



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.116/2024

Sahil Ali Mujjafar Ali,
aged about 23 years,
Occ. Labourer, R/o Ramrahim
Nagar, Yavatmal, Tq. Yavatmal,
Distt. Yavatmal, at present
District Prison, Akola.

... Petitioner

- Versus -

1. State of Maharashtra,
through its Secretary, Home
Department (Special) Mantralaya,
Mumbai.

2. District Magistrate/ Collector,
Yavatmal, Tq. and Distt. Yavatmal.

... Respondents

Mr. S.V. Sirpurkar, Advocate for the Petitioner.
Mr. M.K. Pathan, A.P.P. for Respondent Nos.1 and 2.

CORAM: VINAY JOSHI & MRS.VRUSHALI V. JOSHI, JJ.

DATE OF JUDGMENT: 9.8.2024.

JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard Mr. S.V. Sirpurkar, learned Advocate for the
petitioner and Mr. M.K. Pathan, learned A.P.P. for respondent
Nos.1 and 2. **Rule.**

2. The challenge in this petition is to the impugned detention order dated 14.9.2023 passed by respondent No.2 and its confirmation order dated 31.10.2023 passed by respondent No.1 detaining the petitioner for 12 months in terms of Section 12(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981.

3. The impugned detention order shows that it is based on three offences and two in-camera statements. The offences taken into consideration while passing the detention order are as under:-

(i) Crime No.0350/2023 under Sections 324, 204, 504 and 506 of Indian Penal Code registered at Police Station, Yavatmal City,

(ii) Crime No.0751/2023 under Sections 324, 323, 504 and 506 of I.P.C. registered at Police Station, Awadhutwadi, Yavatmal and

(iii) Crime No.1167/2023 under Sections 326, 323, 143, 147, 148, 504 and 506 of I.P.C. registered at Police Station, Awadhutwadi, Yavatmal.

In Crime No.0350/2023 the petitioner was released after issuing notice under Section 41 (a)(1) of Cr.P.C.

4. The petitioner has stated that the detaining authority has relied on the confidential statements which are not duly verified by respondent No.2. It shows that there has been non-application of mind by the detaining authority. The satisfaction recorded by the detaining authority is not subjective. The perusal of the confidential statements would reveal that the same are related to individual incidents and do not have any nexus with maintenance of public order. The petitioner has been released on bail in all the three offences relied upon by the detaining authority and the bail orders relating to said offences

were not placed before the detaining authority, therefore, there exists non-consideration of material which vitiates the detention order.

5. Mr. Sirpurkar, learned Advocate for the petitioner submitted that the first offence i.e. Crime No.0350/2023 is *sub judice* before the concerned Court and the other two offences are under investigation. The police officer even did not deem it necessary or appropriate to arrest the petitioner for three offences which are relied upon to pass the impugned detention order. He further submits that the petitioner was not a prime accused as no allegation in respect of carrying or holding deadly weapons at the relevant time are made against him. He has prayed to allow the petition.

6. Mr. Pathan, learned A.P.P. vehemently opposed the submissions made by the petitioner. He submits that respondent No.2 has personally seen the in-camera statements of witnesses and verified them on 8.9.2023 before passing the detention order. The Police Inspector, Police Station, Yavatmal City and

Sub-Divisional Police Officer has personally verified the statements from the witnesses and the detaining authority is fully and subjectively satisfied with the truthfulness of these in-camera statements. He further contends that the offences registered against the detainee are of the nature of causing hurt, threatening, carrying weapons and disturbing the public order. The criminal activities of the petitioner created fear and terror in the mind of members of public. In addition to this, after release of the petitioner on bail he continued to indulge in the activities prejudicial to the maintenance of public order with renewed vigour, therefore, the detention order passed by the respondent No.2 on 14.9.2023 is legal and proper. He has prayed to dismiss the petition.

7. Though the petitioner has challenged the detention order on many grounds, he has mainly relied on the ground that release of the petitioner on bail in two offences and the bail orders of the same were not brought/produced before the detaining authority and not supplied to the petitioner. The relevant

material considered while passing the detention order has not been placed before respondent No.2 and, therefore, detention order vitiated on account of non-consideration of material which was relevant for arriving at subjective satisfaction.

8. In this context reliance is placed by learned Advocate for the petitioner on the judgments of this Court as follows:-

(i) *Criminal Writ Petition No.118/2024 (Tanvir Shaha Alim Shaha V/s. State of Maharashtra and another) decided on 9.5.2024,*

(ii) *Elizabeth Ranibhai Prabhudas Gaikwad V/s. State of Maharashtra, Home Department (Special) and another) reported in 2021 SCC OnLine 206,*

(iii) *Criminal Writ Petition No.592/2021 (Vasudev Mahadev Surve V/s. State of Maharashtra and another) decided on 16.12.2021 and*

(iv) *Criminal Writ Petition No.269/2022 (Kasam Kalu Nimsurwale V/s. State of Maharashtra and another) decided on 26.7.2022.*

In identical circumstances, it was held that when the police authorities did not even deem it necessary or appropriate to arrest the petitioner therein for offences on which reliance was placed in the impugned orders and this fact was not placed before

the detaining authority, the detention orders stood vitiated and deserved to be quashed.

10. On going through the detention order it appears that three offences are considered by the detaining authority. In first offence i.e. Crime No.0350/2023 the notice was issued under Section 41(a)(1) of Cr.P.C. as offence is registered for Sections 324, 204, 504 and 506 of Indian Penal Code. In other offences, the petitioner was arrested and released on bail. The bail orders were not considered by the detaining authority. In reply it is stated that the detaining authority was aware of the fact that petitioner was on bail and as it is specific submission of respondent No.2 that thereafter also his criminal activities continued. It means, this fact that petitioner was on bail was in the knowledge of the detaining authority. In the case of Elizabeth (supra) this Court has relied on the observations made by the Hon'ble Apex Court in the case of Abdul Sattar Ibrahim Manik V/s. Union of India reported in (1992) 1 SCC 1, which read as follows:-

“2.This law is expounded by the Apex Court in the case of Abdul Sattar Ibrahim Manik .vs. Union of India, (1992) 1 SCC 1; AIR 1991 SC 2261 which has been followed by another Division Bench in the case of Paras s/o Ramprasad Sahu vs. State of Maharashtra, (2003) 3 Mh.L.J. 24. In paragraph 8 of this Judgment, the Division Bench has reproduced relevant observations of Supreme Court in the cited case of Abdul Sattar Ibrahim Manik. For the sake of convenience, we would like to reproduce the same as under :

"In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the Detaining Authority has to necessarily rely upon them as that would be vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should be supplied to the detenu."

As this fact is not considered and the bail orders were not placed before the detaining authority while passing the detention order, it do not consider, in any manner, the bail orders passed in the crimes pending against the petitioner and, therefore, the impugned orders cannot be said to be valid in the eye of law, it stands vitiated in view of the law laid down by the Hon'ble Apex Court in the case of Abdul Sattar (supra). In the result, petition is allowed. The impugned orders are hereby quashed and set aside.

The petitioner be set at liberty forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Tambaskar.