

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3796 OF 2023**

Nitesh Sunil Sadbhiya,
Age 21 years, Occu: Labour,
Residing at Survey No.106,
Katarwadi, Near Bhairavnath Temple,
Yerwada, Pune.
(At present Yerwada Jail.)

.....Petitioner

Vs.

- 1) The Commissioner Of Police,
Pune City, Pune.
- 2) The State of Maharashtra
(Through The Ld. Principal
Secretary, Home Department,
Mumbai)
- 3) The Superintendent of Jail,
Nagpur Central Prison,
Nagpur

.....Respondents

Mr. Vikas Shivarkar a/w Adv. Vivek Joshi for the Petitioner.
Mr. J.P. Yagnik APP for the Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.
DATE : 5th MARCH, 2024.**

ORAL JUDGMENT (PER- A.S. GADKARI, J.):

- 1) Petitioner has challenged Order dated 11th May, 2023 bearing
OW. No./CRIME PCB/DET/VISHRANTWADI/SADBHAIYA/148/23, passed

by the Respondent No.1 under Section 3(2) of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing Essential Commodities Act, 1981 (Maha.Act No.IV of 1981) (Amendment-1996) (Amendment-2009) (Amendment-2015) (*for short “MPDA Act”*), directing the Petitioner be detained under the said Act and be lodged in Nagpur Central Prison during the said period of detention.

2) Heard Mr. Shivarkar, learned Advocate for the Petitioner and Mr. Yagnik, learned APP for the Respondents-State. Perused entire record produced before us and the Affidavits filed by the Respondents.

3) At the outset, it is to be noted here that, the impugned Detention Order is based on two crimes registered against the Petitioner in near past and two in-camera statements recorded by the concerned Police Officer, on the basis of which the Detaining Authority has come to the conclusion that, the Petitioner is a *“Dangerous Person”* as defined under Section 2(b-1) of the MPDA Act. Along with the Detention Order, grounds of detention dated 11th May, 2023 are served upon the Petitioner.

3.1) From a bare perusal of the said grounds of detention, it is aptly cleared that, the said Detention Order is based on two crimes committed by the Petitioner in near past and two in-camera statements relating to the activities of the Petitioner being a *“Dangerous Person”* as noted above. The Detaining Authority has reached to a subjective satisfaction that, the

Petitioner has unleashed a reign of terror in the said locality and has become perpetual danger to the society at large in the jurisdiction of Vishrantwadi Police Station, Pune City. That, the Petitioner being an impulsively violent man, who wants to spread terror in the society by his violent criminal activities in connivance with his criminal associates. In paragraph Nos.1 to 3 of the grounds of detention, the criminal history indicating the inclination of Petitioner towards criminality which prompted the Detaining Authority to consider the Petitioner as a "*Dangerous person*", is in detailed stated.

3.2) In concluding paragraph No.3, it is stated that, though preventive actions were adopted against the Petitioner in the past, no deterrent effect on him of it by the said preventive actions. It is clarified that, the said detention order is not based on the previous preventive actions and these preventive actions mentioned in para No.3 thereof are shown only to highlight the Petitioner's desperate tendencies to commit violent crime.

3.3) We deem it appropriate to note here that, in paragraph No.3.2 of the Detention Order, the Detaining Authority has referred to and relied upon the preventive actions taken against the Petitioner. The said two actions initiated by the Vishrantwadi Police Station, Pune have been mentioned in a tabular form, which is reproduced herein-below for the sake of brevity.

Preventive Actions

Sr. No.	Police Station	Chapter Case No.	Sections of law	Status
1.	Vishrantwadi	<u>127/2022</u> 05/09/2022	u/s 107 of CrPC.	On 04.02.2023 the case was withdrawn u/s 116(6) of CrPC by Special Executive Magistrate, Khadki Division, Pune city.
2.	Vishrantwadi	<u>42/2023</u> 04/02/2023	u/s 110 (g) of CrPC.	On 04.02.2023 notice u/s 116(3) of CrPC was served upon you by Special Executive Magistrate, Khadki Division, Pune city.

4) A bare perusal of the said two alleged preventive actions mentioned in the grounds of detention were initiated by the Vishrantwadi Police Station, Pune city without considering the legal implications thereof. The first preventive action under Section 107 of the Cr.P.C. bearing Chapter Case No.127 of 2022 dated 5th September, 2022 was withdrawn on 4th February, 2023 under Section 116(6) of Cr.P.C. by the Special Executive Magistrate, Khadki Division, Pune city, apparently as the concerned Authority could not complete the said proceedings within the period of 6 months as mandated by sub-Section 6 of Section 116 of Cr.P.C.

5) On 4th February, 2023 itself, a fresh case bearing No.42 of 2023 under Section 110(g) of Cr.P.C. was initiated against the Petitioner and the notice under Section 116(3) of Cr.P.C. was served upon him by the Special

Executive Magistrate, Khadki Division, Pune city.

It is important to note here that, as per the contents of last para of paragraph No.5.1, the Petitioner was arrested in CR No.328 of 2022 registered with Vishrantwadi Police Station, Pune on 5th January, 2023 and the Sessions Court, Pune granted him bail on 27th February, 2023. Thus, it is apparently clear that, on 4th February, 2023 the Petitioner was in custody (judicial) in the said CR No.328 of 2022, registered with Vishrantwadi Police Station, Pune.

6) As noted earlier, the Detaining Authority has taken into consideration the said preventive actions initiated against the Petitioner by Vishrantwadi Police Station, Pune as one of the prime factors for recording his subjective satisfaction that the Petitioner is a “*Dangerous Person*” as defined under Section 2(b-1) of the MPDA Act.

7) It therefore appears to us that, there is a clear non-application of mind initially by the Sponsoring Authority to sponsor the detention of the Petitioner and subsequently by the Detaining Authority while arriving at a subjective satisfaction that, the Petitioner is a “*Dangerous Person*”.

8) The impugned Detention Order dated 11th May, 2023 bearing OW.No./CRIME PCB/DET/VISHRANTWADI/SADBHAIYA/148/23, therefore is based on the wrong material and not on the basis of correct record. The Sponsoring Authority has not placed true and correct record of the Petitioner before the Detaining Authority i.e. the Respondent No.1 and

therefore the impugned Order is based on incorrect material. The impugned Order therefore is rendered unsustainable in the eyes of law and deserves to be quashed on that ground alone.

9) Hence the following Order:-

ORDER

- a) Detention Order dated 11th May, 2023 bearing OW. No./CRIME PCB/DET/VISHRANTWADI/SADBHAIYA/148/23, is quashed and set aside.
- b) Petition is allowed in terms of prayer clause (b).
- c) Petitioner be released from Jail forthwith, if not required in any other case/cases, on production of an authenticated copy of this Order.
- d) Rule is made absolute in the aforesaid terms.
- e) All the concerned to act on the basis of an authenticated copy of this Order.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed
by SANJIV
SHARNAPPA
MASHALKAR
Date:
2024.03.16
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