

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 162 OF 2024

Mahendra Avinash Patil @ Motya	]	
Age 27 years,	]	
R/o. Room No.313, Hanuman Nagar,	]	
Reliance Gate No.3, Mahape, Navi Mumbai	]	
District Thane.	]	
Presently lodged in Yerwada Central Prison, Pune	]	... Petitioner

V/s.

1.	Commissioner of Police, Navi Mumbai	]	
2.	The State of Maharashtra	]	
	Through, Addl. Chief Secretary	]	
	to Government of Maharashtra	]	
	Mantralaya, Home Department,	]	
	Mantralaya, Mumbai	]	
3.	The Superintendent	]	
	Yerwada Central Prison, Pune	]	... Respondents

Ms. Jayshree Tripathi a/w Ms. Anjali Raut for Petitioner.
Mr. J.P. Yagnik, A.P.P. for Respondents-State.

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

DATE : 23rd APRIL 2024

ORAL JUDGMENT (Per : A. S. Gadkari, J.) :-

(1) Petitioner has impugned the Detention Order bearing No. /PD/DO/MPDA/01/2023 dated 21/09/2023, issued by Respondent No.1, the Commissioner of Police, Navi Mumbai, 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 (Conditions of Detention) Act, 1981 (Mah. Act No.IV of 1981) (Amendment 1996, 2009, 2015) ('MPDA Act'), directing detention of the Petitioner. By a Committal Order of even date, the Petitioner is directed to be detained at Yerwada Central Prison, Pune for undergoing the period of detention.

(2) Heard Ms. Tripathi, learned Advocate for the Petitioner and Mr. Yagnik, learned A.P.P. for Respondents. Perused the entire record produced before us and the Affidavits in Reply of Respondents.

(3) Ms. Tripathi, learned counsel for the Petitioner raised two main grounds while assailing the grounds for detention of the Petitioner :-

- (i) That, the Detention Order dated 21st September 2023, Committal Order and Grounds for Detention were and are never served upon the Petitioner at the time of its execution. Though, the Petitioner was made to sign about 200 pages acknowledging receipt of the said documents, the said documents infact were never served upon the Petitioner. As a result, the Petitioner was precluded to make a representation with the Statutory Authority(s) seeking, either for withdrawal of the said detention or its appropriate consideration by the concerned Authority.
- (ii) That, though the Petitioner through his Advocate made a representation dated 8th January 2024 to the Superintendent, Yerwada Central Prison, Pune, which the State Government received on 9th January 2024, seeking the said documents or the entire compilation of the said documents pertaining to his detention for filing a Writ Petition before this Court, the same were not supplied to him and by a communication dated 18th January

2024, the State Government has mechanically rejected his representation for the same.

(4) As far as the first point noted hereinabove, i.e. non-service of Detention Order, Committal Order and Grounds of Detention is concerned, the Detaining Authority has maintained an office copy of the original documents served upon the Petitioner. The compilation of the said office copy consists of 191 pages. Perusal of the said compilation clearly indicates that, on each and every page, the Petitioner has signed, acknowledging that he has received the said copy on 23rd September, 2023.

(5) Record further reveals that, on 23rd September, 2023, i.e. at the time of service of impugned Detention Order dated 21st September 2023 along with a Committal Order dated 21st September, 2023, the Senior Inspector of Police, Turbhe Police Station, had recorded the statement of Petitioner. In its penultimate paragraph, the Petitioner has admitted the fact that, on the same day and date, he had been handed over with a complete compilation of Detention Order and other documents in English Language and its translation in Marathi vernacular. That, he read the entire set of documents and after understanding the contents, he has signed the said statement towards its acknowledgment.

(6) It is thus clear that, the Petitioner was served with the entire set of Detention Order, Committal Order and Grounds of Detention by the Senior Inspector of Police, Turbhe Police Station on 23rd September 2023. Therefore, according to us, it is not only a sham and moonlight plea adopted, but it tends

to a palpably bogus plea adopted by the Petitioner.

(7) The Detaining Authority has filed an Affidavit dated 26th February 2024. In sub-para of para (8), it is stated that, the Detention Order dated 21st September, 2023, was executed upon the Petitioner, detenu on 23rd September, 2023 and at that time, the Grounds of Detention along with all documents as referred to in the Index thereof, i.e. total (50) documents, runs into page Nos.1 to 192 were given to the Petitioner and he has signed the same. The said averment in the Affidavit is in consonance with the original record maintained by Office of Commissioner of Police, Navi Mumbai, for which we have no reason to have any different opinion or deviation from the same.

(8) As far as second ground as noted above is concerned, it is a fact on record that, the Petitioner through his Advocate made representation to Respondent No.2, through Respondent No.3 dated 8th January 2024, which Respondent No.2 received on 9th January, 2024. In para (3) thereof, the Petitioner has taken the ground that, the Detention Order, Committal Order and Grounds of Detention, have not been served upon him and the copies thereof be supplied to him for filing a Writ Petition before this Court. That, when wife of the Petitioner approached her Advocate and when it was inquired about the said documents, the wife of the Petitioner informed her Advocate that, the said documents were not supplied to the Petitioner and therefore detenu was deprived of from making any representation against the Order of detention.

(9) As noted above, it is a matter of fact on record that, the Detention Order dated 21st September, 2023 along with Committal Order dated 21st September 2023 and Grounds of Detention were infact served upon the Petitioner on 23rd September 2023, when the said Order was executed upon him at Turbhe Police Station, Navi Mumbai. The statements in the Affidavit of Detaining Authority are duly corroborated by contemporaneous record maintained, including the statement of the Petitioner recorded on 23rd September, 2023 while executing the Detention Order, by the office of Respondent No.1. It may be noted here that, the State Government has decided the representation of the Petitioner expeditiously and the entire process is completely within a period of approximately within 10 days.

(10) As noted earlier, record clearly indicates that, the Petitioner was served and handed over with the aforesaid documents on 23rd September, 2023 at the time of execution of the Detention Order and therefore according to us, the instructions given to the Advocate for the Petitioner are incorrect and/or not true.

(11) In view of the above, we find no merits in the Petition and is accordingly dismissed. Rule is discharged.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

RAJESH
VASANT
CHITTEWAN
Digitally signed
by RAJESH
VASANT
CHITTEWAN
Date:
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