

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

WRIT PETITION NO.945 OF 2024

Sharuk Sayeed Khan Age- 27 Years, Occupation - Labour Residing at Nagpur Chawl, Yerwada Pune 411040	}	Petitioner
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Versus

1. The Commissioner of Police, Pune Having address at : Police Commiss- ioner Office, Sadhu Waswani Chowk, Pune 2. The State of Maharashtra through Secretary, Home Ministry (Summons to be served upon Office of Government Pleader, High Court, Mumbai) 3. Superintendent Chandrapur Central Prison	}	Respondents
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Mr. Manoj Gadkari a/w Ms Jyoti Yadav and Mr. Kiran Jadhav,
for the Petitioner.

Mr. J. P. Yagnik, APP, for the Respondent - State.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 26th JULY, 2024**

P.C:-

1. The Petitioner herein is challenging the order issued by Respondent No.1, the Commissioner of Police, Pune, in exercise of his powers 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 “the MPDA Act, 1981) dated 24.01.2024. It is the contention of the Petitioner that, by communication dated 24.01.2024, he was communicated the grounds of detention. While giving details about the reason for passing the order of detention, reliance is placed on para 5, 5.1 and 5.2 of the grounds of detention.

2. The Petitioner has made a representation to the Superintendent of Jail, Chandrapur for revocation of the order of detention on 16.02.2024.

In the present Writ Petition, the Petitioner has raised certain grounds, on the basis of which he is challenging the order of detention. The said grounds are made out in ground No. (i) to (xiii), amongst which, the specific reliance placed by the Petitioner is on the ground No. (vi), which reads thus:

“(vi) The material which has been relied upon by the Detaining Authority, as is evident from the grounds of detention furnished to the petitioner, does not justify the impugned order of detention. The said authority relied on CR No. 691/2023 wherein the detenu/petitioner was arrested on 25/10/2023 and was also granted bail by the Competent Court of law on the same day, and in the CR No. 789/2023 the detenu came to be arrested on 04/12/2023. However the authority has wrongly interpreted that in the said CR 789/2023 the Accused was arrested on 04/12/2023 was in Magisterial Custody till 16/12/2023, infact the documents submitted by the authority shows that the Accused was released on i.e. on 04/12/2023 as was granted bail by the Competent Court of law on the same day, thereafter there are no prejudicial activities of the detenu/Petitioner. The allegations against the petitioner, even if taken at par, would reveal that the offences were not serious and, in any event, the incidents arose out of personal animosity. The act and conduct

attributed to the petitioner, by no stretch of imagination, can be said to be prejudicial to the maintenance of public order. The impugned order thus suffers from the vice of non-application of mind. The personal liberty of the petitioner has been trampled upon on the basis of unsustainable grounds."

Alongwith the said ground, the Petitioner has also raised certain other grounds, but compared to the grounds which is communicated in ground No. (vi), the other grounds do not attach importance.

3. In the affidavit filed by the Commissioner of Police, Pune, who is the Detaining Authority, it is stated that, the Detaining Authority has carefully gone through the material placed before him and after the verification of the in-camera statements, and after subjectively satisfying himself that the detenu is a weapon-wielding, dangerous desperado, of violent character, indulging in terrorizing activities, the order has been issued against the present Petitioner. According to the Detaining Authority, since the year 2021 the detenu is engaged in criminal activities and his activities have created a reign of terror in the minds of people as he and his accomplices move, armed with deadly weapons and do not hesitate to use the said weapons while committing the offences such as hurt, possessing illegal arms etc.

The detenu has been habitually committing offences under Chapters XVI and XVII of the Indian Penal Code as well as Chapter V of the Arms Act. Thus the detenu is a 'dangerous person' as defined under Section 2(b-1) of the said Act. Even the preventive actions under Section 107 of the Code of Criminal Procedure had no deterrent effect on the detenu. A

confidential inquiry into the criminal activities of the detenu and his associates was conducted by the Senior Inspector of Police, Yerwada Police Station, who is the Sponsoring Authority. In-camera statements of witnesses 'A' and 'B' were recorded on 26.12.2023 and 28.12.2023, respectively.

4. The Detaining Authority has considered two offences while passing the order of detention. CR No. 691 of 2023 under Sections 324, 323, 504, 506, 34 of the IPC and Sections 3, 7 of the Criminal Law Amendment Act as well as Section 37(1)/135 of the MPA and Section 4(25) of the Arms Act, and CR No. 789 of 2023 under Sections 324, 323, 504, 34 of the IPC and Sections 3, 7 of the Criminal Law Amendment Act have been taken into consideration.

In C.R. No. 691 of 2023, the detenu alongwith his accomplice assaulted the complainant with a sickle and created terror in the area by waving sickle, due to which shopkeepers closed their shops. In the second CR, i.e. CR No. 789 of 2023, the detenu assaulted the complainant with wooden log and kicks and fists. He also threatened the people who gathered there by waving the wooden log in his hand, due to which the people ran away and the residents of that area closed their doors. It is further submitted that, the last offence registered against the detenu was CR No. 789 of 2023 on 25.11.2023, and he was arrested on 04.12.2023. The case was thereafter under investigation.

It is because of the activities of the detenu, confidential inquiries were conducted by the Sponsoring Authority, which revealed that a number of people were victims of the atrocities of the detenu. On receiving the said proposal forwarded by the

Sponsoring Authority dated 30.12.2023, the proposal was taken into consideration by the Detaining Authority which passed the order of detention on 24.01.2024. The grounds of detention were communicated to the detenu.

5. The Section Officer, Government of Maharashtra, Home Department, Mantralaya, Mumbai has also filed his affidavit giving details about the various steps taken by the various authorities involved in the process of issuance of detention order. According to the affidavit of the said officer, all the steps were taken by the respective authorities right from receipt of report under Section 3(3) of the MPDA Act, 1981, till the date of confirmation of order of detention by the Government on 19.03.2024 within the time line prescribed by law.

6. During the course of hearing, the learned counsel for the detenu/the petitioner has raised various grounds, but the ground which according to us carries importance is ground No. (vi), wherein the Petitioner has taken objection to the contents in the communication, by which the grounds of detention have been communicated to the detenu. In the grounds of detention in para 5.2, the Detaining Authority has given the details about the CR No. 789 of 2023 registered against the detenu. It is stated that, the incident had occurred on 24.11.2023 and on the very night the complaint was lodged against the present Petitioner and his uncle. During the investigation, the statements of witnesses were recorded and spot panchanama was conducted. The detenu was arrested on 04.12.2023 and produced before the JMFC Court, Pune. He was remanded to Magisterial Custody till 16.12.2023. On 16.12.2023, he

applied for bail before the JMFC Court, Pune, which was granted.

7. The learned counsel for the Petitioner has drawn our attention to the papers supplied to the Petitioner alongwith the grounds of detention. Amongst the said papers on Page 103 of the Writ Petition, the Application for Bail in CR No. 789 of 2023 has been placed on record. The said Bail Application is undoubtedly dated 04.12.2023, as averred in the grounds of detention, however, the date of grant of bail to the detenu has been wrongly mentioned in the grounds of detention as 16.12.2023. In fact, the very day on which the said Application was made i.e. on 04.12.2023, an order has been passed by the JMFC Court, Pune, itself, granting bail to the detenu/petitioner on the same day. The said order is on page No. 104 of the Writ Petition. The Detaining Authority has wrongly mentioned the date for grant of bail to the detenu. This shows that, the Detaining Authority has not applied his mind to the case of the Petitioner and has mechanically passed the order without application of mind.

8. In para 8, the Detaining Authority has categorically stated that, he has relied upon the material mentioned in paras 5.1, 5.2, 6.1 and 6.2 of the grounds of detention to arrive at subjective satisfaction that the detenu is a 'dangerous person' as defined under Section 2(b-1) of the MPDA Act and that his criminal activities are prejudicial to the maintenance of public order. The said averment does not appear to be correct from the discussion as above. The Detaining Authority has not at all applied his mind to the material placed before him, and has mechanically undertaken the exercise of passing

the order of detention. This reflects the cavalier and casual attitude of the Detaining Authority which has caused the Petitioner his personal liberty.

9. This Court as well as the Hon'ble Apex Court has time and again expressed the importance of personal liberty of the citizens through various judicial pronouncements. The nature of the MPDA Act is such that, a person is detained without being tried, therefore, it is all the more important to be cautious while restricting the personal liberty of a person. Thus, the stringent provisions such as subjective satisfaction of the Detaining Authority before passing order assumes its importance.

Since the Detaining Authority has committed an error while referring to the date of grant of bail and has passed the order of detention without actual subjective satisfaction, the same needs to be quashed. In view of the conspectus of the matter, the order of detention issued by the Respondent No. 1 is quashed and set aside and rule is made absolute in terms of prayer clause (a), which reads as under:

“(a) This Hon'ble Court may, by way of appropriate Writ order, may kindly be quashed and set aside order dated 24/1/2024 bearing No: OW.NO./ CRIME PCB/ DET/ YERWADA/ KHAN/ 132/ 2024 passed by the Commissioner of Police, Pune City.”

Resultantly, the Petitioner shall be released forthwith.

No order as to costs.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)