



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2466 OF 2023

Ashish Maruti Dhanke

Age : 22 years

R/o. Near Ganpati Temple and Ganesh

Dhore Office, Fursungi, Pune and

Dhankewasti Sarola, Tahsil – Tuljapur

Dist : Osmanabad

(presently detained in Nagpur Central
Prison)

Petitioner

Versus

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

Respondents

Ms. Jayshree Tripathi for the Petitioner.

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

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

DATE : 27th SEPTEMBER 2023

JUDGMENT (Per : Gauri Godse, J.) :

1. By this petition, the petitioner challenges the order of detention bearing No. PCB/DET/HADAPSAR/DHANKE/192/2023 dated 6th June 2023 issued by the Respondent No. 1- The Commissioner of Police, Pune City in the 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”**) for detaining the petitioner.

2. Perusal of the detention order indicates that the detaining authority has relied upon a complaint registered against the petitioner vide CR No.1579 of 2022 dated 14th December 2022 for the offences punishable under sections 307, 450, 323, 354, 354-D,

506 of the Indian Penal Code, under sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, under sections 4 and 25 of the Arms Act, 1959 and under sections 37(1) and 135 of the Maharashtra Police Act. The detaining authority has also relied upon the in-camera statements of the two witnesses.

3. In the CR registered against the petitioner, the allegation against him is that since the complainant rejected the petitioner's proposal, he threatened to kill her. Hence, the complainant had to quit her job. Further, the allegation is that the petitioner forcibly entered the complainant's house with a weapon and threatened and assaulted the complainant and her friend. In connection with the said CR, the petitioner was arrested on 12th May 2023, and on 7th February 2023 charge sheet was filed, and the same is pending trial.

4. Learned counsel for the petitioner has raised various grounds to challenge the order of detention; however, has pressed into service ground (d) of paragraph 5 of the petition, which reads as under:

d. The petitioner says and submits that the order of detention came to be passed on 06.06.2023 while the petitioner was in custody, in C.R. No. 1579/2022 dated 14.12.2022, U/Sec. 307, 450, 323, 354 (D), 506 (2) of IPC & U/Sec. 8, 12 of POCSO Act. & U/Sec. 4(25) of Arms Act & U/Sec. 37(1)/135 of MPA & u.s 3, 7 of Criminal Law Amendment Act registered on 14.12.2022. The petitioner came to be arrested on 12.05.2023. The petitioner was in custody, while the order of detention came to be passed against him. The detaining authority has not recorded his satisfaction to the effect that there is imminent/real possibility of the petitioner's release on bail based on any cogent material, which is a mandatory requirement while passing a detention order against a person (while he is in Custody). Law is well settled that a valid order of detention can be passed (while in Custody) if the detaining authority has recorded three satisfactions, Firstly, awareness about the bail position of the petitioner, Secondly, that there is real/imminent possibility of his release on bail based on cogent material (therefore a detention order) and thirdly, the petitioner may again continue his prejudicial activities in future. The detaining authority is duty bound to give justifiable and cogent reasons based on material available that there is a necessity for passing detention order against a person while he is in custody, in this case the detaining authority

has failed to recorded his satisfaction of imminent/real possibility of release on bail, which is a mandatory requirement of law. The order of detention is illegal and bad in law for not recording satisfaction, the order of detention is liable to be quashed and set aside.

5. Learned counsel for the petitioner submitted that the detention order was issued while the petitioner was already in custody in connection with CR registered against him. She submitted that the detaining authority has not recorded any satisfaction to the effect that there is any imminent or real possibility of the petitioner being released from custody. She submitted that the detention order is served upon the petitioner while he is in custody and that even today, the petitioner is in custody.

6. Learned counsel for the petitioner submitted that the detaining authority has not recorded any reasons to believe that the petitioner is likely to be released on bail and, if so released, is likely to indulge in any prejudicial activity. Thus, it is apparent that the detaining authority has passed an order for detaining the petitioner without

any satisfaction recorded while the petitioner is already in custody. Thus, there is no ground to sustain the order of detention. Learned counsel submitted that there is no basis for recording subjective satisfaction to detain the petitioner. Hence, the detention order cannot be sustained and deserves to be quashed and set aside.

7. In support of her submissions, learned counsel for the petitioner has relied upon the decisions of the Hon'ble Supreme Court as well as decisions of this Court in the following cases:

*(a) Dharmendra Suganchand Chelawat (Through his sister KM Archana) Vs. Suganchand Kanhaiyyalal Chelawat (Through his Daughter KM Archana Chelawat) Vs. Union of India and Others.*¹

*(b) Rekha Vs. State of Tamil Nadu through Secretary to Government and Another.*²

*(c) Huidrom Konungjao Singh Vs. State of Manipur and Others*³

1 (1990) 1 SCC 746

2 (2011) 5 SCC 244

3 (2012) 7 SCC 181

*(d) Jayesh Damodar Koli Vs. The Commissioner of Police and Others.*⁴

*(e) Akshay @ Bhaiyya Ramesh Wahul Vs. The Commissioner of Police and Others.*⁵

*(f) Smt. Suman Sudhakar Jadhav Vs. The Commissioner of Police Thane and Others.*⁶

8. Learned APP supported the order of detention by relying upon the affidavit dated 6th September 2023 of Retesh Kumaarr, Commissioner of Police, Pune City, Pune, affidavit dated 30th August 2023 of Gajanan Bhimrao Gurav, Deputy Secretary, Government of Maharashtra, Home Department (Special), Mantralaya and affidavit dated 11th September 2023 of Deepa Vaibhav Agey, Superintendent Nagpur Central Prison, Nagpur.

9. Learned APP submitted that the detaining authority was aware that the petitioner was in custody on the date of issuance of the order of detention, which is reflected in the reasons recorded by the

4 Criminal Writ Petition No. 2967 of 2022

5 Criminal Writ Petition No. 893 of 2023

6 Criminal Writ Petition No. 3977 of 2017

detaining authority. The learned APP submitted that the charge sheet was submitted in connection with CR against the petitioner on 7th February 2023. The learned APP submitted that in paragraph 11 of the affidavit in reply, the detaining authority has stated that he has considered all the investigation papers i.e. the statement of the witness, and after considering the aforesaid material placed before the detaining authority he has arrived at a satisfaction that there was imminent and real possibility of the petitioner being released on bail in the future. Thus, considering the prejudicial activities of the petitioner and the possibility of him being released on bail in connection with the CR registered against the petitioner, the detaining authority recorded subjective satisfaction that it was necessary to detain the petitioner to prevent him from indulging in prejudicial activities in the future. Learned APP thus submitted that there was no substance in the ground of challenge raised by the petitioner.

10. We have considered the submissions made by both the parties. We have perused the record of the petition. A perusal of the

detention order reveals that the detaining authority has considered the allegation made against the petitioner in the CR. Further, the detaining authority has recorded that during the investigation of the said CR, statements of witnesses were recorded, and spot panchnama was made and that the petitioner was arrested and remanded to police custody and later to magisterial custody. The detaining authority has further recorded that on 7th February 2023 charge sheet was filed, and the case was pending trial.

11. The detaining authority has further relied upon the in-camera statements of the two witnesses and the allegation made against the petitioner by the witness of the in-camera statements. The detaining authority has further stated that in future, the petitioner “may be” granted bail under the ordinary law of the land and in view of the petitioner’s tendencies and inclination reflected in the offence committed by the petitioner as referred to in the detention order the detaining authority was satisfied that after availing bail facility the petitioner was likely to revert to similar activities prejudicial to the maintenance of public order and hence it was necessary to detain the

petitioner.

12. Perusal of the detention order nowhere indicates that the detaining authority has recorded any satisfaction that there is any imminent or real possibility of the petitioner being released from custody. The detaining authority, except for stating that the petitioner “may be” granted bail, has neither referred to any cogent material nor has recorded any satisfaction that there is an imminent or real possibility of the petitioner being released on bail in the near future.

13. The learned counsel for the petitioner has rightly relied upon the aforementioned decisions of the Hon’ble Supreme Court and this Court. The Hon’ble Supreme Court, in the case of *D. S. Chelawat*, held that the compelling reasons for making an order of detention of a person already in jail custody implies that there must be cogent material before the detaining authority based on which it may be satisfied that the detenu is likely to be released on bail and that after his release he would indulge in prejudicial activities.

14. In the case of ***Rekha***, the Hon'ble Supreme Court held that there is a real possibility of release of the person on bail provided he has moved an application for bail, which is pending. The Hon'ble Supreme Court has held that the exception to this situation is that if a co-accused who stands on the same footing as that of the detenu is granted bail, then in such cases, the detaining authority can reasonably conclude that there is a likelihood of the detenu being released on bail even though there is no bail application pending.

15. So far as the present case is concerned, it is no one's case that the petitioner has applied for grant of bail or there is any co-accused who is granted bail who stands on the same footing as the petitioner, which can create a likelihood of the petitioner seeking bail on the ground of parity.

16. The Hon'ble Supreme Court, in the case of ***Huidrom Singh***, held that the detention order based on mere *ipse dixit* statement cannot be sustained and thus quashed and set aside the detention order, which was issued while the detenu was already in custody. The

Hon'ble Supreme Court held in paragraph 9 as under;

“9. In view of the above, it can be held that there is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case. However, if the detention order is challenged the detaining authority has to satisfy the Court the following facts:

(1) The authority was fully aware of the fact that the detenu was actually in custody.

(2) There was reliable material before the said authority on the basis of which it could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.

(3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary.

In case either of these facts does not exist the detention order would stand vitiated. The present case requires to be examined in the light of the aforesaid settled legal proposition.”

17. In the decision of this court in the case of ***Jayesh Damodar Koli***, the detenu was in custody when the order of detention was issued. However, the detenu had preferred an application for bail, which was pending, and the detaining authority was aware that the detenu was already in custody. This court, while dealing with a

similar ground of challenge, held that the satisfaction of the detaining authority in the said case did not reflect that there was any reliable material placed before the detaining authority to arrive at a conclusion that there was a real possibility of the detenu being released on bail and that on being so released he would in all probability indulge in prejudicial activities and hence it was essential to detain him to prevent him from doing so. Thus, this court held that in the absence of any such cogent material before the detaining authority based on which the detaining authority was satisfied that the detenu was likely to be released on bail, it could be said that the detaining authority had failed to record any satisfaction that there was reliable material before the authority based on which there was reason to believe that the detenu is likely to be released on bail. Hence, this court set aside the order of detention.

18. This court takes a similar view in the case of ***Akshay @ Bhaiyya Ramesh Wahul*** and ***Suman Sudhakar Jadhav***. In the case of ***Suman Sudhakar Jadhav***, this court held that the order, which did not spell out the reasons required in support of the order, it cannot be

explained through an affidavit. In the said case, the satisfaction of the detaining authority was sought to be explained by way of an affidavit and the same was absent in the detention order. Thus, this court held that the detaining authority had failed to record satisfaction in the detention order on which he could have validly sustained the detention order; however, the said ingredients being missed out by the detaining authority, the detention order was not sustainable and hence was quashed.

19. Even in the present case, learned APP sought to rely upon an affidavit in reply on behalf of the detaining authority to contend that the detaining authority was satisfied after examining the material of investigation and the statements of witness that there was likelihood that the petitioner would be released from custody. The reasons, as sought to be explained in the affidavit in reply, are absent in the detention order. Hence, the reasons given in the affidavit in reply cannot be taken into consideration to hold that the detaining authority had recorded any satisfaction that the petitioner was likely to be released from custody. Even otherwise, the affidavit-in-reply

also does not spell out there was any cogent material on the record which was considered for arriving at the subsection satisfaction for detaining the petitioner. Thus, in the facts of the present case, the principle of law laid down by the Hon'ble Supreme Court and this court in the aforementioned decisions are squarely applicable to the submissions made on behalf of the petitioner in the present case.

20. Hence, for the reasons recorded above, the petition is allowed by passing 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. CRIME PCB/DET/HADAPSAR/DHANKE/192/2023, dated 06.06.2023 issued under Section 3 of the 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 is set at liberty 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.