

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

CRIMINAL WRIT PETITION NO. 882 OF 2022

Sukhdeo s/o Sakharam Thorat Aged about 60 years, Occ. : Nil, R/o. Gurudeo Nagar, Mozari, Tq. Teosa, Dist. Amravati	}	.. Petitioner
Avdhut S/o Sukhdeo Thorat Aged about 36 years, Occ. Labour R/o Mozari, Tq. Tiosa, Dist. Amravati, (presently detained at Buldhana prison in view of detention Order dated 12/04/2022)	}	.. Detenu

Versus

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|---|---|----------------|
| 1. The State of Maharashtra,
through Home Department (Special),
Mantralaya, Madam Kama Road,
Mumbai – 400 032 | } | .. Respondents |
| 2. The Principal Secretary to Government
of Maharashtra, Home Department
(Special) Mantralaya, Madam Kama
Road, Mumbai – 400 032 | } | |
| 3. The Collector & District Magistrate,
Amravati, Tq. And Dist. Amravati | } | |

Mr. P. R. Agrawal, Advocate for petitioner and detenu.

Mr. N. R. Rode, APP for respondents.

CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE JJ.

RESERVED ON : 08/03/2023

PRONOUNCED ON : 13/03/2023

JUDGMENT (Per : Bharat P. Deshpande J.)

Rule. Rule made returnable forthwith. Heard finally at admission stage with the consent of the learned counsel appearing for the parties.

(2) Petitioner is the father of the detenu, namely, Avdhut Thorat, who is challenging the impugned order of detention of his son, issued by respondent No.3 on 12/04/2022, whereby said Avdhut is directed to be detained for a period of one year under Section 3(1) 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”). The detenu was served with detention order and thereafter, he received compilation along with grounds of detention etc. while in jail.

(3) Learned counsel appearing for the petitioner would submit that the impugned order is bad-in-law and illegal as it violates Article 22 of the Constitution since there is complete non-application of mind and without reaching a substantive satisfaction on the

material produced along with the detention order. The grounds of detention show only two offences bearing Crime No.214/2022 and Crime No.75/2022 registered against the detenu for the offence punishable under Section 65(d) of the Maharashtra Prohibition Act, 1949. In both these offences notice under Section 41(a)(1) of the Code of Criminal Procedure, 1973 was served upon the detenu.

(4) Learned APP appearing for the State submitted that the detenu is a habitual offender and order was passed only to prevent breach of public peace.

(5) Learned counsel for the petitioner placed reliance in the cases of (i) *Shaikh Usman Shaikh Maheboob vs. The State of Maharashtra & anr.* (Cri.W.P.No.690/2022 decided on 19/12/2022), (ii) *Hanif Karim Luluwale vs. State of Maharashtra and others*, reported in 2022(5)Mh.LJ(Crl.)278, (iii) *Smt.Bismillah wd/o Sheikh Rahim vs. The State of Maharashtra and another*, (Cri.W.P.No.73/2022 decided on 21/10/2022), (iv) *Chandbee w/o. Usmaan Patel vs. State of Maharashtra and others*, (Cri.W.P.No.697/2022 decided on 03/03/2023) to buttress his submissions.

(6) The detention order (Annexure-A) is issued by the District Magistrate, Amravati would show that the concerned Authority is satisfied to detain the detenu in order to prevent him from acting in any manner prejudicial to the maintenance of public order in accordance with the provisions laid down under the Act of 1981.

(7) The grounds of detention dated 12/04/2022 though refers to various offences committed by the detenu, only refer to two offences as found in para 5 for the purposes of passing detention order. Para 5 deals with all the grounds of the detention, which is the basis for issuing such detention order, along with statements of two witnesses recorded in-camera and referred to Crime No.214/2022 dated 06/04/2022 and Crime No.75/2022 dated 26/01/2022, registered at Teosa, Police Station. Both these offences are under Section 65(d) of the Maharashtra Prohibition Act, 1949.

(8) Further the detention order in para 5-1 and 5-2 refers to the details of the above two crime numbers. It only shows that on both occasions the Officer of the concerned Police Station, on a secret information conducted raid at the house of the detenu and found/confiscated hand distilled liquor. Samples were collected in

presence of the witnesses.

(9) As far as both these crime numbers are concerned, the grounds of detention show that no arrest of the detenu was effected, however, he was served with a notice under Section 41(a)(1) of the Cr.P.C. This clearly goes to show that even the concerned Police Officer, who registered above two crime numbers did not consider arrest of the detenu for the said offences.

(10) A co-ordinate Bench of this Court in the case of *Shaikh Usman Shaikh Maheboob* (supra) considered similar contentions. In that case also offences were registered under Section 65(k)(d)(f) of the Maharashtra Prohibition Act, 1949 and notice under Section 41(1-a) of the Cr.P.C. were issued.

(11) In the case of *Hanif Karim* (supra), a co-ordinate Bench of this Court was called upon to consider detention of the detenu, wherein the offences alleged against him were of minor in nature and detenu was never arrested and instead of that notice under Section 41(a)(1) of Cr.P.C. was issued against him. In such circumstances, this Court further observes that when arrest was not

necessary, such person could not be considered as dangerous for the public peace.

(12) In the case of *Chandbee Patel* (supra), a co-ordinate Bench of this Court in detail consider similar contentions and found that when arrest of the detenu was not required for the alleged offences, he could not be considered as harmful for the public peace.

(13) The grounds of detention and more specifically in para 5 would show that the detaining Authority considered only two crimes as discussed earlier, for passing the detention order. In both these crimes detenu was not arrested by the Investigating Officer. Hence it could not be said that the detenu was a threat to the public peace.

(14) If such contentions of the detaining Authority in connection with said two offences are not accepted for the purpose of detention, what remains are the statements of two witnesses. The detention order referred to in-camera statements of witnesses 'A' and 'B' in para 5-5 and 5-6. A scrutiny of these statements would clearly go to show that the allegations made against the detenu are only

with regard to the personal threat given to such witness. Both these statements cannot be considered as danger to the public peace or even for law and order situation in the said locality. There is no live nexus between above two statements of witnesses 'A' and 'B' with the alleged offences as disclosed in para 5 of the grounds of detention.

(15) We found that there is no subjective satisfaction, so as to pass the order of detention in the given circumstances. The verification of the statements of two witnesses which is found on page 93 is also suffered from the subjective satisfaction and also from the aspect of non-application of mind.

(16) For the above reasons, we are of the opinion that impugned order of detention is unsustainable. Accordingly, the Writ Petition is allowed. The impugned order of detention is hereby quashed and set aside. The detenu, namely, **Avdhut Sukhdeo Thorat** shall be released forthwith, if not required in any other offence.

(17) Rule made absolute in above terms.

[BHARAT P. DESHPANDE J.]

[VINAY JOSHI, J.]