

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

CRIMINAL WRIT PETITION NO.1464 OF 2024

Shubham Pramod Shinde

.... Petitioner

Versus

State of Maharashtra and Ors.

.... Respondents

.....
Mr.Ashwin Thool a/w. Mr.Jaymangal Dhanraj, Sarthak
Bharsakle, Archishmati Chandramore, Advocate for the
Petitioner.

Mr.J.P. Yagnik, APP for Respondent – State.

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***CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.***

DATED : 12th AUGUST 2024.

ORDER (Per : Manjusha Deshpande, J.)

1 The Writ Petition is taken up for final disposal with
the consent of parties.

2 The petitioner is aggrieved by the Order of Detention
issued by respondent no.1 on 23rd January, 2024. The Order of
Detention is issued by respondent no.1 in exercise of his powers
conferred under Section 3(2) of the Maharashtra Prevention of
Dangerous Activities of Slumlords and Bootleggers, Drug

Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-marketing Essential Commodities Act, 1981 (Mah.Act No.LV of 1981)(Amendment-1996, 2009, 2015) (“MPDA Act”, for short).

The petitioner was served with the Order of Detention alongwith the Committal order and the grounds of Detention. The petitioner has also made a representation against the said alleged illegal Detention, which has been rejected *vide* order dated 5th March, 2024. Thereafter, the petitioner is challenging the Order of Detention alongwith the order of rejection of his representation.

3 The petitioner is challenging the order of Detention on the ground that the impugned order is illegal, arbitrary and stigmatic. The impugned order has been issued without application of mind and in a mechanical manner, without adhering to the settled legal precedents. The petitioner contends that the subjective satisfaction of the respondent is based on consideration of extraneous material and non consideration of relevant record. It is further contention of the petitioner that the Hon’ble Apex Court in several judgments has held that,

while passing Order of detention, the Detaining Authority must consider the bail granted to the detenu and reasons mentioned in the said bail order.

It is the case of the petitioner that, the respondent Detaining Authority has recorded subjective satisfaction without taking into consideration the factual aspect of grant of bail to the petitioner.

4 The petitioner has raised various grounds in the Writ Petition in order to demonstrate the arbitrariness of the Order of Detention issued against the petitioner. While making his submissions, the learned counsel for the petitioner has invited our attention to the grounds of Detention communicated to the detenu. In the said grounds, in paragraph no.5.1, the Detaining Authority has observed that:

“You were arrested on 19/12/2023 and produced before the Hon’ble J.M.F.C. Court, Shivajinagar, Pune. You were remanded to police custody till 21/12/2023, subsequently you were remanded to magisterial custody till 03/10/2023. You applied for bail before Hon’ble Court on 22/12/2023, which is pending before court. Presently, the case is under investigation.”

5 The petitioner has invited our attention to the averments in Writ Petition in paragraph no.4 (iv), he has stated that the learned Sessions Court was pleased to release him on bail by order dated 20.01.2023 i.e. three days prior to the impugned Order. The Order of Detention has been issued on 23rd January, 2024 and the order of bail has been granted in favour of the petitioner on 20th January, 2024.

6 After the petitioner has pointed out the above inconsistencies and non application of mind, we had called upon the learned APP to explain the said ground raised by the petitioner.

 The learned APP has relied on the affidavit filed by the Commissioner of Police, Pune City, Pune. In paragraph 11 of the said affidavit the Detaining Authority has stated that, the Bail Application was decided by the Court on 20.01.2024, but the said copy was not placed before the Detaining Authority, while passing of Order of Detention on 23.01.2024. That is the only response by the Detaining Authority, which cannot be termed as an explanation given by the Detaining Authority. In fact, it supports the contention of the petitioner that, though the bail order was issued on 20th January, 2024, while passing the

Order of Detention on 23rd January, 2024, same was not considered by the Detaining Authority, which shows total non application of mind on his part.

7 The Detaining Authority is totally ignorant about the order of bail, as he has recorded in paragraph no.5.1 that the detenu has applied for bail, which was pending before the Court. The Detaining Authority in paragraph no.8 of the grounds of Detention has also observed that, he has relied on the material mentioned in paragraphs 5.1, 6.1 and 6.2 of the grounds of Detention to record his subjective satisfaction that, the detenu is a “Dangerous Person” as defined in Section 2(b)(1) of the MPDA Act, 1981. It is further observed that, the detenu is likely to be granted bail under the Ordinary Law of Land, when in fact, he was already on bail on the day of passing of the Detention Order.

8 This shows the Detaining Authority has recorded his subjective satisfaction without application of his mind and has recorded that, after availing bail facility and becoming a free person, the detenu is likely to revert to the similar activities which are prejudicial to the maintenance of public order, and

therefore, it is necessary to detain the petitioner to prevent him from acting in a manner prejudicial to the maintenance of public order.

9 The petitioner has also invited our attention to the criminal history of the petitioner referred in the grounds of Detention, to demonstrate his habituality of committing serious offences, where only one offence has been shown in the chart. Similarly, for recording the subjective satisfaction that, the petitioner is a “Dangerous Person” within the meaning of Section 2(b-1) of the MPDA Act, the Detaining Authority has relied on one offence and two in-camera statements. The offence which has been relied upon has been registered on 19th December, 2023, being C.R.No.378 of 2023, for offences punishable under Sections 307, 323, 504 and 506(2) of IPC, and under Section 37(1)/135 of MPDA Act and under Section 7 of the Criminal Law (Amendment) Act.

The in-camera statements of witness “A” has been recorded on 3rd January, 2024 for THE incident that had occurred on 09th November, 2023, which has been verified on 22nd January, 2024. The statement of witness “B” has been

recorded on 6th January, 2024 for incident of 23rd November, 2023, which has been verified on 22nd January, 2024.

The respective dates of the two in-camera statements itself indicate that there is no proper application of mind and subjective satisfaction by the Detaining Authority.

10 Though the petitioner has raised various grounds, the ground regarding passing the Order of Detention, by recording subjective satisfaction without taking into consideration grant of bail in favour of detenu, itself is sufficient for quashing of the order, since it suffers from non-application of mind by the Detaining Authority.

11 While perusing the affidavit filed by respondent no.1, Commissioner of Police, Pune City, Pune, we have come across the name of the person swearing the affidavit, which again supports the contention of the petitioner about non application of mind by the Detaining Authority.

The Detention order is issued by the then Commissioner of Police, Retesh Kumaarr. Whereas, the affidavit

has been filed by Amitsh Kumar, present Commissioner of Pune City, Pune. This Court has time and again held that the affidavit in support of the Detention Order has to be filed by the concerned Detaining Authority, who has passed the Order of Detention. Since the subjective satisfaction is a relative term, it has to be explained by the person who has passed the order after recording his subjective satisfaction. Affidavit by an officer other than the officer, who has passed the said order is not acceptable since the said officer is not aware, about the basis on which subjective satisfaction is recorded by the concerned Authorities.

This Court had an occasion to consider this issue in case of ***Nihal Ravindra Kumbhar Vs. District Magistrate, Pune and Ors.***, in Writ Petition No.755 of 2024. While deciding the said Writ Petition, this Court has observed thus :

“ In the present case also the order of detention is passed on 03.08.2022 by District Magistrate- Dr. Rajesh Deshmukh, whereas the affidavit has been sworn by Dr. Suhas Diwase, who has no knowledge about the proceedings, the nature of case and above all, he is not the authority who has recorded the subjective satisfaction. Recording of subjective

satisfaction is an important exercise to be undertaken by the Detaining Authority, before issuing the order of detention. Since the affidavit is sworn by a person other than, who has recorded his subjective satisfaction, the explanation given by the said authority in his affidavit cannot be taken into consideration.”

While deciding the above Writ Petition, the judgment of ***Gazi Khan Alias Chotia Vs. State of Rajasthan***¹, was relied upon. In the said judgment, the practice of allowing a public officer to file affidavit, who has not dealt with the case at any point of time or at any level and who in the very nature of the case, could not have any personal knowledge of the proceedings, has been deprecated. The Hon’ble Apex Court has held that, the counter and reply affidavits filed by such officers merit nothing but rejection.

The facts of the present case are similar to the facts in the case of ***Nihal Ravindra Kumbhar Vs. District Magistrate, Pune and Ors. (Supra)***. Therefore, even this Writ Petition will be covered by the observations made in the said order.

1 1990 DGLS (SC) 279 : 1990 AIR (SC) 1361

In view of the above observations, the order passed by the Detaining Authority being erroneous, and unsustainable, is required to be quashed and set aside. Accordingly, the Order of Detention dated 23rd January, 2024, and subsequent order of confirmation dated 19th March, 2024, are quashed and set aside and the Writ Petition is made absolute in terms of prayer Clause (b), which reads thus:

“b. Issue an appropriate writ, order and/or direction quashing and setting aside the Impugned Order bearing Number OW.NO.CRIME PCB/DET/PARVATI/SHINDE/111/2024 dated 23.01.2024 issued under section 3 of the MPDA Act and the Petitioner be released forthwith;”

Writ Petition stands disposed off.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)