



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

CRIMINAL WRIT PETITION NO.262/2024

Sahebrao @ Nitin Wishram @ Isram
Pawar, Aged About 40 years,
Occ. Labourer, R/o Amraipura,
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. Yuvraj Dhande, Advocate for the petitioner.
Mr. A.B. Badar, A.P.P. for respondent Nos.1 and 2.

CORAM: VINAY JOSHI & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 10.10.2024.

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

Heard Mr. Yuvraj Dhande, learned Advocate for the
petitioner and Mr. A.B. Badar, learned A.P.P. for respondent
Nos.1 and 2. **Rule.**

2. By this writ petition, the petitioner has challenged the order dated 9.11.2023 passed by respondent No.2-Collector, Yavatmal, under Section 3(2) 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 which is subsequently confirmed by respondent No.1 on 28.12.2023.

3. The proposal for detention was forwarded by the Police Station Officer, Police Station, Awdhootwadi, Yavatmal to the detaining authority on 2.11.2023. The main ground raised challenging the impugned order in the present petition is that the date on which the proposal of detention was sent by the sponsoring authority i.e. 2.11.2023, the detenu was on bail and neither applications nor orders of bail were made part of the proposal and placed before the detaining authority. Other grounds consist of belated consideration of representation made by the petitioner on 7.12.2023, non-supply of translated

documents in Marathi language, documents including N.C.R. Report, spot-panchanama and seizure panchanama, copy of in-camera statements. It is also contended that verification of the in-camera statements is done by different authority than the recording authority.

4. The offences committed within last six months have been relied upon while passing the detention order i.e. Crime No.699/2023 for the offence punishable under Sections 394, 323 and 506 read with Section 34 of Indian Penal Code registered on 17.5.2023 at Police Station, Awdhootwadi, Yavatmal and Crime No.1261/2023 under Sections 4 and 25 of Arms Act registered on 3.10.2023 at Police Station, Awdhootwadi, Yavatmal.

5. Mr. Dhande, learned Advocate for the petitioner submitted that in Crime No.1261/2023 the crime was registered on 3.10.2023 and the order of detention is passed on 9.11.2023 after a delay of one month and hence there is no live link between

the alleged activities and the detention order. He further submitted that the offences registered against the petitioner are pending before the concerned Court. He has stated that after perusing the entire crime chart and F.I.R it reveals that the petitioner is neither convicted against any criminal cases nor found in possession of any deadly weapon. Also he has not breached any condition mentioned in the bail orders.

6. *Per contra*, Mr. Badar, learned A.P.P has tried to explain the manner of occurrence of the incidents. He submitted that taking into consideration the previous criminal history that since 2015 the petitioner has been maintaining his criminal conduct, carrying deadly weapons to create terror in the locality to commit theft, dacoity, robbery, mischief, abuses and threatening to kill due to which public in the vicinity of Police Station, Awdhootwadi, Yavatmal remained in constant terror, fright and insecurity, therefore, in order to curb all these activities of the petitioner the preventive action was taken against him but his illegal activities continued thereafter also. Learned A.P.P

submitted that the truthfulness and the genuineness of the in-camera statements cannot be doubted as it was recorded by the Police Inspector, Police Station, Awdhootwadi, Yavatmal on 5.10.2023 and 8.10.2023 respectively and personally verified by the Sub-Divisional Police Officer, Yavatmal. He emphasised on Crime No.699/2023 wherein the petitioner when went to consume liquor at the complainant's shop, after the demand of money by the complainant for the purchase, the detenue snatched Ra.1000/- from the complainant's pocket, on the basis of which a complaint has been registered. In Crime No.1261/2023 the petitioner was found hiding, in possession of an iron knife at the cremation ground after which the material was seized by the panchas. Length of the knife was 14.5 inches, length of handle was 4.5 inches and the length of the blade was 10 inches worth Rs.500/-. He contended that perusal of the confidential statements of the witnesses clearly disclose that after consuming alcohol the petitioner always used to beat and threatened to kill the retailers of the shops in the vicinity and ask the complainant /

Witness “A” for monthly instalments. Due to which, nobody dared to come forward to file a complaint against the detenue. According to witness “B” the petitioner used to ask for money to drink alcohol to the complainant as he was a working man and accompanied by his colleagues. When denied by him for the same, detenue threatened that if he wanted to work, he will have to pay. Therefore, the criminal behaviour of the petitioner is more than sufficient to term him as a dangerous person and thus the order passed by the detaining authority is just, proper and legal in the eyes of law.

7. This Court has considered the rival submissions. It is settled law that when detention order is passed, since the freedom of an individual is curtailed, in extraordinary circumstances, the detention order has to be scrutinized with that much strictness.

8. The main ground which is raised by the petitioner is that the bail orders are not considered and not placed before the authority and, therefore, the order is vitiated.

9. Learned Advocate for the petitioner has relied on the judgment in case of Ramesh S/o Kisanrao Dandekar V/s. State of Maharashtra reported in **2022 ALL MR (Cri) 3207** of this Court wherein it has relied on the judgment of Hon'ble Apex Court in case of Rushikesh Tanaji Bhoite V/s. State of Maharashtra and Ors. reported in **2012 ALL SCR 1373** in which the Hon'ble Supreme Court has observed as follows:-

"7. the Petitioner is justified in relying upon the judgment of the Hon'ble Supreme Court in the case of Rushikesh Tanaji Bhoite ..Vrs.. State of Maharashtra and Ors. [2012 ALL SCR 1373] (supra). In the said judgment, the Hon'ble Supreme Court has relied upon earlier judgments of the Hon'ble Supreme Court in the cases of Vijay Narain Singh ..Vrs.. State of Bihar and others, 1984 (3) SCC 14 : [1984 ALL MR ONLINE 192 (S.C.) and Rekha ..Vrs.. State of Tamil Nadu through Secretary to Government and another, 2011 (5) SCC 244: [2011 ALL MR (Cri) 2014 (S.C.)]. After appreciating the position of law in this regard, the Hon'ble Supreme Court in the aforesaid case of Rushikesh Tanaji Bhoite ..Vrs.. State of Maharashtra and Ors. (supra) held in similar circumstances that when bail application and order passed thereon pertaining to the detenu were not placed before the Detaining Authority, the order stood vitiated because the subjective satisfaction of the Detaining Authority was based on material, wherein vital documents were not supplied. In fact, in the following paragraphs, the Hon'ble Supreme Court held as follows: -

“7. The admitted position is that detenu was arrested in connection with the above crime on August 15, 2010 and he was released on bail by the Judicial Magistrate, 1st Class, Dharangaon on that very day. One of the conditions imposed in the Order of Bail was that the detenu would appear at Dharangaon Police Station on every Monday between 10.00 a.m. to 12 O'Clock till the charge-sheet was filed. Later on, the detenu made an application before the Judicial Magistrate, 1st Class, Dharangaon seeking relaxation of the above condition. That application was allowed and the above condition was relaxed by the concerned Judicial Magistrate on January 4, 2011.

8. It would be, thus, seen that the order releasing the detenu on bail in the crime registered on August 14, 2010 and the order relaxing the bail condition were passed by the judicial Magistrate, 1st Class, Dharangaon much before the issuance of detention order dated January 10, 2011. However, the detention order or the grounds supplied to the detenu do not show that the detaining authority was aware of the bail order granted in favour of the detenu on August 15, 2010.

9. In a case where detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

10. In the present case, since the order of bail dated August 15, 2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We

cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority."

10. On perusal of detention order it appears that two crimes are considered while passing the detention order. First Crime is Crime No.699/2023 for the offence punishable under Sections 394, 323 and 506 read with Section 34 of Indian Penal Code in which though it is mentioned that the petitioner was arrested on 19.5.2023. It is not even mentioned that when he was released and whether he was on bail. Another Crime No.1261/2023 which was registered under Sections 4 and 25 of the Arms Act in which notice under Section 41(1)(A) of the Act was issued to him. On perusal of paragraph Nos.8, 8.1 and 8.2 of the impugned order passed by the detaining authority it is clear that there is no reference to bail applications filed by the detenu and whether it was allowed and when he was released on bail is mentioned. Though the bail applications were filed and orders

were passed it was not placed before the detaining authority while passing the detention order.

11. Two confidential statements are considered for passing the detention order. On perusal of original statements it appears that it was not verified by the person who has recorded it. Mere formality is completed by taking the signature of Sub-Divisional Police Officer, Pusad at the backside of said statement (statement "A") which was recorded on 8.10.2023 and direct verification was done by him that too on 11.2.2023. Statement of witness "B" is recorded on 5.10.2023 and it was verified by the S.D.P.O. on 2.11.2023 which cannot be considered as verified by the proper person who has recorded the statement. It is also not even seen by the detaining authority which is not sufficient to subjective satisfaction for passing the detention order.

12. The petitioner has also relied on the judgment passed by this Court in Criminal Writ Petition No.118/2024 (Tanvir Shaha Alim Shaha V/s. State of Maharashtra and another)

delivered on 9.5.2024 in support of the argument that bail orders are required to be placed before the detaining authority and also to be supplied to the detenue.

13. In view of above position of law, we are of the view that the petitioner has made a case for interfering with the impugned order. Accordingly, the writ petition is allowed. The impugned order dated 9.11.2023 passed by respondent No.2 and confirmed by respondent No.1 on 28.12.2023 is set aside.

The petitioner be released forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)