



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

CRIMINAL WRIT PETITION NO.546/2023

Hanif @ Illu Hafiz Ansari,  
Arak, aged about 27 Yrs., R/o Ward  
No.6, Walni, Police Station Khaperkheda,  
Dist. Nagpur.  
(Presently in Central Prison, Nagpur) ... Petitioner

- Versus -

1. The State of Maharashtra,  
through its Secretary, Home  
Department (Special), Mantralaya,  
Mumbai -32.
2. District Magistrate, Nagpur.
3. Superintendent,  
Central Prison, Nagpur. ... Respondents

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Mr. R.M. Daga, Advocate for the Petitioner.  
Mr. S.S. Doifode, A.P.P. for Respondent Nos.1 to 3.  
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CORAM: VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.

DATE OF RESERVING THE JUDGMENT: 4.1.2024.

DATE OF PRONOUNCING THE JUDGMENT: 22.1.2024.

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

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The petitioner by this petition seeks to quash and set aside the impugned order dated 29.5.2023 of detention and impugned order dated 17.7.2023 of confirmation of detention passed by the District Magistrate, Nagpur under the provisions 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 Act, 1981 (for short MPDA).

3. The grounds raised to challenge impugned orders in the petition are:-

*(i) That none of the offences relied upon by the detaining authority, forming basis for passing the detention orders concerned an alleged act which is detrimental to the maintenance of public order, and further the acts alleged in those offences can be at the most termed as acts which are disruptive of law and order,*

*(ii) That the authenticity and contents of the statements have not been verified by the detaining authority, who has neither interacted personally with the witnesses or even ascertained the genuineness of the contents thereof from the concerned ACP,*

*(iii) That the two offences considered for passing detention order, the first offence, according to*

*police only warranted issuance of a notice under Clause (a) of Sub-section (1) of Section 41 of the Code of Criminal Procedure (for short "Cr.P.C.") and, therefore, could not be termed to be of a serious nature. The second offence for which the petitioner has been granted anticipatory bail could be dealt with under regular criminal laws. As such none of these offences could form the material for subjective satisfaction of detaining authority, and thus, the impugned orders are passed without any jurisdiction under Section 3 of MPDA, and*  
(iv) *That the order of detention is passed without reference to or considering the bail orders passed by the Magistrate. Said applications never been placed before detaining authority for consideration, before the impugned orders were passed.*

4. The respondents have filed affidavit in reply dated 13.10.2023 through the District Magistrate, Nagpur reiterating their stand that the petitioner was considered as dangerous person under the MPDA and sought to justify his detention and supported the impugned orders.

5. We have heard the learned Counsel for the parties. Perused the record of the detaining authority and both the impugned orders.

6. The main contention of the petitioner appears to be the two offences which are referred in impugned orders. Crime No.671/2022 which is registered under Section 379 of the Indian Penal Code, is about allegation of theft of 1 brass sand valued at Rs.10,000/-. It is submitted that the said allegation i.e. theft of sand has nothing to do with public peace or there is nothing to show that the because of theft of sand there is disturbance to public order and, therefore, invocation of provisions under MPDA was not warranted and the same has vitiated the subjective satisfaction of the detaining authority.

7. In the other crime vide No.691/2022 there are general allegations against the petitioner in the F.I.R. The alleged incident had taken place inside the house of petitioner. In Crime No.691/2022 the petitioner was released on anticipatory bail. The said bail order was not placed before respondent No.2 for consideration and the same has therefore vitiated the entire process of respondent No.2 of reaching his subjective satisfaction while passing the order of detention as the respondent No.2 is

deprived of an opportunity to consider the relevant material which was available.

8. *Per contra* learned A.P.P. appearing for the respondents has supported the impugned orders. It is submitted that incidents relied upon, justify the passing of the impugned orders. It was further contended that on going through the F.I.Rs. in the two offences, has considered that they disclose acts which could be considered detrimental to the maintenance of public order and would justify the passing of the impugned orders. He further submits that a perusal of in-camera statements “A” and “B” disclose that the involvement of the petitioner in those incidents as a public place, causing alarm to the people in the vicinity and that the same were relied upon by the detaining authority only after being verified.

9. The petitioner has come with the case that the detaining authority relied on two crimes which are not sufficient to invoke the provisions of MPDA Act and not warranted the

detention of the petitioner. We quote the observations of the Hon'ble Supreme Court in the case of Kanu Biswas V/s. State of West Bengal reported in (1972) 3 SCC 831 on question of what constitutes breach of "public order" as opposed to breach of "law and order":-

*"6. The distinction between the concept of public order and that of law and order has been adverted to by this Court in a number of cases. In the case of Dr. Ram Manohar Lohia v. State of Bihar, [1966] 1 S.C.R. 709, Hidayatullah J. (as he then was) said that any contravention of law always affected order, but before it could be said to affect public order, it must affect the community at large. He considered three concepts, law and order, public order and the security of the State, and observed that to appreciate the scope and extent of each one of them, one should imagine the concentric circles. The largest of them represented law and order, next represented public order and the smallest represented the security order, just as an act might affect public order but not the security of the State. In the subsequent case of Arun Ghosh v. State of West Bengal, [1970] 3 S.C.R. 288, the Court dealt with the matter in the following words: "Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance, of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether*

*the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An Act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different."*

7. *The question where a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance, of the public order, according to the dictum laid down in the above case is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call "order publique" and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above, case, is : Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order, or does it affect merely an individual leaving the tranquillity of the society undisturbed? "*

10. In Banka Sneha Sheela Vs. State of Telangana, reported in (2021) 9 SCC 415 the Hon'ble Supreme Court has considered the very same question and has set down the distinction between what acts constitute of breach of public order and those which are, in contradistinction, to be in-contravention of law and order in the following terms:-

*“13. There can be no doubt that for ‘public order’ to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects ‘law and order’ but before it can be said to affect ‘public order’, it must affect the community or the public at large.*

*14. There can be no doubt that what is alleged in the five FIRs pertain to the realm of ‘law and order’ in that various acts of cheating are ascribed to the Detenu which are punishable under the three sections of the Indian Penal Code set out in the five FIRs. A close reading of the Detention Order would make it clear that the reason for the said Order is not any apprehension of widespread public harm, danger or alarm but is only because the Detenu was successful in obtaining anticipatory bail/bail from the Courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining*

*of anticipatory bail/bail orders being the real ground for detaining the Detenu, there can be no doubt that the harm, danger or alarm or feeling of security among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make believe and totally absent in the facts of the present case.”*

11. Relying on the ratio laid down in the above two judgments, the facts alleged in the two offences referred to in the detention orders which formed basis for arriving at the subjective satisfaction by the authority, would require analysis, to determine whether they would be disruptive of public order or they would only constitute breach of law and order.

12. The first offence i.e. Crime No.671/2022 is concerned, is registered for the offence of theft of 1 brass sand valued at Rs.10,000/-. The said allegation i.e. theft of sand has nothing to do with public peace or there is nothing to show that because of theft of sand there is disturbance to public order and, therefore, invocation of provisions under MPDA on said count was not warranted. Moreover, in this case the petitioner was

released on intimation under Section 41A of the Cr.P.C. and was not arrested in Crime No.671/2022.

13. Where the crimes relied upon as material for passing a detention order only required a notice under Clause (a) of Sub-section (1) of Section 41 of the Cr.P.C. to the petitioner. This Court in case of Chandbee W/o Usmaan Patel V/s. State of Maharashtra, in Criminal Writ Petition No.697/2022 has considered the situation and facts. In that judgment, while relying on the earlier judgment of this Court in Kiasam Kalu Nimsurwale V/s. State of Maharashtra passed on 26.7.2022 in Writ Petition No.269/2022, this Court has held that where the crimes are relied upon were of such nature that warranted only issuance of a notice under Section 41 of the Code, they could not be construed as crimes of a nature to form the material for recording subjective satisfaction in terms of Section 3 of the MPDA.

14. The second incident is of Crime No.691/2022. This is registered for the offence punishable under Section 353, 332, 294, 506 read with Section 34 of the Indian Penal Code. In said crime he was released on bail on 21.3.2023. The contents of the complaint in both the crimes do not disclose there was cause for any alarm amongst the members of the public of the area or that the acts complained caused disturbance of normal life in the area of the incident. In fact, crimes were not even felt to be of serious nature and felt to warrant issuance of the notice under Clause (a) of Sub-section (1) of Section 41 of the Cr.P.C. to the petitioner.

15. Applying the ratio of the above two judgments to the facts of this case, in our considered opinion, two crimes relied upon would not form the basis or material for recording subjective satisfaction by the authority in terms of of Section 3 of the MPDA as none of the acts would either be termed to be disruptive of maintenance of public order or in any manner detrimental of its maintenance.

16. Next contention of the petitioner was that in-camera statements “A” and “B” recorded by the concerned Police Inspector could not be relied upon for passing the impugned orders. Record does not show that detaining authority has either ascertained from the officer who had recorded statements, as to the genuineness of their contents or as to unwillingness of the witnesses to come forward and make a formal complaint. It was further contended that the statements are of 2.5.2023 and 4.5.2023. According to the petitioner, said statements were recorded much prior to recording of in-camera statements “A” and “B”. The Police Inspector of Police Station Khaperkheda has forwarded the requisition to S.D.P.O. Kamptee Division and the perusal of said requisition would reveal that statements of witnesses “A” and “B” were already recorded and the S.D.P.O. was requested to verify the contents of said statements. Thus it is submitted that in-camera statements supplied to the petitioner along with chargesheet which shows the date 2.5.2023 and 4.5.2023 deprived the petitioner in making effective

representation. The recording of in-camera statements of witnesses “A” and “B” on 2.5.2023 and 4.5.2023 itself is in doubt as such it can be stated that there is delay of five months in passing the impugned orders of detention from registration of last crime i.e. on 16.12.2022 and the delay is not explained. Same has snapped live link with the criminal activities of petitioner and on this aspect also the subjective satisfaction reached by the respondent No.2 gets vitiated.

17. On perusal of in-camera statements of witnesses “A” and “B” it is clear that the statements only record that the detaining authority has only signed the statement. There is no any endorsement that it is seen by him. The Superintendent of Police (Nagpur Rural) has seen the verification recorded by Assistant Superintendent of Police on 9.5.2023 but do not record that authority has ascertained from the officers who recorded the statements or verifying the authorities that their contents were genuine or that the officers had ascertained form the witnesses

that they were in fact not willing to give a complaint against the petitioner.

18. In case of Sheikh Hussain @ Shahrukh Shaikh Fatru V/s. State of Maharashtra reported in **2023 DGLS (Bombay) 1318** this Court has held in similar fact and situation, wherein it has observed that a detaining authority must record its subjective satisfaction that the statements of witnesses were genuine and that it had interacted with Assistant Commissioner of Police to very such a statement.

19. Applying the ratio laid down in Sheikh Hussain (supra) to the present case, wherein the authority has nowhere recorded its satisfaction that it has passed the order after interlinking with the officer who has verified the statements or that it was satisfied that the contents were genuine, we have no alternative left but to hold that such statements could not be relied upon as material for passing the detention orders.

20. One of the ground is that the bail order was not produced before the respondent No.2 at the time of passing the detention order.

21. The petitioner has relied on paragraph Nos.12 to 14 of judgment in the case of Dipak @ Fantya Ashokrao Kawanpure V/s. State of Maharashtra and Ors. reported in **2002 ALL MR (Cri) 3512** which read as under:-

*“12. In Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Ors. reported in 2012 ALL SCR 1373, the Hon’ble Supreme Court while considering the effect of not placing orders on the record of the Detaining Authority, passed by the Judicial Magistrate First Class, Warud, releasing the detenu on bail for crimes that are referred to by the authorities while passing the orders of detention has held as under:*

*“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.”*

*In this judgment, the Hon'ble Supreme Court has in terms held that since the order of bail was not placed before the detaining authority at the time of passing the order of detention, even though the detaining authority was aware of the order of bail, the detention order was rendered invalid.*

13. The Bombay High Court, while considering the position that when only the operative part of a bail order was placed before the authority for consideration while passing the detention order, whether the detention order would still be vitiated for non-consideration for the reasons contained in the order of grant of bail, has held:

*“9. Of course, it is submitted by learned APP that these five crimes were only considered as indicative of the previous criminal activity and therefore it was not necessary for the detaining authority to consider the reasons for which the detenu was granted bail in each of these crimes. In our respectful submission the argument cannot be accepted. The law settled by Hon'ble Apex Court in the case of Abdul Sathar*

*Ibrahim Manik (supra), is clear in this regard. Hon'ble Supreme Court has in clear terms observed that in the 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 a vital ground for ordering detention. Hon'ble Supreme Court further held that in such a case, the bail application and the order granting bail must necessarily be placed before the authority and the copies should also be supplied to the detenu. It would then mean that, whenever previous crimes registered against the detenu are considered as indicative of continuous criminal activity of the detenu, the detaining authority must also consider the reasons for which the detenu was granted bail in those previously registered crimes. This is because of the fact that those reasons would enable the detaining authority to reach proper satisfaction upon knowing existence of prima facie case against the detenu or otherwise in those previously registered crimes. Besides, as held by this Court in the case of Elizabeth Ranibhai Prabhudas Gaikwad (supra) there should not be any mismatch or unexplained inconsistency between the order passed by one authority granting bail and the order passed by another authority directing detention of that person for the very criminal activity. Consideration of the reasons of bail would help the detaining authority bridge the gap, in some cases, between the reasons for which bail was granted and the reasons for which preventive detention is ordered. Thus, we find no substance in the argument of learned APP made in this regard.*

*10. Learned APP has invited our attention to the case of Lakhan Kisan Tusambad Vs. District Magistrate, Beed and ors. reported in 2022 ALL MR (Cri) 1748,*

*to support the contention that since previous crimes were considered only for the purpose of demonstrating past crime record, non placing of bail orders in those crimes has not adversely affected the detention order. Let us, therefore, consider this case.*

*14. The Nagpur Bench of this Court in its judgment dated 01.07.2022 passed in Ratanmala Mukund Balkhande Vs. State of Maharashtra and Ors., Criminal Writ Petition No.820/2021; (2022 ALL MR (Cri.) 3106), was considering a situation where the detaining authority had knowledge that the detenu was on bail in all seven crimes referred to in the detention order, that the reasons for grant of bail were not placed before the detaining authority, whilst considering the effect of non-placement of the reasons contained in the bail orders passed by the competent Court, it has held:*

*“8. In this case, although, seven crimes registered against the detenu formed the material for reaching the subjective satisfaction of the detaining authority, admittedly, in five of the crimes, in which the detenu was on bail, no bail orders were placed before the detaining authority. This lacuna, in our opinion, has vitiated the satisfaction reached by the detaining authority as it was deprived of opportunity to consider relevant material, though available.”*

22. In case in hand though paragraph No.5.1.4 of grounds of detention mentions that the petitioner has obtained pre-arrest bail order on 21.3.2023, however, it does not reveal the conditions in said order. Therefore, it shows that the granting of anticipatory bail order was not placed before the respondent No.2

at the time of passing the order of detention which as held by the Hon'ble Supreme Court and this Court vitiates the impugned orders.

23. Under these circumstances on the above-said grounds held by us in favour of petitioner we are of the opinion that the impugned detention orders are not sustainable and are passed contrary to the provisions of Section 3 of MPDA.

24. In view of aforesaid reasons, the petition is allowed.

We hereby quash and set aside the impugned orders dated 29.5.2023 and 17.7.2023 passed by the respondents.

We direct that the petitioner be set free forthwith (in crimes registered against him relating to this petition), if not required in any other crime.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)