. In support of her submissions learned counsel relied upon the decisions of the Honorable Supreme Court in ***Jai Singh and Others***

*Vs. State of Jammu and Kashmir*¹, *Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others*² and *Dharmendra Suganchand Chelawat and Another Vs. Union of India and Others*.³

7. Learned APP has supported the order of detention by relying upon the affidavit dated 22nd April, 2023 filed on behalf of respondent no. 3 and submitted that the representation filed by the petitioner was immediately forwarded to respondent no. 2. Learned APP also relied upon an affidavit dated 19th May 2023 of Dr. Raja Dayanidhi, District Magistrate, Sangli and an affidavit dated 1st June 2023 of Anil Eknath Kulkarni, Joint Secretary, Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai. Learned APP relied upon paragraph 2 of the affidavit of Respondent No. 2, which refers to the rejection of the representation by relying upon remarks of the Detaining Authority.

8. We have considered the submissions made on behalf of both parties. The Honorable Supreme Court, in the case of *Jai Singh and*

1 (1985) 1 SCC 561

2 (1986) 4 SCC 416

3 AIR 1990 SC 1196

Others, held that the liberty of a subject is a serious matter and it is not to be trifled with in a casual, indifferent and routine manner. In the said case the Honorable Supreme Court has observed that as per the record, the detaining authority was not aware about the detenu being in custody in connection with a criminal case at the time of passing the detention order. The Hon'ble Supreme Court thus held that the detention order will stand vitiated on the ground of non application of mind as to the question whether the detention order was necessary despite the detenu already being in custody.

9. The Honorable Supreme Court in the case of *Binod Singh* has held in paragraph 7 as under :

(7) It is well settled in our constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his

being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detenu, the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order. A bald statement is merely an ipse dixit of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent. Eternal vigilance on the part of the authority charged with both law and order and public order is the price which the democracy in this country extracts from the public officials in order to protect the fundamental freedoms of our citizens. In the affidavits on behalf of the detaining authority though there are indications that transfer of the detenu from one prison to another was considered by the need to serve the detention order while he was in custody was not properly considered by the detaining authority in the light of the relevant factors. At least the records of the case do not indicate that. If that is the position, then however disreputable the antecedents of a person might have been, without consideration of all the aforesaid relevant factors, the detenu could not have been put

into preventive custody. Therefore, though the order of preventive detention when it was passed was not invalid and on relevant considerations, the service of the order was not on proper consideration.

10. The Honorable Supreme Court in the case of *Dharmendra Suganchand Chelawat* has held that the expression “compelling reasons” in the context of passing an order of detention of a person already in custody implies that there must be cogent material before the Detaining Authority on the basis of which it may be satisfied that the detenu is likely to be released from custody in the near future and taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him. The Honorable Supreme Court had thus set aside the order of detention.

11. Perusal of the facts of the present case shows that the petitioner was already in custody when the order of detention was passed. There are no reasons recorded by the Detaining Authority as to why the petitioner was required to be detained inspite of he being in

custody, in the case registered against him. The law laid down by the Honorable Supreme Court in the aforesaid decisions squarely applies to the facts of the present case. The affidavit filed on behalf of the Detaining Authority is bereft of any explanation as to the reason for passing detention order inspite of the Petitioner being in custody. Considering the aforesaid, we find that there is no explanation supporting the order of detention. As a result we pass the following order :

(i) Petition is allowed and Rule is made absolute in terms of prayer clause (b), which reads as under:

(b) The order of Detention bearing No. Home-1/ Desk-6/MAG/ MPDA/ SR/ 06/ 2382/ 2022, dated 23/12/2022 issued under Section 3 of M.P.D.A. Act 1981 by the Respondent No. 1 be quashed and set aside and on quashing the same the petitioner be ordered for release forthwith.

(ii) The petitioner be released forthwith, if not required in any other case.

All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.