



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

CRIMINAL WRIT PETITION NO. 2853 OF 2023

**Neha Rizwan Sayyad Wife of
Rizwan Sayyad Hamid**

Age- 26 years, Occ: Private Service
(On Behalf of Detenue – Rizwan
Sayyad Hamid
detained under MPDA Act, 1981
vide D.O. No. 02/PCB/DP/ZONE
-vii/2023 dtd 30.01.2023.)

r/o Room No. 9144, Yamuna Society,
Sagar Nagar, Upper Depotpada,
Parksite, Vikhroli (West),
Mumbai – 400 083.

....Petitioner

Versus

1. The State of Maharashtra

Through Principal Secretary,
Home Department, Government
of Maharashtra, Mantralaya,
Mumbai – 400 032.

**2. Commissioner of Police for
Greater Mumbai,**

Mumbai Police Head Office,
Dr. D. N. Road, Mumbai – 400 001.

3. The Senior Inspector of Police,

Parksite Police Station, Ahilyabai
Holkar Marg, Surya Nagar,
Vikhroli (W), Mumbai – 400 083.

4. Nashik Road Central Prison,

Through its Superintendent,
Jail Rd, Nashik Road, Nashik,
Maharashtra – 422101.

....Respondents

Mr. Rajkumar Awasthi a/w Ms. Bushra Sayed, Mr. Fayzan Khan and
Mr. Yogesh Samant i/b Mr. Moin Khan for the petitioner
Mr. J. P. Yagnik, Additional PP for the State

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

DATE : 12th DECEMBER 2023

JUDGMENT: (PER: GAURI GODSE, J.)

1. This petition is filed to challenge the order dated 30th January 2023 passed by respondent no. 2-Commissioner of Police, Greater Mumbai in the exercise of powers conferred by 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 of Essential Commodities Act, 1981 ('MPDA' Act) for detaining the petitioner's husband - Rizwan Hamid Sayyad @ Rijju.

2. The detention order is passed by relying upon a complaint

registered against the petitioner vide CR number 732 of 2022 dated 30th October 2022 for the offence punishable under sections 326, 504, 506(2) of IPC and section 184 of the Motor Vehicles Act. The allegations against the detenu are pertaining to the incident dated 28th October 2022. It is alleged that when the complainant reached the construction site, an autorickshaw driven at a very high speed stopped beside him, and it came close to the complainant's motorcycle. Since the complainant questioned the detenu for driving at a high speed, the detenu dashed the complainant's motorcycle by his auto rickshaw. It is also alleged that the detenu abused and assaulted him with an iron rod. The detenu was arrested on 31st October 2022 and was granted bail on 23rd January 2023.

3. The detaining authority has also relied upon two in-camera statements recorded on 16th December 2022 and 19th December 2022, referring to incidents of the second week of October 2022 and the third week of October 2022, respectively. Witness 'A' of the in-camera statement has alleged that the detenu got down from the rickshaw and threatened and assaulted the witness. It is alleged that

seeing 2-3 people coming to help the witness, the detenu took out a knife from his pocket brandished it and threatened the people around. Witness 'B' of the in-camera statement has stated that when he was walking, the detenu and his associates accosted him and assaulted him. It is further stated that the detenu and his accomplices threatened and assaulted the witness and extorted money from him.

4. Thus, by relying upon the aforesaid CR and two in-camera statements, the detaining authority has recorded a subjective satisfaction that the detenu is a dangerous person and is required to be detained to prevent him from indulging in any prejudicial activities in future.

5. Learned counsel for the petitioner has raised various grounds to challenge the detention order. However, it is not necessary to examine all the grounds in as much as the petition is required to be allowed on the ground raised in paragraph No. 4.25A of paragraph 4 which reads as under:

“4.25A That, the Commissioner has relied upon

FIR No. 179/2022 wrongly in deriving his subjective satisfaction for passing the Detention order because this C.R. No. 179/2022 does not form the part of the grounds raised in para no. 8 of the D.O. The detaining authority has formed the basis of present action on the erroneous ground that within Petitioner's release, within 3½ months he committed another offence, because C.R. No. 179/2022 has not been taken as a ground in the instant D.O. Therefore, no subjective satisfaction can be inferred".

6. Learned counsel for the detenu submitted that in paragraph No. 10 of the detention order, the detaining authority has relied upon the material referred to in paragraph 8 to record the subjective satisfaction. Learned counsel submitted that the detaining authority has further relied upon a complaint registered against the detenu vide CR No. 179 of 2022. He further submitted that paragraph 8 of the detention order indicates that the relied upon complaint by the detaining authority is CR No. 732 of 2022 registered against the detenu. However, paragraph 10 of the detention order indicates that

the detaining authority has relied upon CR No. 179 of 2022 registered against the detenu. He submitted that paragraph 5(a) of the detention order indicates that CR No. 179 of 2022 is referred to in the list of offences registered against the detenu, which are not relied upon by the detaining authority for recording the grounds of detention. Learned counsel thus submitted that there is a complete non-application of mind on the part of the detaining authority in relying upon the CR registered against the detenu, which is shown as not relied upon cases in the detention order. Learned counsel further submitted that the ground of detention recorded on the basis of not relied upon CR also left the detenu in a confused state of mind depriving him of making an effective representation. He, therefore, submitted that non-application of mind on the part of the detaining authority has vitiated the detention order. He submitted that the detenu's right under Article 22 (5) of the Constitution of India is also violated as he is deprived of making an effective representation. Hence, he submitted that the continued detention of the detenu is rendered illegal and impermissible. Thus, it was submitted that the

detention order be quashed and set aside and the detenu be released forthwith.

7. Learned APP supported the detention order by relying upon the respective affidavits filed by the detaining authority, jail authority and the State Government. With reference to the aforesaid grounds of challenge raised on behalf of the detenu, learned APP submitted that perusal of the entire detention order would indicate that the detaining authority has clearly stated that the grounds in paragraph 8 are relied upon incidents for recording subjective satisfaction. He submitted that paragraph 8(a) refers to CR number 732 of 2022, and paragraph 8B refers to two in-camera statements relied upon by the detaining authority. Learned APP submitted that even though in paragraph 10, the detaining authority has referred to CR No. 179 of 2022, it is specifically stated in paragraph 5(a) that the same is not relied upon by the detaining authority. He thus submitted that there is no non-application of mind on the part of the detaining authority and that the aforesaid ground cannot be said to have deprived the detenu of making an effective representation. He, therefore, submitted that there

is no substance in the ground of challenge raised on behalf of the detenu.

8. We have considered the submissions made by both the parties. We have perused the record and the detention order as well as the supporting documents and affidavits relied upon by the learned APP. A perusal of the detention order clearly indicates that CR No. 179 of 2022 is shown in the list of CRs registered against the detenu, which are not relied upon by the detaining authority. However, paragraph 8(a) refers to only CR No. 732 of 2022 as a relied-upon CR for recording the grounds of detention. A perusal of paragraph 10 of the detention order indicates that the detaining authority has relied upon CR No. 179 of 2022 from the list of non-relied-upon incidents for recording subjective satisfaction that the detenu is a dangerous person. Paragraph 10 of the detention order shows that there is complete non-application of mind on the part of the detaining authority by relying upon a CR, which is specifically mentioned in the list of non-relied-upon incidents. Thus, there is substance in the argument of the learned counsel for the petitioner that the aforesaid discrepancy in the

detention order left the detenu in a confused state of mind, depriving him of making an effective representation.

9. The aforesaid paragraph 10 also reveals that there is non-application of mind on the part of the detaining authority by referring and relying upon a CR, which is already shown in the list of non-relied-upon incidents. Thus, we find substance in the submissions made on behalf of the detenu that the detention order is vitiated on the grounds of non-application of mind on the part of the detaining authority. Learned counsel for the detenu is also right in submitting that the aforesaid discrepancy left the detenu in a confused state of mind and deprived him of filing an effective representation, thus violating his right guaranteed under Article 22 (5) of the Constitution of India. Hence, we are of the opinion that the detention order stands vitiated, and the continued detention of the detenu is rendered illegal and impermissible.

10. Hence, for the reasons recorded above, the petition is allowed by passing following order :

ORDER

i) Petition is allowed in terms of prayer clause (A) which reads as under:

“(A) That, this Hon’ble Court exercising powers under Article 226 of the Constitution of India, 1950 be pleased to issue Writ of Habeas Corpus and/or any other appropriate writ, order for setting aside the Detention Order No. 02/PCB/DP/ZONE-VII/2023 dated 30.01.2023 passed against the detenue (Rizwan Hamid Sayyed) and its confirmation Order dated 23/03/2023 passed by the State Government, both under the MPDA Act, 1981 by holding the same as illegal, null void, bad-in-law, perverse.”

ii) The petitioner’s husband, who is the detenu-Rizwan Hamid Sayyed be set at liberty forthwith, unless required in any other case.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.