



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

CRIMINAL WRIT PETITION NO.752 OF 2024

Yogesh @ Bhurya Vasant Chavan,
Age : 32 years, Occu : Labour,
R/o. Bajrangpura, Jamner,
Dist. Jalgaon

.. Petitioner

Versus

1. The State of Maharashtra
Through Deputy Secretary,
Home Department (Special),
Mantralaya, Mumbai
2. The State of Maharashtra
Through District Magistrate,
Jalgaon
3. The State of Maharashtra
Through Superintendent,
Central Jail, Thane

.. Respondents

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Mr. Harshal Prakash Randheer, Advocate for the Petitioner
Mrs. Vaishali N. Patil – Jadhav, APP for the Respondents / State.

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**CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Reserved on : July 10, 2024

Pronounced on : July 18, 2024

JUDGMENT (Per NEERAJ P. DHOTE, J.) :

. RULE. Rule is made returnable forthwith. Heard finally
with the consent of both the sides.

2. Impugned in this Petition is the order dated 29.01.2024
bearing No.Dandapra/Kavi/MPDA/02/2024 issued by the Respondent
No.2 - Detaining Authority and it's confirmation by the Respondent No.1
– State, detaining the Petitioner in exercise of the powers under the
provisions of Sub-section (1) of Section 3 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 (hereinafter referred to as 'the MPDA Act').

3. The Respondent No.2 / Detaining Authority arrived at the subjective satisfaction that the Petitioner was the Dangerous person and his activities were adversely affecting maintenance of the public order, on the basis of following material:-

Offences registered against the Petitioner:-

Sr. No	Police Station	Crime No.	Date of registration of crime Sections	Date of arrest	Sections	Present Status
1.	Jamner	20/2017	04-02-2017	10-02-2017	Under Sections 324, 323, 504, 506, 34 of IPC	Pending trial
2	Jamner	117/2021	11-04-2021	23-04-2021	Under Sections 394, 324, 323, 504, 506, 34 of IPC	Pending trial
3	Jamner	226/2021	09-07-2021	No arrest	Under Sections 65 (e) of Maharashtra Prohibition Act, 1949	Pending trial
4	Jamner	85/2022	19-02-2021	No arrest	Under section 188 of IPC read with section 37 (1)(3) for breach of section 135 of Maharashtra Police Act, 1951	Pending trial

Preventive Action taken against the Petitioner :-

Sr. No.	Name of Police Station	Date of Registration	Registration No.	Section
5	Jamner	13-02-2017	29/2017	As per section 107 of Criminal Procedure Code, 1973
6	Jamner	10-06-2021	98/2021	As per section 107 of Criminal Procedure Code
7	Jamner	07-05-2023	256/2023	As per section 107 of Criminal Procedure Code
8	Jamner	01-11-2023	698/2023	As per section 107 of Criminal Procedure Code

Offences registered recently within six months against the Petitioner :-

Sr. No.	Police Station	Crime Number	Date of registration of crime	Date of arrest	Section	Present status
9	Jamner	494/2023	09-10-2023	09-10-2023	Under Sections of 436, 435, 506, 34 IPC	Under Police investigation
10	Jamner	495/2023	09-10-2023	No arrest	Under Sections 435, 504, 506, 34 of IPC	Under police investigation

Two in-camera statements :

Sr. No.	Date of Incident	Nature of Allegation
1.	16/12/2023	Abused, threatened.
2.	16/12/2023	Abused, threatened

4. Learned Advocate for the Petitioner submitted that though several grounds are raised in the memo of the Writ Petition, he was restricting the challenge to the impugned order on following grounds:

- (i) Consideration of offences wherein the Petitioner was acquitted.
- (ii) Vague in-camera statements.

4.1. In support of his arguments, he relied on the following authorities:

- (a) **Rushikesh Tanaji Bhoite vs. State of Maharashtra and Others, (2012) 2 SCC 72**, wherein it was held that,

“non-placing of bail order whereunder detenue was released on bail, before Detaining Authority, vitiated the subjective satisfaction of the Detaining Authority and order of detention under challenge therein was set aside.”

- (b) Judgment dated 12.08.2022 passed by this Court at it's Principal Seat in **Criminal Writ Petition No.454 of 2022** wherein the Application for bail and bail order was not considered by the Detaining Authority

and it was observed that *‘non-consideration of this vital documents would vitiate the subjective satisfaction of the Detaining Authority’.*

(c) **Sandeep Govind Pawar vs. State of Maharashtra and others, 2023 SCC OnLine Bom. 778** wherein it was observed as under:

“there was breach of time frame stipulated under Section 10 of the said Act i.e. representation of the Petitioner therein was placed before the Advisory Board after the prescribed period and the order was set aside”.

(d) **Mallada K Sri Ram vs. State of Telangana and Others, 2022 SCC OnLine SC 424** wherein it was observed thus,

“the order of detention was based on stale material and demonstrated non-application of mind on the part of the detaining authority to the fact that the conditions which were imposed on the detenu, while granting bail, were duly fulfilled and there was no incidence of further violation.”

5. The impugned order is supported by the learned APP. It is submitted that the Detaining Authority considered the material available before it and thereafter arrived at the subjective satisfaction that the Petitioner was the dangerous person and properly exercised the jurisdiction vested under Section 3 of the MPDA Act.

5.1. In support of her submission, she relied on the judgment in **Phulwari Jagdambaprasad Pathak vs. R. H. Mendonca, 2000 DGLS (SC) 1108** wherein it was observed that,

“It is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. If a person found to be repeatedly engaged in such activities as mentioned in section 2 (b-1) which affect adversely or are likely to affect adversely the maintenance of public order he can be detained as a dangerous person.”

6. Coming to the matter at hand, the enclosures to the Petition show that by Judgment dated 22.03.2018 passed by the learned Judicial Magistrate First Class, Jamner in Regular Criminal

Case No.50/2017 the Petitioner has been acquitted from the Crime No.20/2017 referred at Sr. No.1 in the chart shown above. The copy of the order dated 12.05.2023 passed by the learned JMFC, Jamner in Summery Criminal Case No.753/2021 show that the Petitioner has been acquitted in Crime No.226/2021 referred at Sr. No.3 of the chart shown above. The impugned order show that the said aspects of acquittal of the Petitioner in the above referred two crimes were not considered by the Detaining Authority. It appears that the said material i.e. Judgment / order of acquittal were not placed before the Detaining Authority by the Sponsoring Authority. The impugned order nowhere show that the Detaining Authority was aware of the acquittal of Petitioner in those cases which are considered for Detaining him. Thus, the non-placing and non-consideration of the material as important as the order of acquittal has vitiated the subjective satisfaction of the Detaining Authority.

7. As regards the crime referred in the above chart at Sr. No.10, it is clear from para no.5.2 of the impugned order of detention that the Investigating Machinery issued notice under Section 41A of the Code of Criminal Procedure, 1973 (hereinafter, in short, 'Cr.P.C.'). This show that the arrest of the Petitioner was not required as considered fit by the concerned Investigating Machinery. Moreover, the said crime was under the Prohibition Act and admittedly the Petitioner has not been detained as the bootlegger.

8. The impugned order show that two in-camera statements were considered by the Detaining Authority. Copies of the statements are enclosed with this petition. Perusal of the same show that no specific date, day are mentioned with reference to the incident referred therein. This makes the said statements

vague in respect of the date and day. Reliance on such in-camera statements which are not specific in respect of date and day show non-application of mind by the Detaining Authority in passing the impugned order.

9. In the light of the aforesaid discussion, the Petition succeeds and the impugned order cannot be allowed to sustain being contrary to the settled position in law as reflected from the judicial pronouncement relied upon by the learned Advocate for the Petitioner. Hence, we proceed to pass the following order.

ORDER

- (i) Criminal Writ Petition is allowed.
 - (ii) The impugned Order of detention dated 29.01.2024 bearing No.Dandapra/Kavi/MPDA/02/2024 and the order confirming the same by the Respondent No.1 - State are quashed and set aside.
 - (iii) Petitioner be released forthwith, if not required to be detained in any other case.
10. Rule is made absolute accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

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