

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

WRIT PETITION NO.3785 OF 2023

Shubham @ Parya Sunil Duble

.. Petitioner

vs.

State of Maharashtra & Anr.

.. Respondents

Mr. Nitin Gaware Patil with Mr. Anandmaya Dhorde and Mr. Sahil Choudhari for the Petitioner.

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

Ms. Meera Chavan, PSI, Chatushrungi Police Station present.

**CORAM: A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 26th FEBRUARY 2024

P. C.:-

1) Detention Order dated 6th July 2023 passed by Respondent No.2 under Section 3(2) of the 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 (for short 'MPDA Act') is challenged by the Petitioner-detenu by invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

2) Heard Mr.Nitin Patil, learned Advocate for the Petitioner and Mr.Gavand, learned APP for the State. Perused entire record produced before us.

3) Though, the Petitioner has raised several grounds while

assailing the said Detention Order dated 6th July 2023, learned Advocate for the Petitioner restricted his challenge to the detention order qua ground No.V. He submitted that, the complete copy of Order dated 13th June 2023 passed by the learned Additional Sessions Judge, Pune in Bail Application No.3317 of 2023 seeking pre-arrest bail in C.R.No.275 of 2023 registered with Chaturshrungi Police Station, Pune City under Section 506 (2), 504 read with 34 of I.P.C.; Section 4 (25) of Arms Act; Section 7 of Criminal Law Amendment Act, 2013; and Section 37 (1)/135 of Maharashtra Police Act was not produced before the Detaining Authority by the Sponsoring Authority. Though, it was document of vital importance for arriving at subjective satisfaction that, the Petitioner is a 'dangerous person' as contemplated under Section 2(b-1) of the MPDA Act. He submitted that, by the said Order dated 13th June 2023, the learned Additional Sessions Judge, Pune had granted pre-arrest bail to the Petitioner with certain observations which weigh in his mind while protecting the Petitioner by pre-arrest bail. He submitted that, therefore subjective satisfaction arrived at by the Detaining Authority is vitiated as the said Authority did not consider vital documents before passing it. That, as a matter of fact the sponsoring authority did not produce at all the said complete Order of pre-arrest bail before the Detaining Authority and therefore the Detaining Authority had no occasion to consider the same before passing the impugned Order. He

therefore prayed that, the detention Order may be quashed and set aside.

4) Mr.Gavand, learned A.P.P. after perusing entire record fairly conceded to the fact that, except forwarding and producing the Application for bail and the operative part of Order dated 13th June 2023, passed by the learned Additional Sessions Judge, Pune, the complete text of Order was not submitted by the Sponsoring Authority to the Detaining Authority. Despite the said fact learned A.P.P. made feeble attempt to justify the Detention Order passed by the Respondent No.2.

5) Perusal of record clearly indicates that, the Sponsoring Authority i.e. the Senior Inspector of Police, Chaturshunghi Police Station, Pune while forwarding the proposal of the Petitioner to the Respondent No.2 for his detention under Section 3(2) of the MPDA Act had forwarded various documents to the Detaining Authority. The Order of pre-arrest bail dated 13th June 2023, is in connection with C.R.No.275 of 2023 registered with Chatushungi Police Station, Pune. Perusal of index of the documents annexed to the compilation of documents, served upon the Petitioner while serving the Order of detention on him, at Serial No.27 mentions about Application for bail and Order of bail. The said documents are annexed at page 139 to 148 of the compilation. The said same documents are annexed at page Nos.159 to 167 to the Petition. It is an admitted fact on record that, the complete text of Order dated 13th June 2023, passed by the Additional

Sessions Judge, Pune, was not produced before the Detaining Authority by the Sponsoring Authority. Therefore the Detaining Authority was not having the reasons recorded by the learned Additional Sessions Judge while granting bail to the Petitioner in the said crime. According to us, therefore the process of reaching to subjective satisfaction by the Respondent No.2 i.e. Detaining Authority gets impaired for want of basic vital document i.e. the complete text of said pre-arrest bail Order.

6) The Detaining Authority therefore was handicapped to reach to the conclusion as to whether the detention of the Petitioner would be really necessary after his release from jail or granted pre-arrest bail by the Court of competent jurisdiction and if the authority is bonafide satisfied that, such detention is necessary, it can make a valid Order of detention a few days before a person is likely to be released from jail or is actually released from jail. As noted earlier, in the present case the Petitioner was granted pre-arrest bail by the Court of competent jurisdiction and the findings recorded by the said Court were necessary and relevant for arriving at a subjective satisfaction by the Detaining Authority that, the Petitioner in fact is a 'dangerous person' and his being a free citizen would cause breach of peace and public Order may also create law and Order problem in the vicinity. Reliance is placed on the decision of the Supreme Court in case of (i) *Abdul Sathar Ibrahim Manik vs. Union of India & Ors.* reported in (1992) 1

SCC 1 and (ii) *Gousiya Firoz Khan vs. Commissioner of Police & Ors.* reported in *2023 SCC Online Bom.437*.

7) In case of *Alakshit Rajesh Ambade vs State of Maharashtra* (Writ Petition No.626 of 2022, dated 20th December 2022), the co-ordinate Bench of this Court in para 13 has held as under :

“13. It is well settled law that the grounds on which an accused, and a proposed detenu, is granted bail also form important part of the material available against such a person and therefore, it is the duty of the Detaining Authority to also consider that material. After all, the object of a preventive detention order passed under Section 3(1) of the MPDA Act is to curb criminal activities of the person which are considered prejudicial to the maintenance of public order. Grant of bail is an important factor which goes into making up of the requisite satisfaction of the Authority. When considered appropriately, the grounds of bail do impact the decision of the Authority, one way or the other. We would illustrate the point by giving a few examples. In a given case, a person may be granted bail on a ground, inter alia, that he is not likely to tamper with the prosecution's evidence or witnesses. This would be a ground which may strengthen the case of that person and it may

possibly restrain the Authority from passing any detention order. In another case, a proposed detenu is granted bail, not on merits of the matter but, upon a default ground under Section 167 of the Code of Criminal Procedure. There may be another case where the person is granted temporary bail for fulfilling some urgent purpose. In both of these examples, the grounds of bail may not perhaps help the proposed detenu and the Authority may possibly find them to be all the more reason for ordering preventive detention of such a person, provided the other criteria is fulfilled. Such is the importance of the grounds of bail and therefore, they are required to be considered by the Detaining Authority while passing the order of detention. This is the law laid down by the Apex Court in the case of Abdul Sathar Ibrahim Manik Vs. Union Of India [1991 AIR 2261], which has been followed by this Court in several of its judgments including the judgment delivered in the case of Ratnamala Mukund Balkhande Vs. State of Maharashtra [2022 All M.R. (Cri) 3106]”.

8) After applying the aforesaid ratio to the case in hand we are of the considered opinion that, the subjective satisfaction reached by the Detaining Authority while passing the impugned Order gets vitiated for not

considering all the necessary and relevant documents which have been referred to and relied upon by it.

9) In view of aforestated deliberation, the impugned Order of Detention dated 6th July 2023, deserves to be quashed and set aside.

Hence, the following Order :-

- (a) Detention Order dated 06/07/2023 bearing No.OW.NO./CRIME/PCB/DET/DUBLE/CHATURSHUNGI/265/2023 is quashed and set aside.
- (b) Petition is allowed in terms of prayer clause (b).
- (c) Petitioner/detenuue be released from jail forthwith, unless required in any other case (s).
- (d) Rule is made absolute in the aforesaid terms.

10) All the concerned to act on an authenticated copy of this order.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)