

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 420 OF 2024

Saddam Rashid Sahikh

@Saddam Bhai

Age: 29 years : Occupation -Nil

Residing At – Virvade Budruk,

Tal. Mohol, Dist. Solapur.

.. Petitioner

v/s.

1) State Of Maharashtra
Through Additional Chief Secretary (Home)
Government of Maharashtra
Home Department (Special) Mantralaya,
Mumbai.

2) Mr. Milind Shambharkar
District Magistrate, Solapur
Office of District Magistrate,
Solapur, Maharashtra.

.. Respondents

JYOTI
RAJESH
MANE

Mr. Shailesh S.Kharat for the Petitioner.

Mr. S.V. Gavand, APP for the Respondent-State.

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by JYOTI
RAJESH MANE
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**CORAM : A. S. GADKARI &
SHYAM C. CHANDAK, JJ.**

DATE : 16th APRIL, 2024.

ORAL JUDGMENT : (PER : SHYAM C. CHANDAK, J.) :-

1) Present Petition preferred under Article 226 of the Constitution of India, challenged the Order of Detention dated 21st July 2023, passed by District Magistrate, District Solapur under Section 3 (1) of the *Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders And Dangerous Persons, Video Pirates, Sand Smugglers and*

persons engaged in Blackmarketing of Essential Commodities Act, 1981 (No.I.V of 1981) (Amendment-1996, 2009 and 2015) ('MPDA Act' For short), whereby it has been directed to detain the Petitioner, with a view to prevent him from acting in any manner prejudicial to the maintenance of public peace.

1.1) Alongwith Order of detention, the Petitioner was also served with the grounds of detention and the documents relied upon by the Detaining Authority for passing the Detention Order.

2) Heard learned Advocate Mr. Kharat for the Petitioner and learned APP Mr. Gavand for the State. Perused the record.

3) Learned Advocate Mr. Kharat submitted that, when the Detention Order was passed, the Petitioner was in jail/custody of the crime considered for passing the Order of Detention, because Petitioner's bail application in that crime was already rejected. There was no reliable material before the Detaining Authority to record its subjective satisfaction that, the Petitioner is likely to be released on bail in near future to prompt the said Authority to pass the Order of Detention to prevent the Petitioner from committing any act, prejudicial to the 'Public Order'. Said crime was committed against an individual and not against a community at large. Therefore, it did not cause the problem of 'Public Order'.

3.1) Additionally, the Detaining Authority has relied upon two in-camera statement of witnesses 'A' and 'B'. However, the witness 'A' speaks

about the incident which had occurred 2 years prior to the registration of the crime considered for passing the Order of Detention. The statement given by witness 'B' is as vague as possible and no specific instance of alleged threat or commission of any offence as contemplated under Chapter XVI or XVIII of I.P.C. is disclosed thereof. Therefore, the subjective satisfaction of the Detaining Authority to term the Petitioner as a 'Dangerous Person', defined in Section 2(b-1) of the M.P.D.A. Act, is certainly erroneous. He submitted that, in this background, the impugned Order for Detention is not sustainable in law and is liable to be set aside.

4) Learned APP vehemently submitted that, the Detaining Authority was aware that the detenu was in judicial custody when the Order of Detention was issued against him and this awareness as well as the satisfaction of the Detaining Authority that, the detenu may be granted bail and that the likelihood of the detenu being indulging in activities prejudicial to maintenance of public order after released on bail is reflected in the grounds of detention. The Detaining Authority had a reason to believe that, the detenu may be granted bail under the normal law of the land. Considering the Criminal background of the Petitioner, there was reasonable apprehension that, if the Petitioner gets bail he would again involve in the same criminal activities. This conclusion reached by the Detaining Authority was well supported by the in-camera statement of witnesses 'A' and 'B'. As such, the Petitioner cannot question the legality of

the Detention Order. Accordingly, the Petition be dismissed.

5) We have carefully considered the rival submissions in the light of the record. Admittedly, the Detention Order is based on one crime i.e. C.R.No.397/2023 and the in-camera statement of two witnesses.

6) The said C.R.No.397/2023 was registered with *Mohol* Police Station, Dist.Solapur, on 17th May 2023, for the offences punishable under Sections 307, 364, 327, 504, 506 r/w. 34 of the I.P.C. and Sections 3 r/w. 25 of the Indian Arms Act. The F.I.R. in the aforesaid crime was filed by informant Sharad B. Thombare, wherein he narrated that, prior to about six months, the Petitioner had taken the informant's sister, his niece and nephew with him to village *Virvade Budruk*, on the pretext that, he would give some role in a movie to his niece. Since then, they all were residing with the Petitioner. However, the Petitioner started to harass the informant's sister and her minor daughter and was forcing the sister to marry her daughter with him. Therefore, in April 2023, the informant's sister and her daughter returned to the informant giving him an excuse of daughter's examination. Thereafter, the Petitioner repeatedly phoned the informant's sister and told her to come back and threatened that, otherwise, he would abduct her and kill alongwith her daughter. Therefore the informant phoned the Petitioner and objected to him. However, the Petitioner told the informant to come to Solapur and promised that, he would not trouble his sister and her daughter. Therefore, the informant with his cousin brother

Vinod went to meet the Petitioner on 16th May 2023, at about 8 p.m., at Tuljapur road, Solapur. From there the Petitioner and his associates abducted the informant and took him to certain hotel. There, the Petitioner caused the informant to consume liquor forcefully, abused, beat and threatened him at a gun point that, he should send his sister and her daughter to him otherwise, he would kill him. Thereafter, the Petitioner brought the informant at the place from where he had abducted him. Thereafter, the Petitioner abducted informant and Vinod. However, at certain petrol pump the informant escaped and with the help of police he came to the police station and filed the F.I.R. Meanwhile Vinod also came there with injuries on his person.

6.1) Considering the aforesaid narration, it is apparent that, the said crime was committed against an individual. There is nothing on record showing that, said crime disturbed the even tempo of the life of certain society in a particular locality.

7) The in-camera statement of witness 'A' reveals that, prior to about two years, the Petitioner had created a scene in the UCO Bank at Solapur. Therefore, said witness 'A' questioned the Petitioner for his said act as the UCO Bank help the local people. However, the Petitioner assaulted and abused the witness 'A' and his associates. Then the Petitioner lodged a crime against them at *Kamti* Police Station. But this incident is too stale to link it with the Detention Order in question.

7.1) The statement of witness 'B' clearly indicates that, the said statement is very vague as no specific instance of alleged threat or commission of any offence as contemplated under Chapter XVI or XVIII of the I.P.C. is disclosed thereof to term the Petitioner as 'dangerous person' as contemplated under Section 2(b-1) of the M.P.D.A. Act.

8) In view thereof, according to us, the subjective satisfaction reached by the Detaining Authority that the Petitioner is a 'dangerous person', is not well founded.

9) It is settled law and as enunciated in the case of *Kamarunnissa vs. Union of India and another, and connected petitions, (1991) 1 SCC 128*, even in the case of person in custody a Detention Order can validly be passed (i) if the authority passing the Order is aware of the fact that he is actually in custody; (ii) if he has reason to believe on the basis of reliable material placed before him that there is a real possibility of he being released on bail and on being so released he would in all probability indulge in prejudicial activity; (iii) If it is felt essential to detain him to prevent him from so doing him.

9.1) In the case of *Binod Singh vs. District Magistrate, Dhanbad, Bihar and another, (1986) 4 SCC 416*, it was held that there must be awareness of the facts necessitating preventive custody of a person for social defense. If a man is in custody and there is no imminent possibility of he being released, the power of preventive detention should not be

exercised. The detenu was in jail. There was no indication that, this factor or the question that the said detenu might be released or that there was such possibility of his release, was taken into consideration by the Detaining Authority properly and seriously, before the service of the Order. Therefore, it was held that, a bald statement is merely an *ipse dixit* of the officer. If there is cogent material for thinking that the detenu might be released, then that should have been made apparent.

9.2) In the decisions i) *Nitin Baban Pawar vs. Commissioner of Police and Othrs.*, 2023 SCC OnLine Bom. 236 and ii) *Gousiya Firoz Khan vs. Commissioner of Police and Othrs.*, 2023 SCC OnLine Bom. 437, cited by learned Advocate for Petitioner, this Court held that, the Detaining Authority should have reason to believe on the basis of reliable material placed before him, that there is real possibility of the detenu being released on bail and that being so released he would in all probability indulge in prejudicial activity and it is essential to detain to prevent him from doing so.

10) In the case in hand, from the record before us, it is evident that the Petitioner was arrested in the said Crime No.397 of 2023 on 17th May 2023 and he was in police custody remand till 23rd May 2023. Thereafter, the Petitioner was remanded to judicial custody. Meanwhile, the Petitioner's application for bail was rejected on 14th July 2023, as submitted by learned Advocate for the Petitioner. This statement is not contradicted by the

Respondents. Thus, it is an admitted fact that on the date of passing of the detention Order the Petitioner was behind bars.

11) However, from the factual analysis of the present case, it is evident that, the detaining authority has not explained as to on what material it was subjectively satisfied that, the Petitioner was likely to be released on bail in near future. In fact, the grounds of detention do not mention that, there was reliable material on record showing or at least helping to infer that, there was real or imminent possibility of the Petitioner being released on bail and that, in the event of he being at large, he is likely to indulge in activities prejudicial to the maintenance of public order, peace and tranquility in the future and that, with a view to prevent him from acting in such a prejudicial manner in the future, it is extremely necessary to detain him under the said Act. Even an '*ipse dixit*' to that effect is not recorded in the grounds of detention. Hence, we are of the opinion that, the Detaining Authority has failed to properly consider the material before it and record its satisfaction that, detention of the Petitioner was essential to safeguard the interest of certain society from his criminal activities.

12) No doubt, in the affidavit-in-reply, in paragraph 13, the Respondent No.1, the Detaining Authority, has stated that, when the sponsoring Authority forwarded its proposal for detaining the Petitioner, the Petitioner was in custody at that time and considering the various parameters laid down by the Higher Courts, there was every possibility of

the Petitioner being released on bail and thus there was necessity to pass the detention Order. However, this independent assertion sans mentioning it in the grounds of detention and in the absence of a reliable material countenancing that, will not supplement the need of the law to record the subjective satisfaction that, it was imminent that the Petitioner would be released on bail and once he is free, he will again indulge in activities prejudicial to the interest of the society or the community concerned, therefore, it is essential to pass the Order of Detention.

13) In view thereof the impugned Detention Order is not sustainable in law and is liable to be quashed and set aside.

13.1) Hence, the following Order:

- 1) The detention Order dated 21st July 2023 bearing NO.DCB/2/RR/3629(1)/2023 issued by Respondent No.2, is quashed and set aside.
- 2) Petitioner be released from jail forthwith on production of an authenticated copy of the operative part of the present Order, if not required in any other case/cases.
- 3) Petition is allowed in terms of prayer clause (b).
- 4) Rule is accordingly made absolute.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)