



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

Criminal Writ Petition No. 446 / 2024

Shaikh Sharukh Shaikh Hasan

Age : 27 years, Occ.Labour,

R/o Imamwada, Raver,

Taluka Raver District Jalgaon.

...Petitioner

Versus

**1. State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai.**

**2. The District Magistrate,
Collector Office, Jalgaon.**

**3. The Superintendent,
Central Prison, Harsool,
Kolhapur, Dist. Kolhapur.**

..Respondents

Advocate for the Petitioner : Mr. Patil Atmaram J.

A.P.P. for Respondents /State : Mr. A. V. Lavte

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

DATE : 26 APRIL 2024

ORAL JUDGMENT [Per Shailesh P. Brahme, J.] :

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

2. The petitioner is challenging order dated 27.12.2023 passed by the respondent no.2/District Magistrate, Jalgaon 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 Act, 1981 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience). The petitioner is held to be dangerous person considering six offences registered against him, preventive actions, non-cognizable offences and previous order of detention dated 28.04.2023.

3. Learned Counsel Mr. Atmaram Patil for the petitioner makes following submissions formulated on the grounds raised in the petition :

- i. Though previous order of detention was quashed by the High Court within six months, impugned order was passed without there being any fresh incriminating material against the petitioner.
- ii. Petitioner was released on bail in the offences pitted against him, but detaining authority failed to consider orders of bail.
- iii. Impugned action is against Article 22(5) of the Constitution of India because petitioner was not supplied legible and translated copies of the documents.

- iv. There is breach of Section 8 because grounds of detention were not supplied within five days.
- v. There is breach of Section 10 as papers were not placed before the Advisory Board within three weeks from the date of detention.
- vi. Delay in passing impugned order, vitiates proceedings.

4. Learned Counsel for the petitioner seeks reliance upon following judgments :

- i T.A. Abdul Rahman Vs. State of Kerala
1990 AIR (SC) 225
- ii Vaddi Lakshmi Vs. State of Telangana & Ors.
Criminal Appeal No.1723/2024
- iii Mujib s/o Abdul Shaikh Vs. District Magistrate, Aurangabad & Ors., Criminal Writ Petition No.221/2023
- iv Cherukuri Mani w/o Narendra Chowdari Vs. The Chief Secretary, Government of Andhra Pradesh & Ors. Criminal Appeal No.1133/2014 arising out of Special Leave Petition (CRL) No.2531/2014
- v Balu s/o Waman Patole Vs. The Commissioner of Police, Aurangabad and Ors. Criminal Writ Petition No.155/2019.
- vi Pradeep Nilkanth Paturkar Vs. S. Ramamurthi
1994 AIR (SC) 656
- vii Rushikesh Tanaji Bhoite Vs. State of Maharashtra & Ors.
2012 AIR (SC) 890

5. Per-contra, learned APP Mr. A.V. Lavte supports impugned

order on the basis of affidavit-in-reply of the respondent no.2. He submits that the petitioner is a history-sheeter and undeterred by the preventive actions as well as previous order of detention dated 28.04.2023. He submits that the detaining authority has considered all aspects of the matter and passed a reasonable and plausible order. He would submit that the petitioner did not raise any objection against so called illegible and english version of the documents. It is further submitted that there is no delay in processing the proposal of the petitioner. He would further submit that all necessary documents were served on the petitioner on 27.12.2023 and he had due opportunity to make the representation. It is further submitted that there is overwhelming material against him including in-camera statements to arrive at the subjective satisfaction that he is a dangerous person.

6. Learned APP relies upon the following judgments :

- i Mohammad Imran Vs. Police Commissioner, Aurangabad & Ors., AIR OnLine 2021 Bom 3419
- ii Smt. Phulwari Jagadambaprasad Pathak Vs. R.H. Mendonca and Others, 2000 AIR SCW 2727.
- iii Dhurus Kanu Vs. State of W.B.
AIR 1975 SC 571

7. Having heard both the sides and having gone through the

relevant papers what emerges is that petitioner is facing action of detention for the second time within a span of six months. Earlier order of detention was quashed by the High Court in Writ Petition No.888/2023 mainly on the ground that petitioner was not supplied legible and translated copies which affected his right under Article 22(5) of the Constitution of India. It was recorded that orders dated 31.08.2022 and 10.09.2022 were in English. Petitioner was not supplied translation of these orders. It further reveals that except last registered offence, C.R. No.482/2023, on selfsame record impugned order is passed.

8. Interestingly, the sponsoring authority in the proposal of detention mentioned that the petitioner had obtained order from the High Court citing minor technical reasons. It is a matter of record that earlier order of detention was quashed on ground of violation of Article 22(5) of the Constitution of India which amounts to serious lapse on the part of detaining authority.

9. While forwarding the proposal, the sponsoring authority appears to have rectified the mistake of supplying Marathi translation of English version of order dated 31.08.2022. However, no endeavour has been made to supply Marathi translation of English order dated 10.09.2022. We have gone through the relevant papers placed on record by the learned

APP. The detaining authority has not at all applied mind to this aspect of the matter. On this very ground, earlier order of detention was quashed by the High Court and the mistake has been repeated in the present action. This is serious lapse on the part of the detaining authority while arriving at subjective satisfaction which cannot have any excuse.

10. The petitioner was pitted with six offences, preventive actions, earlier order of detention and two in-camera statements. It appears that last offence was registered on 19.11.2023 bearing C.R. No.482/2023 for offences punishable under Sections 354, 354A, 354D, 506 of the Indian Penal Code. The offences registered against him, do fall under Chapter XV and XVII of IPC. There was material available against the petitioner. However, mere availability of the material is not sufficient to hold that subjective satisfaction to be legal and proper. We have already recorded in earlier paragraph our reservation for the subjective satisfaction.

11. The grounds of detention do not show that the orders enlarging petitioner on bail have been considered by the detaining authority. The reasons for granting bail have not been appreciated. It is settled legal position that these reasons are relevant inputs for the detaining authority. Learned Counsel for

the petitioner has rightly referred to judgment of Rushikesh Tanaji Bhoite (supra). We respectfully follow the view.

12. Our attention is invited to documents bearing running pagination from 64 to 66 which are the office notes of the sponsoring authority. Notes recorded on 19.12.2023 are in English. These are part of proposal of detention. English version is neither legible nor has it been translated. The sponsoring authority did not take care of furnishing a translation and legible copy of the same. The detaining authority also did not notice this lapse. Despite of the findings of the High Court in earlier round of litigation, same mistake is committed by the sponsoring authority as well as detaining authority. The right of the petitioner to make effective representation gets affected. We have no hesitation to hold that the impugned action is in violation of Article 22(5) of the Constitution of India.

13. Impugned order was passed on 27.12.2023. The petitioner was detained on 28.12.2023. The petitioner's grievance is that he was not supplied with grounds of objection and relevant papers within five days from his detention. It was incumbent for the respondents to file affidavit of jail authorities to demonstrate that relevant papers were served on the petitioner. No affidavit has been filed. The affidavit of respondent no.2/detaining

authority is of no avail. It only refers that all papers were served on him on 27.12.2023, in time. Original papers which are produced by the learned APP also do not show when the documents were served and as to whether there is endorsement of the petitioner. We are constrained to hold that there is breach of Section 8.

14. After detention, the papers were forwarded to the State Government for approval under Section 3(3) of the Act. In paragraph no.6 of the affidavit-in-reply, it has been explained date-wise as to how promptitude was shown to secure approval. The approval was granted on 05.01.2024. We find no merit in the submissions of the petitioner that there was delay in securing approval.

15. After approval as referred above, papers were forwarded to Advisory Board. Petitioner has raised specific ground of non-compliance of Section 10 of the Act. It was incumbent upon the respondent no.2 to deal with this aspect in the affidavit-in-reply. Learned APP would point out paragraph no.6 of the reply to show that the petitioner was heard on 05.02.2024 by the Advisory Board. Thereafter the order of detention was confirmed on 13.02.2024. However it has not been demonstrated that the papers were placed before the Advisory Board within three

weeks from the date of detention i.e. 27.12.2023. We find merit in the submission of the petitioner that there is non-compliance of Section 10.

16. The petitioner has raised ground of delay also. Order of detention was passed on 27.12.2023. In-camera statements were recorded on 10.12.2023 and 13.12.2023. They were verified by higher Police personnel. The proposal for detention was submitted on 21.12.2023. These events have been explained by the respondent no.2 in affidavit-in-reply. We do not find any delay or indifferent attitude of the officers in the process of passing order of detention. The submissions in this regard has no merit.

17. Learned APP refers to judgment of Mohammad Imran (supra) and especially paragraph no.12. In that matter, it was contended by the detainee/petitioner that his mother tongue was Urdu and translation should have been furnished in Urdu. The submission was not accepted because translation in Marathi was provided and the detainee was knowing Marathi. In the present case, no translation of the documents which are in English has been furnished to the petitioner. The ratio in the judgment is not applicable to the present case.

18. The next judgment in the matter of Smt. Phulwari

Jagdambaprasad Pathak (supra) is cited. We have gone through paragraph no.16. The prepositions laid down, cannot be disputed. However the facts of the matter in hand are different. The judgment cannot be made applicable. Lastly a reliance is placed on judgment in the matter of Dhurus Kanu (supra) which is referred to buttress that a single offence pitted against the petitioner would be sufficient to attract drastic action. We are bound by this preposition. However we are not upsetting impugned order on the ground that there is inadequacy of the material or a solitary instance was cited. The judgment has no application to the present case.

19. A sequitur, the impugned order suffers on the ground of un-sustainability of the subjective satisfaction, want of statutory compliance and contravention of Article 22(5) of the Constitution of India. Learned APP relies on Section 5A of the Act. The defects in the grounds of detention are fundamental, going to root of the matter. We are of considered view that even Section 5A cannot save impugned order. We, therefore, pass following order :

ORDER

- i. Criminal Writ Petition is allowed.
- ii. The impugned detention order no. Dandapra/Kavi/MPDA/89/2023 dated 27.12.2023

issued under Section 3(2) of the MPDA Act, 1981, passed by respondent no.2 against the petitioner is quashed and set aside.

iii. The petitioner shall be set at liberty forthwith.

iv. Rule is made absolute in above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE