



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO. 88 OF 2024**

Ajay S/o Ramesh Wahul @ Thakur,  
Age : 32 Years,  
R/o Sai Nagar, Ekta Colony,  
H/N-30/1 Satara Parisar,  
Chhatrapati Sambhajinagar. .. Petitioner

**Versus**

1. Commissioner of Police,  
Chhatrapati Sambhajinagar.
2. The State of Maharashtra  
(Through Addl. Chief Secretary  
to Government of Maharashtra  
Mantralaya, Home Department  
Mantralaya, Mumbai.
3. The Superintendent  
Central Prison,  
Chhatrapati Sambhajinagar. .. Respondents

Shri Rupesh A. Jaiswal, Advocate for the Petitioner.  
Shri M. M. Nerlikar, Addl.P.P. for the Respondent Nos. 1 to 3.

**CORAM : MANGESH S. PATIL AND  
SHAILESH P. BRAHME, JJ.**

**CLOSED FOR JUDGMENT ON : 10.04.2024  
JUDGMENT PRONOUNCED ON : 18.04.2024**

**JUDGMENT (Per Shailesh P. Brahme, J.) :-**

. Rule. Rule is made returnable forthwith. Heard both the sides finally with their consent at admission stage.

2. The petitioner is questioning order of detention dated 19.12.2023 passed by the respondent No. 1/Commissioner U/Sec. 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred as to the 'M.P.D.A. Act' for the sake of brevity and convenience). The petitioner is directed to be detained for one year being dangerous person and drug offender.

3. Impugned order was passed on the basis of following material :

- I. CR No. 342/2023 U/Sec. 452, 427, 323, 504, 506 of the I. P. Code of Satara Police Station, Aurangabad registered on 18.10.2023.
- II. CR No. 405/2023 U/sec. 328, 276 of I. P. Code, Sec. 8(c), 22(a) of Narcotic Drugs and Psychotropic Substances Act, 1985 and Sec. 18(a), 18(c), 27(b)(2) of Drugs and Cosmetics Act, 1940 of Satara Police Station, Aurangabad registered on 02.12.2023.
- III Chapter Case No. 1/2015 U/Sec. 110(e)(g) of the Code of Criminal Procedure.
- IV. Detention order Case No. MPDA/DET-8/CB-124 dated 09.11.2021.
- V. In camera statements of two witnesses.

4. The detaining authority found that the petitioner is a dangerous persons and he is drug offender also. Considering the criminal activities and especially previous action of preventive

detention under self same act he is found to be undeterred and continued to disturb public order. It is further recorded that normal penal laws are inadequate to curb his criminal activities.

5. Learned counsel for the petitioner tenders on record written submissions along with judgments as well as compilation of the documents running into 315 pages which were actually served upon the petitioner. He would also place reliance upon rejoinder. He makes following submissions :

- (i) Representation was neither decided, nor communicated.
- (ii) No need to pass detention order when petitioner was already in magisterial custody.
- (iii) There was no record to show prejudice to public order.
- (iv) Experts opinion for the offence relating to the drugs was not solicited.
- (v) Documents were not supplied.
- (vi) Detention order was mechanical and casually passed.

Besides, he would rely on various judgments with which we propose to rely little later.

6. Learned Additional Public Prosecutor submits that due procedure has been followed and timeline prescribed under the Act has been adhered to. It is further submitted that neither there is violation of principles of natural justice, nor is there violation of Article 22(5) of the Constitution of India. It is vehemently submitted that there was no need to seek expert's opinion. The subjective satisfaction cannot be faulted with.

Reliance is placed upon the judgment of the Allahabad High Court in the case of Abhay Kumar Shrivastava Vs. State of U. P. reported in *2003 Cri. L. J. 4102* and in the case of Brijendra Singh Yadav Vs. State of U. P. reported in *2020 (1) ALJ 158*. Besides that a communication dated 11.01.2024 with communication dated 09.01.2024 are placed on record.

7. We have considered rival submissions advanced by the learned counsel for the parties across the bar. We have gone through record which was placed before the detaining authority. Undisputedly, two offences, two in camera statements, one chapter case and a preventive action under the M. P. D. A. Act are the foundation to pass impugned order.

8. By our order dated 15.03.2024, we permitted the parties to file additional affidavits as well as documents. In furtherance of that petitioner filed additional affidavit to reiterate that the rejection of his representation was not communicated to him. Respondents countered it by affidavit dated 28.03.2024 as well as 10.04.2024. An endeavour is made by the learned A.P.P. to show that representation was rejected on 09.01.2024 and it was served on 10.01.2024 and the acknowledgment was also secured. We are pointed out the acknowledgment secured on letter dated 09.01.2024. The petitioner disowns signatures of the acknowledgment appearing on order dated 28.03.2023 and 09.01.2024.

9. We have considered additional affidavit dated 28.03.2024

filed by the respondent No. 3. It is stated in paragraph No. 8 that the rejection of the representation was communicated to the petitioner through email. We have also gone through paragraph No. 2 of the affidavit dated 10.04.2024 filed by the respondent No. 3 reiterating the above facts. Additionally, it is mentioned that the communication dated 09.01.2021 was received on 10.01.2024 and it was served on the petitioner. An acknowledgment was taken on the letter dated 09.01.2024. Though petitioner denied to have received communication dated 09.01.2024, there is no reason to disbelieve the statements made on oath by the responsible officers of the respondents. We find no merit in the submission of the petitioner.

10. Learned counsel for the petitioner seeks to rely upon the judgment of this Court in the matter of **Digambar @ Digambar Vitthal Dagdade Vs. The District Magistrate, Latur and others in Cri. W. P. No. 1736 of 2023 dated 08.02.2024** and in the matter of **Nilesh Sunil Pendulkar Vs. The District Magistrate Ahmednagar and others in Cri. W. P. No. 1820 of 2023 dated 29.02.2024**. We have considered relevant paragraphs of the judgments. In both the matters order of rejection of representation was not passed, nor communicated. No acknowledgment of the detenu was produced before the Court. This is not the situation in the present matter. We are therefore not inclined to accept submission of the petitioner in this regard.

11. Learned counsel would point out the finding recorded by

the detaining authority in paragraph No. 10. The subjective satisfaction of the detaining authority is criticized showing the findings recorded therein. Learned Addl. P. P. would invite our attention to the para No. 16 of the reply dated 15.02.2024.

12. When the matter was under consideration before the detaining authority, petitioner was in magisterial custody in CR No. 405/2023. It was offence not only under the Indian Penal Code but also under the N.D.P.S. Act and the Drugs and Cosmetics Act. He was found to be in possession of contraband article i. e. 30 strips of Nitrosun-10 tablets which was of sizable quantity. As bail is the rule and custody is an exception, the detaining authority appears to have recorded that the petitioner was likely to be released on bail. That does not make the subjective satisfaction deficient or defective. Learned Addl. P. P. cited judgments of the Allahabad High Court. It is relevant to refer to para No. 19 of the judgment in the matter of **Abhay Kumar Shrivastava Vs. State of U. P.** (supra).

“19. As held by Apex Court in the case of Ahmad Nassar v. State of Tamil Nadu, 1999 (8) JT (SC) 252 in spite of rejection of the application by a Court once it is open to the detaining authority to come to his own satisfaction based on the contents of the bail application that there is likelihood of detenu being released on bail. Merely because no bail application was then pending is no premise to hold that there was no likelihood of his being released on bail. The words "likely to be released" connote chances of being bailed out in case pending bail application or in case it is moved in future is decided. The word "likely" shows it can be either way. So without taking any such risk if on the

facts and circumstances, the type of crime to be dealt under the criminal law, including contents of the bail application, each and compositely all would constitute to be relevant material for arriving at the conclusion.”

13. Learned counsel for the petitioner would refer to para No. 6 of the judgment of the Supreme Court in the matter of **Ramesh Yadav Vs. District Magistrate, Etah and others** reported in ***2010 All SCR (O.C.C.) 65***. Same is reproduced as under :

“6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed. We are inclined to agree with counsel for the petitioner that the order of detention in the circumstances is not sustainable and is contrary to the well settled principles indicated by this Court in series of cases relating to preventive detention. The impugned order, therefore, has to be quashed.”

14. Further reliance is placed on the judgment of the Supreme Court in the matter of **A Shanti (Smt) Vs. Govt. of T. N. and others** reported in ***(2006) 9 SCC 711***. Relevant para No. 4 of the judgment reads as under :

“4. In similar circumstances, this Court in *T.V. Saravanan V. State*<sup>1</sup> directed release of the detenu. Counsel for the State is unable to distinguish that judgment. This Court in *T.V. Saravanan*<sup>1</sup> has held that the “imminent possibility” of the appellant coming out on bail is merely the *ipse dixit* of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere *ipse dixit* of the detaining authority is not sufficient to sustain the order of detention.”

15. Further reliance is placed on on para No. 9 of the judgment of this Court in the matter of **Akshay @ Bhaiyya Ramesh Wahul Vs. The Commissioner of Police, Aurangabad and others in Cri. W. P. No. 893 of 2023 dated 11.08.2023**. Same reads thus :

“9. Admittedly, it was a crime of attempt to commit murder, punishable under Section 307 of the Indian Penal Code. The petitioner was arrested in the said crime on 13/3/2023. While the order of detention was passed even one month’s period of his arrest was not over. Although he had preferred an application for bail. Needless to mention that, even the charge sheet was not filed in the said crime, the offence was triable by Sessions Judge. The material that the petitioner had made an application for bail and opinion of the sponsoring authority that he is likely to get bail had, therefore, no basis of any material of he was likely to be granted bail by Court of Judicial Magistrate, First Class. To avoid grant of bail by Court of Judicial Magistrate, First

Class, the investigating officer is supposed to file charge sheet within ninety days of arrest of the accused. Here, more than two months period was with him. Normally, Court of Judicial Magistrate, First Class does not grant bail on merits when the case is exclusively triable by the Court of Session. In the impugned order, the observations that the detenu is likely to be released on bail, in view of law of the land is unsupported by any convincing reasons. In our view, therefore, the material on the basis of which the detaining authority claim to have had reason to believe the petitioner likely to get bail was not sound and on such material, no subjective satisfaction could have been arrived at. On this sole ground, the order is liable to be set aside.”

16. All the judgments are distinguishable on facts from the case in hand. We are dealing with a case in which the detenu has been held to be not only dangerous person, but even as a drug offender. He is found to have undergone preventive detention under the self same act previously also. The detaining authority in the case in hand had cogent material before it for concluding against the petitioner. It is not that without there being any other corroborative incriminating material, the detaining authority has proposed impugned action only in anticipation of release of detenu on bail. We are therefore of the considered view that the judgments would not enure to the benefit of the petitioner. Learned Addl. P. P. has rightly referred to judgment of the Allahabad High Court in the matter of Brijendra Singh Yadav Vs. State of U. P. (supra). Para No. 22 reads as follows :

“22. As regards the plea of learned counsel for the

petitioner that the impugned order is vitiated because it has been passed with a mala fide intention to frustrate the bail allowed to the petitioner, we are of the view that there is no substance in the contention. No doubt when the proceedings of clamping provisions of NSA were initiated, the petitioner was in jail but it is settled by a catena of decisions of the Apex Court that even when a person is in custody, a detention order can validly be passed if the authority passing the order is aware of the fact of his being in custody and he has reason to believe, on the basis of material placed before him, that there is imminent possibility of his being released on bail and that on being so released, he would in all probability indulge in prejudicial activities and to prevent him from doing so, it is necessary to detain him. A detention order cannot be struck down on the ground that the proper course for the authority was to oppose the bail application and if bail is granted notwithstanding such opposition, to question it before a higher Court, as is sought be pleaded by learned counsel for the petitioner (See: Kamarunnissa Vs. Union of India, (1991) 1 SCC 128 and Yogendra Murari Vs. State of U.P. and Ors., AIR 1988 SC 1835). On the facts in hand, we are unable to accept the contention of learned counsel for the petitioner that the impugned detention order was passed merely to frustrate the order of the Court, granting bail to the petitioner.”

17. It can be seen from the record that application for bail and relevant papers were before the detaining authority. In the impugned grounds of detention findings are recorded by the detaining authority in paragraph No. 7 to 11 about his subjective satisfaction. Considering involvement of the petitioner in various criminal activities and especially when on earlier occasion also detention order under the M.P.D.A. Act was passed,

the detaining authority arrived at conclusion that drastic action was needed to curb his activities. It is being noticed that there is proper application of mind and consideration of relevant record to pass the impugned order, though petitioner was in a magisterial custody. Imminent danger and possibility of indulging in prejudicial activity to the public order in future have been considered and reflected in the reasoning. In that view of the matter, we do not see any perversity in the subjective satisfaction.

18. We have considered the allegations pitted against the petitioner in two offences registered against him. If we consider CR No. 342/2023 which is U/Sec. 452, 427, 323, 504, 506 of the I. P. Code in isolation then it cannot be said that offence reflects any prejudicial activity to the public order. However, that is not case with CR No. 405/2023. The petitioner was found to be in possession of contraband drug without any explanation or prescription. We have considered in camera statements and earlier preventive order dated 09.11.2021 passed against the petitioner. We find that this was sufficient input for the detaining authority to hold that the petitioner indulged in the activities prejudicial to the public order.

19. Learned counsel refers to the judgment of the Supreme Court in the matter of Rekha Vs. State of T. Nadu Through Sec. To Govt. and another reported in *2011 ALL MR (Cri) 2914 (S.C.)*. We have considered paragraph No. 26, 32, 33 and 38. The judgment is distinguishable on facts. In the case in hand the detaining

authority has arrived at subjective satisfaction not only on the basis of last offence bearing CR No. 405/2023 involving offence under the N.D.P.S. Act and Drugs and Cosmetics Act, but the detenu already in past had suffered detention order of one year. On the basis of material placed before the authority he is found to be habitual offender and undeterred by regular penal laws.

20. We have considered the judgment of the Supreme Court in the matter of **Ameena Begum Vs. The State of Telangana and others** reported in ***2023 LiveLaw (SC) 743*** which is a exponent for the concept of law and order and public order. Applying the principles explained therein, we find that the detaining authority in the present case has not committed any illegality.

21. Learned counsel for the petitioner assailed the subjective satisfaction of the detaining authority as there was no expert's opinion solicited to confirm that the contraband seized from the petitioner was dangerous to the public health. We have considered relevant papers of investigation of CR No. 405/2023. It reveals from FIR and panchanama that 30 strips of Nitrosun-10 were seized from the person of the petitioner. Petitioner could offer no justification for possessing the tablets in such a quantity. There was no prescription of any medical practitioner or bill of purchase of drug. In the investigation it has been recorded that the contraband was a scheduled H-1 prescription drug and its components fall under Narcotic Drugs and Psychotropic Substance. Mr. Jivan Jadhav who is a Drug Inspector has endorsed that it is schedule H1 prescription drug. We have

considered his statement recorded during the investigation. Pertinently, all the papers of the investigation of CR No. 405/2023 were supplied to the petitioner. Under these circumstances, we are not inclined to accept that absence of any expert's report or chemical analyzers report vitiates the subjective satisfaction.

22. In this regard petitioner refers to judgment of the Supreme Court in the matter of District Collector, Anantpur and another Vs. V. Laxmanna reported in *2005 All MR 9Cri) 1800 (S.C.)*. We have considered paragraph Nos. 5 to 8 of the judgment. The next judgment of this Court in matters of **Prakash Chandrakant Kanjar Vs. The State of Maharashtra in Cri. W. P. No. 1285 of 2023 dated 19.10.2023** and **Styavan Shakha Rathod Vs. Commissioner of Police, Pune city in Cri. W. P. St. No. 15879 of 2023 dated 25.10.2023** have been considered by us. These judgments are distinguishable on facts. They do not enure to the benefit of the petitioner.

23. Further reliance is placed on the judgment of this Court in the matter of **Dhanubai @ Dhanno Yashvant Nettlekar Vs. State of Maharashtra and others in Cri. W. P. No. 1527 of 2023 dated 08.02.2024** in which we have recorded that the subjective satisfaction of the detaining authority is recorded to be perverse in the absence of opinion of expert's to come to conclusion that consumption of contraband would be hazardous to the public health and public life.

24. It is useful to refer to our view taken in the matter of **Santosh Subhash Koli vs The State of Maharashtra and others in Criminal W. P. No. 1858 of 2023 judgment dated 04.03.2024**, wherein we have in paragraph No. 13 taken a view that it is not that in all cases expert's opinion would be required to be solicited. If the detenu is found to be in possession of illicit liquor without licence then it would be obvious to hold that the expert's opinion would not be necessary. We are of considered view that judgment in the matter of **Dhanubai @ Dhanno Yashvant Nettlekar Vs. State of Maharashtra and others** (supra) would not enure to the petitioner.

25. Learned counsel for the petition would lastly rely upon the judgment of Division Bench of this Court in the matter of **Shri Ismail Nasruddin Shaikh Vs. Commissioner of Police, Solapur and others reported in Cri. W. P. No. 3825 of 2012 dated 28<sup>th</sup> January, 2023** to buttress that expert's opinion or report of chemical analysis is a vital document which needs to be supplied to detenu. The Division Bench was considering the illegal activity of black marketing of kerosene which is distributed only through the public distribution system under the provisions of the Essential Commodities Act of. In that context it was thought fit to have the report of expert or chemical analysis. The case in hand has different facts. The ratio of the judgment is not applicable to the case in hand.

26. Learned counsel for the petitioner has invited our attention to the representation 27.12.2023. In paragraph No. 5 it is stated that he was not being supplied document of expert's opinion which has caused prejudice to his right guaranteed under Article 22(5) of the Constitution of India. Although there is no specific reply to this point by the respondents in their reply, it is difficult to vitiate the impugned order on this point. We have already recorded that expert's opinion was already there in the investigation papers in the form of statement of Mr. Jivan Jadhav. It was not necessary to solicit any opinion or report of chemical analyzer. The petitioner was served with all the necessary document running into 317 pages. We do not find that the petitioner was unable to make effective representation on the basis of the record supplied to him.

27. In this regard petitioner would rely upon the judgment of the Supreme Court in the matter of **Ramchandra A. Kamat Vs. Union of India** reported in *1980 SJ (SC) 347* and judgment of this Court in the matter of **Rupesh Ram Thakur Vs. The Commissioner of Police, Thane and others** reported in *2018 All MR (Cri) 2264*. We have considered the relevant paragraphs of both the judgments. However, in the present case all necessary documents have been supplied to the petitioner. On facts, we are not inclined to apply the ratio laid down in both the judgments.

28. It is the grievance of the petitioner that the impugned

order is passed mechanically and in a casual manner. In camera statement “A” does not bear a date. Both in camera statements have been verified by the Sub Divisional Police Officer. We are not persuaded by this submission that subjective satisfaction is either defective or faulty.

29. We have recorded our findings against the petitioner for all the submissions formulated in paragraph No. 03. For the sake of argument, even if it is recorded that the expert’s opinion was required before holding that consumption of the drug would be hazardous to the public health, that would not enure to the benefit of the petitioner. The petitioner in the present case is involved in various criminal activities. This is not a case wherein solitary offence under the NDPS or Drugs and Cosmetics Act is pitted against him. By implication of Section 5(A) impugned order based on various grounds cannot get vitiated even if one of the grounds is held sufficient to justify the preventive detention order.

30. For the reasons recorded, we find no substance in the petition. The criminal writ petition is dismissed. Rule is discharged.

**[ SHAILESH P. BRAHME, J. ]      [ MANGESH S. PATIL, J. ]**

*bsb / April 24*