

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 49 OF 2023

Amol alias Guddu s/o Sevakar Khorgade,
Aged about 35 years, Occ : Business,
R/o Flat No. 601, Green, Leverage Colony,
P. Stn. Koradi, Nagpur City. } .. Petitioner

Versus

1. The Commissioner of Police, Nagpur
Civil Lines, Nagpur
 2. The State of Maharashtra,
Through Addl. Chief Secretary to
Government of Maharashtra, Mantralaya,
Home Department, Mantralaya, Mumbai
 3. The Superintendent, Nagpur Central
Prison, Nagpur (petitioner is presently
detained at Nagpur central prison)
 4. The Superintendent, Kolhapur Central
Prison, Kalamba (to be detained at
Kolhapur Central prison as per committal
order)
- } .. Respondents

Shri. Shashank Manohar, Advocate for petitioner.

Shri. V. A. Thakare, APP for respondent Nos.1 to 4.

CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE JJ.

RESERVED ON : 10/03/2023

PRONOUNCED ON : 14/03/2023

JUDGMENT (Per : Bharat P. Deshpande J.)

Rule. Rule made returnable forthwith. Heard finally by the consent of the learned counsel appearing for the parties.

(2) The petitioner is challenging order of detention passed under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons engaged in Black Marketing of Essential Commodities Act, 1981 (here-in-after referred to as “the Act of 1981”) issued by respondent No.1 on 08/11/2022, mainly on two grounds. Firstly, such order is passed without application of mind and on the basis of stale instances. Secondly, petitioner has been acquitted in all the matters referred in the grounds of detention, which were prior to 2016 and had no connection at all with the sole incident of the year 2022, wherein even charge-sheet is not filed against the petitioner.

(3) Shri. Shashank Manohar, learned counsel appearing for the petitioner raised only two grounds. It is his contention that detaining Authority though referred earlier cases from the year 2012

to 2015, as found in para 4 of the grounds of detention, what was placed before him was only the copies of reports in those matters. Had the Authorities placed the outcome of such matters i.e. acquittal of the petitioner in all those matters, there would have been a different conclusion than the one which is challenged in the present petition.

(4) Shri. Shashank Manohar, learned counsel then submits that even though the only incident which has been relied upon in the grounds of detention and more specifically in para 7, refers the FIR vide Crime No.23/2022 registered at Sadar Police Station dated 19/01/2022, and charge-sheet bearing No.243/2022 filed on 10/06/2022, did not named the petitioner as one of the accused in the said FIR and also in the charge-sheet. Petitioner was in fact arrested subsequent to filing of the said charge-sheet and that too on the basis of vague allegations. Till date supplementary charge-sheet disclosing name of petitioner as one of the accused, is not filed in the said matter. He then would submit that acquittal of the petitioner in all earlier matters is in fact a circumstance which ought to have been informed to the detaining Authority and not bringing it to the notice, shows the suppression of valuable material which further show non-application of mind.

(5) Shri. Shashank Manohar, learned counsel then relied upon following decisions :-

1. *Khaja Bilal Ahmed vs. State of Telangana and others, (2020) 13 SCC 632.*
2. *Ramesh vs. State of Gujrat and others, AIR 1989 SC 1881.*
3. *Deepak Dattu Suryawanshi vs. Commissioner of Police and others, 2017(1) Bom.C.R.(Cri.)588.*
4. *Baliram s/o Namdeo Bedke vs. The State of Maharashtra and others, (Cri.W.P.No. 539/2020 decided on 03/08/2020.)*

(6) Learned APP while supporting the detention order would submit that the petitioner is habitual offender and involved in illegal activities of sand mining, sand theft, preparing forged invoices etc. and detaining Authority has considered various aspects including present offence registered at Sadar Police Station vide Crime No.23/2022. He would submit that investigation in the said matter is still going on though charge-sheet is filed against 22 accused persons. However, he admitted that though the present petitioner was arrested subsequent to filing of the charge-sheet, till date supplementary charge-sheet is not filed against him and others.

(7) The reply-affidavit is also filed on behalf of the respondent No.1. Rival contentions fall for consideration.

(8) The detention order is dated 08/11/2022, wherein respondent No.1 in exercise of powers conferred under Sub-Section (1) of Section 3 of the Act of 1981, directed the petitioner to be detained in Kolhapur Central Prison, Kalamba under the conditions including condition as to maintenance and discipline laid down in the Act of 1981. The grounds of detention are also dated 08/11/2022 in accordance with Section 8 of the Act of 1981. Such grounds of detention shows that since the year 2012, the petitioner is engaging in commission of violent and desperate activities. The alleged crimes committed by the petitioner are in nature of sand smuggling and was involved as part of group of persons preparing of forged documents, unauthorized extraction, removal, collection, replacement, picking up or disposal of sand along with its transportation, storing and selling or abetting to such offences. While doing so, the petitioner, has used criminal force, assault to deter public servant from discharging their official duties. It is then claimed that by such acts, the petitioner have created terror in the minds of the people residing in the area including their life and liberty and disturbance due to such criminal activities. It

also created environmental damages causing changes in the course of rivers, flood like situation in the adjoining areas, due to sand extraction and mining.

(9) The grounds for detention further shows in para 3 and 4 that the petitioner was found involved in various offences pertaining to Chapter XVI and XVII of the Indian Penal Code and Chapter VII of Mines and Mineral (Development and Regulation) Act, 1957 particulars of offences in which petitioner was involved are shown in para 4 in a tabular form which reads thus :-

"Sr. No.	P.Stn. & Cr. No.	Under Sections	Date of Offence / FIR	C. C. No. & Date	Remarks
1	<u>Khaparkheda Nagpur Rural</u> 18/2012	379, 34 IPC	30/01/2012	<u>86/2012</u> 02/05/2012	Sand Theft
2	<u>Saoner Nagpur Rural</u> 75/2012	379, 186, 34 IPC	06/12/2012	<u>290/2012</u> 24/12/2012	Sand Theft
3	<u>Khapa, Nagpur Rural</u> 57/2013	379, 34 IPC	19/09/2013	<u>313/2013</u> 16/10/2013	Sand Theft
4	<u>Khaparkheda, Nagpur Rural</u> 156/2013	379, 109, 34 IPC	10/11/2013	<u>007/2014</u> 07/01/2014	Sand Theft
5	<u>Saoner, Nagpur Rural</u> 210/2015	353, 379, 109, 504, 506, 34 IPC	19/11/2015	<u>213/2016</u> 09/06/2016	Sand Theft"

(10) The grounds of detention further shows that the allegations of such past offences were referred, but not considered for the purpose of passing of order for detention. The only offence which was considered for passing detention order is found in para 7 which reads thus :-

Sr. No.	P.Stn. & Cr. No.	Under Sections	Date of Offence / FIR	C. C. No. & Date	Remarks
1	<u>Sadar</u> 23/2022	465, 466, 467, 468, 471, 420, 34 IPC r/w Sec.48(7), 48(8) of Maharashtra Land Revenue Code, 1966 Section 4, 21 of Mines and Mineral (Development and Regulation) Act, 1957	19/01/2022	<u>2439/2022</u> 10/06/2022	Court Pending and further investigation

(11) The grounds of detention in para 7 shows details of Crime No.23/2022 registered at Sadar Police Station for the offences punishable under Sections 465, 466, 467, 468, 471, 420 read with 34 of the IPC and Sections 48(7) and 48(8) of the Maharashtra Land Revenue Code, 1966 and Sections 4 and 21 of the Mines and Mineral (Development and Regulation) Act, 1957.

All the allegations in para 7, are in connection with other accused persons who were arrested. Similarly, it shows seizure of

vehicles allegedly involved in transportation of the sand. It further shows that on 04/11/2022, petitioner filed bail application before the Chief Judicial Magistrate, which was allowed on 07/11/2022 with a direction to release the petitioner on executing PR. Bond of Rs.25000/- with one solvent surety in the like amount. Finally in para No.7.1.12, the authorities as recorded thus :-

“7.1.12. After going through the facts of the above crime, it becomes clear that you have created terror in the minds of public in that area and disturbed the public orders and you are a known sand smuggler who individually and as a part of group of persons is engaged in and abets unauthorized extraction, removal, collection, replacement, picking up or disposal of sand and its transportation, storing and selling or commits or attempts to commit or abets the commission of offences in respect of sand.”

(12) The above observations in para 7 of the grounds of detention would show that all the allegations are with regard to illegal sand mining or transportation and the offences including abetment under the Mines and Mineral (Development and Regulation) Act, 1957.

(13) Thus, offences though against environment and particularly against the State Authorities being sand is a property of the State, has nothing to do with public peace or creating any fear in the minds of local people or creating any terror in the society.

Be that as it may, the fact remains that there is only solitary case, which is now referred for the consideration of passing detention order, in which the name of the present petitioner is not figuring in the FIR. A complaint is basically against one Rahul Khanna who negotiated with the complainant and produced fake royalty receipt. The complainant also paid an amount of Rs.9900/- to Rahul Khanna only. Subsequently many persons/suspects were arrested in the said crime and a charge-sheet was also filed. It is also a fact that subsequently petitioner was arrested on the basis of same statements/alleged confessions of the co-accused persons, however, he has been granted bail by the Chief Judicial Magistrate.

(14) In the case of *Khaja Bilal Ahmed* (supra), similar contentions were raised with regard to earlier criminal matters pending against the said petitioner which are referred in para 9. The affidavit filed by detaining Authority shows that such earlier cases were only referred, but did not relied upon for the purpose of passing of detention order, which is clear from para 10. While dealing with such contentions, the Hon'ble Apex Court observed in para 20, 21, 22 and 23 as under :-

“20. *The order of detention in the present case contains a reference to fourteen cases which were instituted against the appellant between 2007 and 2016. The chart provided on behalf of the State Government which has been extracted earlier indicates that out of the fourteen cases, five cases which pertain to 2012 were transferred to the SIT for investigation; there being no change in that position. Four cases pertaining to 2007 are pending trial. The appellant has been acquitted in four cases of 2009, 2011, and 2012. The case of 2016 was compromised in a Lok Adalat on 8-9-2017.*

21. *In Sama Aruna v State of Telangana,(2018) 12 SCC 150, this Court while construing the provisions of the Telangana Offenders Act, 1986 held : (SCC pp. 157-58, para 16)*

“16. Obviously, therefore, the power to detain, under the 1986 Act can be exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account. In Golam Hussain v. State of W.B. (1974) 4 SCC 530, this Court observed as follows: (SCC p.534, para 5)

“5.No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on,

grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case.”

Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities.” (Emphasis supplied)

22. *In the facts of that case, the Court held that the order of detention was passed on stale grounds, which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. This Court held thus :*

“17. The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. See G. Reddeiah v. State of A.P. and P.U. Iqbal v. Union of India. (Emphasis supplied)”

23. *In the present case, the order of detention states that the fourteen cases were referred to demonstrate the “antecedent criminal history and conduct of the appellant”. The order of detention records that a “rowdy sheet” is being maintained at PS Rain Bazar of Hyderabad City and the*

appellant “could not mend his criminal way of life” and continued to indulge in similar offences after being released on bail. In the counter affidavit filed before the High Court, the detaining authority recorded that these cases were “referred by way of his criminal background... (and) are not relied upon”. The detaining authority stated that the cases which were registered against the appellant between 2009 and 2016 “are not at all considered for passing the detention order” and were “referred by way of his criminal background only”. This averment is plainly contradictory. The order of detention does, as a matter of fact, refer to the criminal cases which were instituted between 2007 and 2016. In order to overcome the objection that these cases are stale and do not provide a live link with the order of detention, it was contended that they were not relied on but were referred to only to indicate the antecedent background of the detenu. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.”

(15) We have gone through the observations of the Apex Court as quoted above and found that similar circumstances are found in the present matter.

(16) Shri. Manohar, learned counsel pointed out that all earlier cases referred in para 4 of the grounds of detention were decided by the concerned Courts and in all those matters, petitioner have been acquitted, much before passing of the detention order. Such orders are produced along with the present petition from page 87 onwards. Learned APP did not dispute about these facts and more specifically acquittal of the petitioner in all those matters much prior to passing of detention order. On careful perusal of the grounds of detention, we also observed that the detaining Authority did not refer to such judgments/acquittals. In fact record would show that such judgments/acquittal orders were not brought to the notice of the detaining Authority which is clear from Annexure-B at page 67. First 12 cases referred in the above Annexures show that only copy of FIR or the complaint was placed before the detaining Authority, therefore, it is clear from the record that if these orders/acquittal were produced before the concerned Authority, there would have been different conclusion. This further shows that the detaining Authority failed to

apply its mind or to call for the details of the said cases before passing the impugned order of detention.

(17) The above observations further show that stale instances have been considered as relevant for arriving at subjective satisfaction which to our mind is again unwarranted and show non-application of mind. In other words, it shows that the detaining Authority had already made-up its mind to detain the petitioner on such material without keeping mind open by considering the relevant material.

(18) In the case of *Ramesh vs. State of Gujrat* (supra), the Hon'ble Apex Court while dealing with the similar circumstances, observed in para 12 and 13 as under :-

“12. We shall now pass on to the second contention. It has been urged on behalf of the petitioner that the criminal case under Sr. No. 2 of the table namely Crime No. 357/87 of Sayajiganj Police Station registered under the provisions of Prohibition Act is stated to be pending whilst in fact the accused (detenu) has already been acquitted on 31.8.88 i.e. earlier to the passing of the impugned order and that the fact that the accused has been acquitted in that case either has been withheld or suppressed by the sponsoring authority. According to the learned Counsel for the petitioner, has this material fact of acquittal been placed before the detaining authority it might have influenced the mind of the detaining authority one way or the other on the question whether or not to make the detention order.

13. As rightly submitted by Mr. Parekh, the withholding of the vital fact that the detenu has been acquitted in that criminal case, resulting in the non-application of the mind of the detaining authority to the said fact vitiates the impugned order as ruled in *Dharamdas Shamlal Agarwal v. The Police Commr.*, (1989) 1 JT 580: (AIR 1989 SC 1282)."

(19) In the case of *Deepak Suryawanshi* (supra) a co-ordinate Bench of this Court observed in para 10 and 14 as under :-

"10. Therefore, it is abundantly clear that the detaining authority was not made aware and conscious of the Judgment and order passed by the Court of Sessions Judge, Pune in Criminal Appeal No.71 of 2004 dated 15th February 2011 acquitting the Petitioner i.e. detenu from the offence (Crime No.63 of 2003) punishable under Section 399 of the I.P.C. The Supreme Court in the case of *Dharamdas Shamlal Agarwal vs. The Police Commissioner and another*, supra, while considering the contention of the detenu therein that the acquittal of the detenu in two of the cases shown in the table appended to grounds, had not been brought to the notice of detaining authority and on the other hand they were withheld and the detaining authority was given to understand that the trial of those cases was pending, has taken a view that, the non-placing of the material fact namely the acquittal of detenu in the two cases resulting in non-application of mind of the detaining authority to the said fact vitiated the requisite subjective satisfaction, rendering the detention order invalid. It will be gainful to reproduce Para 12 of the said Judgment of the Supreme Court, which reads thus:

"12. From the above decisions it emerges that the requisite subjective satisfaction the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by

the detaining authority before issuing the detention order. It is clear to our mind that in the case on hand, at the time when the detaining authority passed the detention order this vital fact, namely, the acquittals of the detenu in case Nos. mentioned at Serial Nos. 2 and 3 have not been brought to his notice and on the other hand they were withheld and the detaining authority was given to understand that the trial of those cases were pending. The explanation given by the learned counsel for the respondents, as we have already pointed out, cannot be accepted for a moment. The result is that the non-placing of the material fact namely the acquittal of detenu in the above-said two cases resulting in non-application of minds of the detaining authority to the said fact has vitiated the requisite subjective satisfaction, rendering the impugned detention order invalid."

14. *In the light of discussion in foregoing paragraphs and as held by the Supreme Court in the case of Dharamdas Shamlal Agarwal vs. The Police Commissioner and another, supra, that once the requisite subjective satisfaction of the detaining authority is vitiated due to non-placing the acquittal order of detenu before the detaining authority, the detention order renders invalid. In our considered opinion, in the present case for more than one reason including non-placing of the order of acquittal of detenu i.e. Petitioner in Criminal Appeal No.71 of 2004 Mr. Deepak Dattu Suryawanshi vs. The State of Maharashtra decided on 15th February 2011, and also on other two grounds, the requisite subjective satisfaction of the detaining authority stands vitiated, rendering the detention order invalid."*

(20) From the above decisions of the Apex Court, as well as, co-ordinate Bench of this Court, it is clear that such observations are squarely applicable to the facts and circumstances of the matter in hand, as the Authority though referred to cases prior to 2015, did not rely upon it. The question as to the conduct or activity of the detenu

in past must be taken into account without coming to the conclusion i.e. going to engage in, or make preparation for engaging in such activities, however, how far back, is to be take into account.

(21) In this regard, the Apex Court in the case of *Sama Aruna vs. State of Telangana (2018) 12 SCC 150*, observed that incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities.

(22) In the present matter para 4 of the grounds of detention show five cases from 2012 to 2015 registered against the detenu in connection with theft of sand, which are ranging from eight to ten years earlier from the date of detention order. Specifically when in all cases detenu has been acquitted, cannot form the basis for being satisfied that the detenu is going to engage in, or make preparation for engaging in such activities.

(23) A contention of Shri. Manohar, learned counsel on both counts needs to be accepted as detaining Authority failed to apply

its mind in proper perspective. Similarly, the orders of acquittal in all earlier matters were not considered which show non-application of mind. Subjective satisfaction stands vitiated for the simple reason that there is no live nexus between the earlier matters with the referred one for passing detention order. Similarly, present petitioner is not named in the said FIR of 2022 and even though he was subsequently arrested and released on bail, till date no efforts have been made by the Investigating Authority either to include his name in the said crime, or to file supplementary charge-sheet against him.

(24) The statement of two witnesses are found referred in para 8 of the grounds of detention. Witness 'A' states that he know the petitioner being a sand smuggler and notorious, he would not come forward to narrate the facts as there is threat to his life. This witness refers to one incident of August, 2022 alleging that the petitioner and his drivers transported sand through the field of witness 'A' and when he questioned during midnight they threatened him, abused and then left the spot. Witness 'B' claims to be a truck driver by profession, who also claimed that he know the activities of the petitioner, but due to threat to his life, he will not come forward to state anything against the petitioner. This witness refers to same

incident in the second week of September, 2022 and at that time the petitioner obstructed him and threatened with dire consequences, assaulted with fists blows which are created fear in the mind of the said witness.

(25) Both these statements show that the petitioner allegedly gave threats to these witnesses and there is fear in the mind of villagers about sand smugglers. First of all such alleged instances disclosed by witness 'A' and 'B' comes within the ambit of Chapter XVI and XVII of the Indian Penal Code. However, a detention order show that the petitioner is a sand smuggler and not a dangerous person as tried to be projected by the concerned Authority as far as offences under IPC are concerned.

(26) Learned APP though tried to support the detention order, failed to satisfy the reasons/grounds on which such detention order is based. The circumstances which are highlighted and discussed above would clearly goes to show that the order impugned herein is unsustainable in the eyes of law, as it clearly affects the personal liberty of the petitioner without following due process of law. Having said so, we hold that the detention order dated 08/11/2022 is liable to

be quashed and set aside on the above said grounds.

(27) Accordingly, the Writ Petition is allowed. The detention order dated 08/11/2022 is hereby quashed and set aside. The petitioner, namely, **Amol alias Guddu s/o Sevakar Khorgade** shall be released forthwith, if not required in any other offence.

(28) Rule made absolute in above terms.

[BHARAT P. DESHPANDE J.]

[VINAY JOSHI, J.]