



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1162 OF 2023

Siddant alias Siddharth Sanjay Marathe
R/o Bldg. No.2, Pratik Nagar
Opp Jaibhavani Nagar, Kothrud,
Pune(at present Kolhapur Central prison,
Kolhapur)

... Petitioner

vs.

1. Commissioner of Police, Pune City
2. The State of Maharashtra
(through Addl. Chief Secretary to
Government of Maharashtra, Mantralaya,
Home Department, Mantralaya, Mumbai.
3. The Superintendent, Kolhapur Central
Prison, Kolhapur.

... Respondents

Ms. Jayshree Tripathi, for the Petitioner.

Mrs. M.H. Mhatre, A.P.P for the State.

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

DATED : 25th JULY 2023

JUDGMENT(PER: GAURI GODSE, J.)

1. This petition is filed to challenge the order of detention dated 7th February 2023 passed by the Respondent No.1-

Commissioner of Police, Pune City, Pune, against the petitioner in the exercise of the powers under sub-section 2 of section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing Essential Commodities Act, 1981 ('MPDA Act').

2. Respondent No.1, while passing the order of detention, has relied upon one CR bearing No. 258 of 2022, registered against the petitioner on 26th October 2022 for the offences punishable under sections 307, 504, 506 of IPC and section 37 (1)(3)/135 of Maharashtra Police Act and under section 4(25) of Arms Act. The order of detention indicates that the allegation in the said CR against the petitioner is that he had abused the complainant and created terror by taking out an iron sickle hidden in his shirt with the intention to kill and brandishing it on the complainant's head. The detaining authority has further referred to the statements of the witnesses recorded during the investigation. The detention order further reveals that the petitioner was arrested on 28th October 2022 and was remanded

to police custody on 31st October 2022 and, thereafter, remanded to judicial custody till 13th November 2022. The petitioner was granted bail on 23rd November 2022, and the CR registered against the petitioner is under investigation.

3. The detaining authority has reproduced the gist of the in-camera statements, which refer to the incidents of 24th October 2022 and 22nd October 2022. The gist of the in-camera statements reveals that the witness alleged that the petitioner have abused and assaulted them for money and created terror.

4. The learned counsel for the petitioner has raised various grounds in the petition. However, pressed into the ground raised in clause(g) of paragraph 5 of the petition, which reads as under:-

*“ (g) The Petitioner says and submits that in the solitary relied on C.R. for passing the detention order i.e C.R. No. 258 of 2022, the Petitioner was granted bail by the Hon’ble Ld Sessions Judge, Pune on 23.11.2022. (Annexed at **EXHIBIT-G**). The Hon’ble Sessions Judge granted bail to the Petitioner placing his reliance on an (Exhibit-5) which had information that the Complainant sustained injuries due to “skid*

and fall from bike’, there was also a discharge card taken into consideration. The Petitioner says and submits that this vital aspect considered by the Sessions Court has not been taken into consideration by the detaining authority even though the bail order was placed before the detaining authority. The Petitioner says and submits that failure to consider this vital aspect/ reason by the Ld. Sessions Judge while granting bail to the Petitioner cannot be without substance while arriving at his subjective satisfaction and pass the said detention order. This amounts to non-application of mind of the detaining authority. The order of detention is illegal and bad-in-law for non-application of mind, liable to be quashed and set aside.”

5. Learned counsel for the petitioner submitted that the learned Sessions Judge while granting bail to the petitioner, has relied upon the Injury Certificate, which had information that the complainant had sustained injuries due to ‘skid and fall from bike’. She further submitted that this vital aspect considered in the order granting bail is not taken into consideration by the detaining authority even though the copy of the order was placed before the detaining authority. Learned counsel, thus, submitted that failure on the part of the detaining authority not to consider this vital aspect relied upon by the learned Sessions Judge while

granting bail to the petitioner shows non-application of mind by the detaining authority. She, thus, submitted that ignoring such a vital aspect shows non-application of mind and thus, subjective satisfaction recorded by the detaining authority is without any substance. She, therefore, submitted that the order of detention is illegal and bad in law for non-application of mind and hence, be set aside and the petitioner be released forthwith.

6. In support of the submissions made by the learned counsel for the petitioner, she relied upon the decision of this court in the case of *Anil Tukaram Mohite v. The Commissioner of Police, Pimpri Chinchwad and others*¹. She submitted that this court, in the case of *Anil Tukaram Mohite*, accepted the submission made on behalf of the detenu that the failure to consider the reasons assigned by the learned Sessions Judge while releasing detenu on bail in predicate offence would show non-application of mind by the detaining authority.

7. Learned APP supported the order of detention by relying upon the affidavits dated 27th April 2023 of Retesh Kumaarr,

¹ 2021 ALL MR(Cri) 3794

Commissioner of Police, Pune City, as well as affidavit of Hemant Patil, Senior Inspector of Police, Kothrud Police Station, Pune City, Pune and affidavit dated 1st June 2023 of Anil Eknath Kulkarni, Joint Secretary, Government of Maharashtra, Home Department(Special), Mantralaya, Mumbai. In response to the ground raised by the petitioner, the learned APP submitted that all the materials placed before the detaining authority were verified and considered before arriving at subjective satisfaction. She submitted that the material with reference to the offence registered vide CR No. 258 of 2022, the entire investigation papers along with Injury Certificate issued by the Dinanath Mangeshkar Hospital and Research Center was placed before the detaining authority, and the same was considered while passing the order of detention. She, thus, submitted that sufficient material was scrutinised by the detaining authority before arriving at the subjective satisfaction. She, therefore, submitted that there is no substance in the ground of challenge raised by the petitioner.

8. We have considered the submissions made by both parties.

A perusal of the detention order shows that the detaining authority has relied upon CR No. 258 of 2022 registered against the petitioner. The detaining authority has also considered the allegations against the petitioner in the said C.R. in detail. The detaining authority has further referred to the date of arrest of the petitioner and the dates of remanding the petitioner to police custody as well as judicial custody and the order granting bail to the petitioner. A perusal of the detention order does not refer to the reasons recorded by the learned Sessions Judge at the time of granting bail to the petitioner. We have perused the order dated 23rd November 2022 passed by the learned Additional Sessions Judge, Pune, in Criminal Bail Application No. 7383 of 2022, thereby granting bail to the petitioner in connection to CR No. 258 of 2022. The said order granting bail shows that the learned Sessions Judge, in paragraph 5 of the order, has recorded that he has perused the said certificate showing the history as told by the informant to the doctor that the injuries are caused due to skid and fall from the bike.

9. Learned Sessions Judge has, thus, in paragraph 5, recorded

that the discharge card shows that the history of the injuries was due to a skid and fall from the bike, and further held that bail can be granted to the petitioner. The learned Judge has also recorded that the alleged incident had taken place on 25th October 2022, and after the informant was discharged, FIR was lodged on 26th October 2022. Thus, the learned Judge granted bail to the petitioner by taking into consideration the discharge card which showed that the history of injuries was due to skid and fall from the bike. The order of detention does not reveal that the detaining authority has considered the reasons recorded by the learned Sessions Judge for granting bail though all documents, including the order of bail, were placed before the detaining authority. Thus, non-consideration of the vital aspect taken into consideration by the learned Sessions Judge for the grant of bail shows non-application of mind on the part of the detaining authority while recording subjective satisfaction.

10. In the decision of this Court in the case of **Anil Tukaram Mohite**, relied upon on behalf of the petitioner, this Court was dealing with the ground raised to challenge the detention order

that the copy of the bail order granting bail to the detenu was not placed before the detaining authority. Submission on behalf of the detenu in the said case was that if the copy of the order granting bail was placed before the detaining authority, then the aspect of delay in lodging FIR highlighted by the learned Sessions Judge while granting bail may have weighted with the detaining authority had the copy of the bail order placed before the detaining authority and was considered. Thus, this Court has accepted the submissions on behalf of the detenu that failure to take into consideration the reasons assigned by the learned Sessions Judge while releasing the detenu on bail in a predicate offence would vitiate the order of detention.

11. In the present case though the order granting bail to the petitioner was placed before the detaining authority, perusal of the order of detention shows that the reasons recorded by the learned Sessions Judge for granting bail to the petitioner are not at all taken into consideration by the detaining authority while recording the subjective satisfaction. Thus, the principles laid down by this Court in the case of *Anil Tukaram Mohite* squarely

apply to the facts of the present case. Hence, in the present case, non-consideration of the vital aspect regarding the reasons recorded by the learned Sessions Judge for granting bail to the petitioner would show the non-application of mind by the detaining authority in arriving at the subjective satisfaction which would vitiate the order of detention. Hence for the reasons recorded above, the petition is allowed and Rule is made absolute on the following terms:

ORDER

- i) The petition is allowed;
- ii) The detention order dated 7th February, 2023 passed by the Respondent No.1-Commissioner of Police, Pune City, Pune against the petitioner in exercise of the powers under sub-section 2 of section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing Essential Commodities Act, 1981 ('MPDA Act'), is quashed and set aside;

iii) 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.)