



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 842 OF 2023

Dikshit @ Guthali Milind Bhagat
Aged about 24 years, Occu. - Labour,
R/o. Pradhyana Nagar, Sant Tukdoji Ward,
Hinganghat, Wardha.

.... **PETITIONER**

// VERSUS //

- 1) State of Maharashtra,
Through its Secretary,
Home Department (Special),
Mantralaya, Mumbai.
- 2) Collector/District Magistrate, Wardha,
Wardha.

.... **RESPONDENTS**

Mr. Mir Nagman Ali, Advocate for the petitioner.
Mr. S.S. Doifode, Additional Public Prosecutor for respondents.

CORAM : **VINAY JOSHI AND**
MRS. VRUSHALI V. JOSHI, JJ.

RESERVED ON : **19.03.2024.**
PRONOUNCED ON : **28.03.2024.**

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

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the learned counsel appearing for the parties.

3. The detenue has been preventively detained vide order dated 28.09.2023 passed by the Respondent No. 2, which has been confirmed by the State on 06.10.2023. These orders are under challenge in this petition.

4. In the detention order, it is mentioned that the offences which are taken into account for the said purpose of detention, are from the year 2020-2023, purporting to 10 offences. Also, there is another statement that, the detention order is based on last 6 month's offences, both are contradictory.

5. According to the learned Counsel for the petitioner, the detention order is patently illegal as it suffers from basic defects. It is well-within the knowledge of detaining authority that, in most of the offences the detenue was on bail and the matters are pending before the concerned Court. The reasons for grant of bail were not produced before the detaining authority. He also submits that some documents were not supplied to the detenue. On these grounds, he urges that the detention order deserves to be quashed and set aside.

6. The petitioner is detained for the reasons of smuggling and transporting country and foreign liquor, illicit possessing and selling and doing the business of illicit liquor. It is submitted that,

detaining authority was supplied with only operative part of bail order passed in Crime No. 481/2020 for offences punishable under Sections 307, 504 read with Section 34 of Indian Penal Code. It is further submitted that, even if it is considered that activities of petitioner are dangerous to public health, same would not mean that activities are creating public order situation.

7. Learned APP for the State opposed the contentions raised on behalf of the petitioner and in favour of his contention, places before us the order of externment dated 16.03.2018 passed by the Superintendent of Police, Wardha, thereby externing the petitioner for a period of two years and states that the petitioner is the member of a gang and along with other members having been allegedly involved in offences punishable under Sections 399 and 402 of the Penal Code and that the non-placing of bail orders in the past crimes does not affect the execution of the detention order. He further submits that in the recent crimes, the above-mentioned needful has been complied with, thus the order shall be carried out.

8. The perusal of the material on record available, in the in-camera statements, Witness A asserts that, there is a possession of country and foreign liquor at the house of the detenue and that he carries a knife and sword with him.

9. All these aspects are subject to satisfaction and verification of the truthfulness of the statements of the confidential witnesses by the Sub-Divisional Police Officer, Wardha, in addition to presence of the nexus in all these relating incidents, if public order is breached, hence prayed to dismiss the petition.

10. We have heard both the parties and perused the record. The main contention of the petitioner is that the authority has made contradictory statement. On perusal of record, it reveals that while passing the order in para 8 it is mentioned that “he has considered 10 offences registered against the petitioner in last 4 years” and at the same time in same paragraph, he has stated that “detention order is based on last 6 months offences registered against the petitioner”. All the crimes since 2020 are discussed while passing the order.

11. The learned Counsel for the petitioner relied on the judgment passed by the Hon’ble Apex Court in ***Khaja Bilal Ahmed Vs. State of Telangana and others***, reported in ***2019 DGLS(SC) 1677***, in paragraph No.15, which reads as under :

“15. In the present case, the order of detention states that the fourteen cases were referred to demonstrate the “antecedent criminal history and conduct of the appellant”. The order of detention

records that a “rowdy sheet” is being maintained at PS Rain Bazar of Hyderabad City and the appellant “could not mend his criminal way of life” and continued to indulge in similar offences after being released on bail. In the counter affidavit filed before the High Court, the detaining authority recorded that these cases were “referred by way of his criminal background... (and) are not relied upon”. The detaining authority stated that the cases which were registered against the appellant between 2009 and 2016 “are not at all considered for passing the detention order” and were “referred by way of his criminal background only”. This averment is plainly contradictory. The order of detention does, as a matter of fact, refer to the criminal cases which were instituted between 2007 and 2016. In order to overcome the objection that these cases are stale and do not provide a live link with the order of detention, it was contended that they were not relied on but were referred to only to indicate the antecedent background of the detenu. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction

of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.”

12. In this case the authority has relied on the crimes registered against the petitioner since 2020. The both in-camera statements of the witnesses are also recorded on 04.08.2023. The general statements against the person involved in selling of the country liquor are made by both the witnesses. There is no nexus and live link between the last crime registered against the petitioner and the detention order passed by the authority.

13. On perusal of the detention order, it is abundantly clear that the detaining authority not only considered the relevant

material but apart from said material, the extraneous material is also considered by the detaining authority.

14. The Hon'ble Supreme Court in the case of ***Mohd. Dhana Ali Khan Vs. State of West Bengal***, reported in ***4 AIR 1976 SC, 734***, while considering the detention order, detention of detenu therein under Section 3 of the Maintenance of Internal Security Act in the facts of the case held in para 13 as under :-

“13. In these circumstances, therefore, we are satisfied that the District Magistrate before passing the order of detention had other materials also before him. It cannot be said to what extent the District Magistrate was influenced by the other materials and not by the material which is mentioned in the ground of detention. Thus the order of detention suffers from a very serious infirmity which goes to the root of the matter. The liberty of the subject being an extremely precious right, where any infraction of such a right is involved in the court must act as a watchdog and a sentinel on the quivive to see that every benefit of the lacunae goes to the detenu.”

The detenu was externed and the documents were placed before detaining authority. Said order was challenged in Criminal Writ Petition No.22/2018, which was allowed but said order was not placed before the authority.

15. The Hon'ble Apex Court in the case of ***Dharamdas Shamlal Agarwal Vs. Police Commissioner***, reported in ***1989 DGLS 161*** :

"7. In the grounds of detention five cases registered against the detenu in respect of which he had been arrested are taken into consideration by the detaining authority to draw his subjective satisfaction that the detenu was disturbing the maintenance of public order. Out of the five cases, two cases mentioned under Serial Nos.2 and 3 are shown as P.T., that is pending trial. In other words on 17.9.88 i.e. the date of passing the order of detention, the detaining authority was of the opinion that the trials of both the cases were not over, though actually the detenu had been acquitted even on 26.8.1988 in the case relating to Crime No.411 of 1982 and on 5.6.88 in the case relating to Crime No.412/82. Though the acquittal of both the cases are admitted, the date of acquittal of Crime No.411/82 is given as 6.7.88 in the counter. In the Writ Petition two ground Nos.10 and 11 are with reference to these cases. They read as follows:

"10. The petitioner states that in the grounds of detention the detaining authority has mentioned erroneously that Case No.411 of 1982 is pending. In fact, the said Case was decided by the Court on 26.8.1988 and the petitioner was acquitted by the judgment dated 26.9.1988 delivered by the Metropolitan Magistrate, Court No.7, Ahmedabad. When grounds of detention were passed and when the detention order was passed in September, 1988, the detaining authority has taken a non existing fact into account that the said

case was pending trial. The detention is liable to be quashed on this ground also.

11. Likewise, the grounds of detention mentioned that Case No.412 of 1982 is pending which is erroneous. The said case was decided on 5.6.1988 and the petitioner was acquitted. The detention is liable to be quashed for taking this non-existent ground."

The petitioner was on bail in all the offences considered by the authority, only operative part of bail order was supplied to authority in Crime No.481/2020 for offences punishable under Sections 307, 504 read with Section 34 of the Indian Penal Code and reasoned bail order was not placed before the authority.

16. It is observed by this Court in the case of ***Ratnamala Mukund Balkhande Vs. State of Maharashtra***, reported in ***2022 DGLS (Bom.), 1650*** in para 9, which reads as under:

"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."

17. In the light of discussion in foregoing paragraphs and as held by the Hon'ble Supreme Court in the cases supra that once the requisite subjective satisfaction of detaining authority is vitiated and the cases which are earlier not

considered are considered by the detaining authority, the detention order renders invalid.

18. In our considered opinion, in the present case, for more than one reason including non-placing of the order of acquittal of detenue and also on other grounds, the requisite subjective satisfaction of the detaining authority stands vitiated rendering the detention order invalid.

19. Accordingly, the Criminal Writ Petition must succeed and we pass the following order:-

- (i) The Criminal Writ Petition is **allowed**.
- (ii) The order passed by the detaining authority dated 28.09.2023 is hereby quashed and set aside.
- (iii) The Petitioner shall be released from detention forthwith if not required in any other matter. The parties to act upon.

20. Rule is made absolute in the aforestated terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)