

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

CRIMINAL WRIT PETITION NO. 166 OF 2023

Sau. Sonali Rajendra Thakur

Age : 42 years, Occupation-Housewife,
Residing at S.No.112, Lane No.5,
Mahalaxmi Colony, Paud Road,
Sutardara, Kothrud, Pune.

... Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary of Home Dept.
(Preventive Detention), (Special),
Mantralaya, Mumbai-400 032.
2. Advisory Board, (Detention),
Mantralaya, Mumbai.
3. The Commissioner of Police,
Office at – 2 Sadhu Wasvani Road,
Camp, Pune city, District – Pune.
4. The Superintendent of
Arthar Road Central Jail, at Mumbai
5. The Police Inspector,
Through Kothrud Police Station,
District – Pune.

... Respondents

Mr. Ramji T. Kotali a/w Mr. Umesh Gawali for the Petitioner.
Mrs.M.H. Mhatre, APP for the Respondent–State.

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.**

DATE : APRIL 12, 2023

ORDER - (Per : Sharmila U. Deshmukh, J.):

1. By this petition, filed under Article 226 of the Constitution of India, the Petitioner– Sau. Sonali Rajendra Thakur, who is the mother of the detenu–Rushikesh Rajendra Thakur, has challenged the Detention Order dated 27th September, 2022, bearing No.PCB/DET/THAKUR/307/2022, issued by the Respondent No.3–Commissioner of Police, Pune, under Section 3(2) 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 (for short, the “MPDA Act”).

2. Heard Mr.Ramji T. Kotali, learned counsel for the Petitioner and Mrs. Mhatre, learned APP for the Respondent– State. Perused the papers and proceedings with the assistance of the learned counsel for the parties.

3. Few facts necessary for consideration are as under:

. On 20th March, 2022, First Information Report (FIR) came to be registered against the detenu vide C.R. No.72 of 2022 with Kothrud Police Station, Pune for alleged offences under Sections 307, 326, 143, 147, 148, 149, 504, 506(2) of the Indian Penal Code, 1860, and Sections 4(25), (27), 35 of the Arms Act, 1959, and Sections 37(1),(3) and 135 of the Maharashtra Police Act, 1951 in respect of an incident alleged to have occurred on 18th March, 2022. It was alleged that on 18th March, 2022 at about 7:30 pm the complainant was on his way to a shop in front of Atharva school, when he witnessed the detenu alongwith six accomplices coming towards the complainant from Kalubai temple armed with “*koyta*” and waving the “*koyta*” in the air. It is alleged that one of the detenu’s accomplice abused the complainant and with the intention to kill the complainant hit the “*koyta*” on the head of the complainant severely injuring him. It is alleged that the detenu severely injured the complainant’s left hands small fingers with “*koyta*” and his other accomplices thrashed the complainant on his left leg, left arms and stomach with stones.

4. After registration of the FIR, the detenu came to be arrested on 27th March, 2022. Vide order dated 7th July, 2022, the detenu was enlarged on bail by the learned Sessions Court, Pune in connection with the aforesaid C.R.No.72 of 2022.

5. In the interregnum, the Respondent No.5-Sponsoring Authority recorded in-camera statements of two witnesses i.e. Witness “A” on 3rd July, 2022 and Witness “B” on 4th July, 2022, in respect of the incidents alleged to have occurred on 15th March, 2022 and 28th February, 2022 respectively. The witnesses have deposed that the detenu had threatened the witnesses and extorted money from them. On 9th July, 2022, the proposal was submitted by the Sponsoring Authority to ACP, Kothrud, which was verified and on 15th July, 2022, the proposal was forwarded to DCP Zone-III. On 16th July, 2022, the proposal was sent back for correction and for submission of additional documents to the Sponsoring Authority and after compliance, the proposal was resent to DCP Zone-III on 4th August, 2022. On 10th August, 2022, the file was placed before the Additional Commissioner of Police and thereafter, before the ACP Crime-1 on 7th September, 2022. On 12th September, 2022, the file was placed before the DCP Crime, and on 16th September, 2022, the file was placed before the Joint Commissioner of Police, who have given the endorsement on 21st September, 2022. On 26th September, 2022, the file was placed before the Detaining Authority for approval, and on 27th September, 2022, the order of detention was passed. On 1st November, 2022 the detenu preferred a representation before the Chairman,

Advisory Board (Detention), Mumbai and on 7th October, 2022 the State Government approved the impugned detention order.

6. Perusal of the impugned Detention Order indicates that based on C.R. No.72 of 2022 and the two in-camera statements of Witness “A” and Witness “B”, the detaining authority has reached a subjective satisfaction that the detenu is a “Dangerous Person” as defined in Section 2(b-1) of MPDA Act and the detenu’s criminal activities are prejudicial to the maintenance of public order.

7. Although the Petition raises number of grounds seeking to challenge the detention order, learned counsel for the Petitioner has pressed into service Ground 7(f) of the Petition which reads thus:

“f. The Petitioner states and submits that, the Ld. Sessions Court, Pune granted bail to the Detenue by order dated 07.07.2022 and while granting bail it is observed that, it appears that in incident in question present Detenue along with others two were holding the sickles in their hand and they used in commission of crime. Then question comes how injury certificate shows only one injury over left little finger of complainant Sandesh. So also it is the case of prosecution that remaining accused also assaulted

complainant Sandesh by means of stone over his stomach etc. but again no injury is sustained on other part of complainant's body. After perusal of statements of eyewitnesses then it appears that there is confusion, whether accused have used stones or bricks in commission of crime. Furthermore, there is no Test Identification Parade so as to fix the identity of Detenue in the commission of crime. Further, there is delay of two days in lodging F.I.R. So under these circumstances at this stage do not find that there is strong prima facie case against the Detenue so as to deny bail to Detenue. However, after perusal of observation made by the Ld. Sessions Court, Pune it shows that in the present case there is no any material to indicate that the Detenu attributed any active role in commission of alleged crime on the basis of which impugned detention order was passed, hence, impugned detention order suffers from the non-application of mind on the part of detaining authority.”

8. Learned Counsel for the Petitioner has invited the attention of this Court to the bail order dated 7th July, 2022 annexed at Page 195 of the Petition. The learned Additional Sessions Judge, while considering the application for bail has observed that the

injury certificate shows only one injury over left little finger of the complainant; that there appears to be confusion about whether the accused used stones or bricks in commission of offence; that there is no test identification parade so as to fix the identity of the detenu in the commission of crime. He would submit that the detaining authority has not considered the grounds on which the detenu was enlarged on bail and hence the subjective satisfaction stands vitiated.

9. Learned counsel for the Petitioner, in support of his submission, relies upon the following decisions:

- (i) **Cri.W.P.No.3309 of 2021 [Shivkumar Madeshwaran Devendra vs. State of Maharashtra and Ors., decided on June, 15, 2022 by this Court];**
- (ii) **Narendra @ Chotya Mahadev Balkawade vs. Commissioner of Police, Pune and Ors. [2020(2) Mh.L.J. (Cri.);**
- (iii) **Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Ors. (1995) 3 SCC 237;**
- (iv) **Ganesh @ Gajaraj Sainath Patil vs. The State of Maharashtra and Ors. [2011 All MR (Cri) 2585];**
- (v) **Anil Tukaram Mohite vs. Commissioner of Police and Ors. [2021 SCC OnLine Bom 2969];**
- (vi) **Alakshit s/o. Rajesh Ambade vs. The State of Maharashtra and Anr. [Cri.Writ Petition No.626 of 2022, decided on 20.12.2022, Nagpur Bench of this Court];**

- (vii) **Bharat Kisan Mekale vs. Commissioner of Police, Solapur and Ors. [2022 (3) Mh.L.J. (Cri.) 96];**
- (viii) **Nilesh Bansilal Gaywal @ Ghaywal vs. State of Maharashtra and Ors. [2021 3 Crimes(HC) 474];**
- (ix) **Devidas Lalji Ade vs. State of Maharashtra & Ors. [2023 ALL MR (Cri) 130];**
- (x) **Sachin Parshuram Mane vs. The Commissioner of Police, Pune City & Ors. [2022 All MR (Cri) 2566];**
- (xi) **Sushanta Kumar Banik v. State of Tripura [AIR 2022 SC 4715];**
- (xii) **Pradeep Nilkanth Paturkar v. Ramamurthi and Ors. [AIR 1994 SC 656];**
- (xiii) **Suman Sudhakar Jadhav v. Commissioner of Police [2016 DGLS (Bom.) 1861];**

10. An affidavit-in-reply has been filed by the Respondent Nos.2 and 3. Learned APP has invited the attention of this Court to the affidavit-in-reply of the Respondent no.3, and the reply of the Respondent No 2 and 3 to Ground 7(f) of the Petition, which reads as under:

“11. With reference to ground 7(e), (f) of the petition, it is denied that there is no any material to indicate that the detenue attributed any role in commission of offence vide C.R. No.72/2022. It is denied that the offence which is taken into consideration is stale offence.

It is submitted that there is sufficient material against the detainee in offence vide C.R.No.72/2022. The statements of various witnesses revealed the active role played by the detainee. Thus there is no substance in the say of petitioner in this para.”

11. Learned APP would further submit that the detaining authority has taken into consideration all the material on record and has thereafter reached a satisfaction that the detenu is a dangerous person within the meaning of Section 2 (b-1) of MPDA Act. As regards the consideration of the bail order, she has invited the attention of this Court to Marathi version of the detention order which is annexed at page 43 of the petition and in particular, paragraph 8 of the detention order at page no.48. Learned APP for the Respondent-State, relies upon the following decisions:

- (i) **Vishal Aananda Mahabal vs. State of Maharashtra, Collector and District Magistrate, Superintendent [2021, LawSuit (Bom) 1417];**
- (ii) **Pravin @ Palya Arjun Uttekar vs. The Commissioner of Police and Ors. [in Cri. Writ Petition No. 4728 of 2021, decided on 14 July 2022, by this Court];**
- (iii) **Nagnarayan Saryu Singh vs. A.N.Roy, Commissioner of Police & Ors. [2006 (2) Bom.C.R.(Cri.64)];**
- (iv) **Meena Tai Hanif Patel vs. Shri Amitabh Gupta and Ors. [in Cri.Writ Petition No.2965 of 2022 decided on 24th January 2023 by this Court];**

(v) **Smt.Phulwari Jagadambaprasad Pathak v. R.H. Mendonca and Ors. [AIR 2000 SC 2527].**

12. We have given our anxious consideration to the rival submissions.

13. The Detaining Authority has, on the basis of C.R. No.72 of 2022 and two in camera statements, arrived at a subjective satisfaction that the Petitioner was a dangerous person as defined under Section 2(b-1) of the MPD Act and that the criminal activities of the detenu are prejudicial to the maintenance of the public order. As an order of preventive detention makes serious inroads into the personal liberty of the detenu, the detaining authority must be satisfied that there is danger of activity being carried out by the detenu, which is prejudicial to the community. For reaching the subjective satisfaction, the detaining authority has to take into consideration the entire material available in respect of the detenu.

14. The question is whether all the available material was placed before the Detaining Authority before the passing of the detention order. We have carefully perused the English and Marathi versions of the impugned detention order. We find that there is variance in paragraph 8 of these versions, inasmuch as in the English version of the impugned detention order, the Detaining Authority

has recorded in paragraph 8 that the detenu is in judicial custody of the concerned Hon'ble Court, Pune in the offence of Kothrud Police Station, Pune in C.R.No.72 of 2022, whereas in the Marathi version of the impugned detention order, it is recorded in paragraph 8 that in respect of the FIR No.72 of 2022, the detenu was arrested and is presently enlarged on bail.

15. At this stage, it would be appropriate to refer to the decision of this Court in the case of **Alakshit s/o. Rajesh Ambade (supra)**. This Court has held that it is well settled law that the grounds on which an accused, and a proposed detenu, is granted bail also forms important part of the material available against such a person and therefore, it is the duty of the Detaining Authority to consider that material. In the facts of that case, as the grounds on which the bail was granted to the Petitioner was not considered by the Detaining Authority, the detention order was termed perverse and bad in law.

16. In our opinion, the decision in the case of **Alakshit s/o. Rajesh Ambade (supra)**, is squarely applicable in the facts of the present case. There appears to be a doubt as to whether the bail order was in fact placed for consideration before the Detaining Authority. It may be noted that both these versions are signed by the Detaining Authority without noticing the anomaly in these two

versions, which indicates non application of mind of the Detaining Authority. As it cannot be conclusively established, by reason of the variance in the two versions, that the grounds on which the detenu was enlarged on bail was considered by the Detaining Authority, the subjective satisfaction stands vitiated.

17. Hence, the following order.

ORDER

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

“(b) This Hon’ble Court may be pleased to issue Writ of Mandamus or any other directions in the nature of Mandamus or any appropriate Writ to quash and set aside the impugned Detention Order dated 27/09/2022 bearing No. PCB/DET/THAKUR/307/2022 issued by the Respondent No. 3 u/s. 3(2) of the M.P.D.A. Act arising out of impugned Committal Order dated 27/09/2022 bearing No.PCB/DET/THAKUR/308/2022 issued by the Respondent No.3 arising out of impugned order dated 24/06/2022 issued by the Respondent No.1 bearing No.-MPDA-0622/CR-191/Spl-3B.”

(ii) The petitioner is set at liberty forthwith, if not required in any other case.

18. Rule is made absolute in the above terms.
19. All concerned to act on the authenticated copy of this order

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.