

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

**CRIMINAL WRIT PETITION NO. 3795 OF 2023**

Wasim alias Lal Rashid Hajari  
Age. 39 years, R/o. Sara Apartment,  
Flat No.05, Saibabanagar, Amar Residency,  
Kondhwa Khurd, Pune & House No.54/55  
H P Lohiyanagar, Pune (presently detained  
at Nagpur Central Prison) .... Petitioner  
v/s.

- 1) Commissioner of Police, Pune City
- 2) The State of Maharashtra (Through  
Addl. Chief Secretary to Government of  
Maharashtra Mantralaya, Home Department  
Mantralaya, Mumbai.
- 3) The Superintendent  
Nagpur Central Prison, Nagpur .... Respondents

Ms. Jayshree Tripathi a/w. Ms. Anjali Raut for the Petitioner.  
Ms. P.P. Shinde, APP for the State.  
Ms. Snehal Jadhav, PSI, Kondhwa Police Station, present.

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

**DATED : 15<sup>th</sup> MARCH, 2024.**

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

- 1) By this Petition under Article 226 of the Constitution of India, Petitioner has questioned the legality of Order dated 08<sup>th</sup> August, 2023 passed 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 of

Essential Commodities Act, 1981 (for short 'the MPDA Act'), issued by the Respondent No.1, directing detention of the Petitioner.

1.1) By an Order of even date, the Respondent No.1 issued Committal Order directing that, the Petitioner be detained in Nagpur Central Prison, Nagpur.

2) Heard Ms. Tripathi, learned Advocate for the Petitioner and Ms. P.P. Shinde, learned A.P.P. for the State. Perused entire record produced before us.

3) Record reveals that, along with the Detention and Committal Orders dated 08<sup>th</sup> August 2023, the Petitioner was also served with the Grounds of Detention of even date. The Sponsoring Authority so also the Detaining Authority have taken recourse to the criminal antecedents of the Petitioner. Present Detention Order is a sequel of one crime registered against the Petitioner in near past and two in-camera statements/ confidential statements of two witnesses, from the vicinity of Samarth Police Station, Pune. The said crime is C.R.No.136 of 2023 registered at Samarth Police Station, Pune City dated 15<sup>th</sup> June, 2023 under Sections 143, 147, 148, 307, 323, 324, 504, 506 read with Section 149 of the Indian Penal Code; Sections 37(1)(3)/135, 142 of Maharashtra Police Act; Sections 4(25) of Indian Arms Act and Sections 3 and 7 of Criminal Law Amendment Act.

3.1) Record indicates that, in the said crime, Petitioner was

arrested on 16<sup>th</sup> June, 2023 and since then even as of today, he is behind bars. The said two in-camera statements of the witnesses have been recorded after the Petitioner is arrested.

4) It be noted here that, on the date of passing of the Detention Order dated 08<sup>th</sup> August 2023, the Petitioner did not file an Application for releasing him on bail and therefore, there was no reasonable apprehension to believe that he would be granted bail under normal law of the land at any time as the offence alleged against him is not compulsorily punishable with death sentence.

4.1) The Detaining Authority while recording its subjective satisfaction in Paragraph 8 of the grounds of detention, has observed that, the Petitioner is in judicial custody in the offence of Samarth Police Station, Pune in C.R.No.136 of 2023. That, in future he may be granted bail under an ordinary law of land as the said offence is not compulsorily punishable with death sentence. In view of his tendency and implication reflected in the offence committed by him as noted therein, as well as the incident recorded in in-camera statement, Respondent No.1 recorded it's subjective satisfaction that, after availing bail facility and becoming a free person, the Petitioner again is likely to revert to criminal activities. The Detaining Authority therefore has reached to the subjective satisfaction that, the Petitioner is a 'Dangerous Person' as contemplated under Section 2(b-1) of the MPDA Act and has passed the said Detention Order.

5) The Hon'ble Supreme Court in the case of *Rekha v/s. State of Tamil Nadu through Secretary to Government and another* reported in (2011) 5 SCC 244, has held as under :-

*“ 27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed. ”*

6) From the facts narrated hereinabove, it is apparently clear that, the Petitioner is arrested in the said crime i.e., C.R.No.136 of 2023 registered at Samarth Police Station, Pune on 16<sup>th</sup> June, 2023 and since then he is behind bars. He had not filed an Application for bail on the date of issuance of Detention Order.

6.1) As a matter of fact and as per the statement of learned Advocate for the Petitioner, the Petitioner had filed an Application for bail in the month of January, 2024 and by an Order dated 29<sup>th</sup> January, 2024

the learned Additional Sessions Judge, Pune was pleased to direct the Petitioner to be released on bail on certain conditions.

7) It is thus clear that, the Detaining Authority was aware of the fact that, the Petitioner was in judicial custody and he had not filed an Application for bail when the Order of Detention was passed. The subjective satisfaction of the Detaining Authority that, the Petitioner would be granted bail under ordinary law of land on 08<sup>th</sup> August, 2023 i.e., on the date of passing of the said Order, was therefore not founded on the reasonability of the material produced before it. Therefore, the subjective satisfaction of the Detaining Authority that, the Petitioner would be granted bail under an ordinary law of land and after grant of bail he is likely to indulge in the activities prejudicial to the maintenance of the public order, therefore cannot be sustained. According to us, this is not sufficient requirement to issue an Order of Detention while the detenu was in custody.

8) There cannot be second opinion about the settled legal position that, even in case a person is in custody, the Detention Order can validly be passed. However, the Detaining Authority should have reason to believe on the basis of the reliable material placed before it that, there is a real possibility of the detenu being released on bail and being so released he would in all probability indulge in prejudicial activity and it is necessary to detain him to prevent him from indulging into activities prejudicial to

the maintenance of the public order.

9) In the case in hand, the subjective satisfaction reached by the Detaining Authority does not reflect that, the reliable material was placed before him by the Sponsoring Authority to subjectively arrive at the said conclusion. According to us, on the date of passing of Detention Order there was no cogent material before the Respondent No.1, to arrive at the said conclusion that, the detenu might be released on bail in near future.

10) In paragraph 11 of the Affidavit-in-reply filed by the Detaining Authority it is denied that, the then Detaining Authority has not recorded his satisfaction to the effect that, there is imminent/real possibility of the Petitioner's release on bail based on any cogent material, which is a mandatory requirement while passing a detention order against a person, while he is in custody. It is further stated that, in view of the tendency and inclination reflected in the offences committed by the detenu, the then Detaining Authority was satisfied that after availing bail facility and becoming free person, the detenu is likely to revert to similar activities which are prejudicial to the maintenance of public order in future and therefore, it was necessary to detain the Petitioner to prevent him from acting in prejudicial manner in future. According to us, these assertions are not in consonance with the material on record, in reaching to the subjective satisfaction by the Detaining Authority.

11) As noted earlier, there was no cogent material placed before

the Detaining Authority on the basis of which the Detaining Authority was satisfied that, the detenu was likely to be released on bail. Perusal of record would indicate that, no such inference can be drawn in that behalf. It is a settled position that, mere *ipse dixit* of the Detaining Authority is not sufficient to sustain the Order of Detention. There was no reliable material before the Detaining Authority on the basis of which it recorded satisfaction that, there was a reason to believe that the Petitioner is likely to be released on bail.

12) In view of the above deliberation, the impugned Detention Order is therefore rendered unsustainable in the eyes of law and deserves to be quashed on that ground alone.

12.1) Hence, the following Order :-

- (a) Detention Order dated 08<sup>th</sup> August, 2023 bearing OW.No./CRIME PCB/DET/KONDHWA/HAJARI/354/2023 passed by the Respondent No.1 is quashed and set-aside.
- (b) Petition is allowed in terms of prayer clause (b).
- (c) Petitioner-Wasim alias Lal Rashid Hajari be released from jail on production of authenticated copy of the Operative part of the present Order, if not required in any other case/cases.
- (d) Rule is accordingly made absolute.

PREETI  
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(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)