



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

CRIMINAL WRIT PETITION NO.349/2024

Sheikh Mobin @ Moin Sheikh Israil,
Aged about 24 Years, Occupation Labourer,
R/o Bendkipura, Taluka and District
Yavatmal.
(Presently at Yavatmal Prison)

... Petitioner

- Versus -

1. The Government of Maharashtra
through Section Officer to the
Government of Maharashtra, Home
Department, 2nd Floor, Mantralaya,
Madam Kama Road, Hutatma
Rajguru Chowk, Mumbai 400 032.
2. The District Magistrate, Yavatmal.
3. The Superintendent of Police
Yavatmal, Office of Superintendent
of Police, LIC Square, Taluka and
District Yavatmal 445 001.

... Respondents

Mr. Vivek Awchat, Advocate for the petitioner.
Mr. A.B. Badar, A.P.P. for respondent Nos.1 to 3.

CORAM: VINAY JOSHI & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 17.10.2024.

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

Heard Mr. Vivek Awchat, learned Advocate for the petitioner and Mr. A.B. Badar, learned A.P.P. for respondent Nos.1 to 3. **Rule.**

2. The petitioner has challenged the impugned detention order dated 24.8.2023 passed by respondent No.2 detaining him under Section 3 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 was confirmed by respondent No.1 on 1.9.2023.

3. The detention order is based on two crimes registered against the petitioner i.e. Crime No.231/2023 punishable under Sections 457 and 380 of the Indian Penal Code, registered on 5.5.2023 at Police Station, Mahagaon, Yavatmal and Crime No.418/2023 punishable under Sections 454, 457 and 380 of I.P.C. registered on 22.5.2023 at Police Station, Yavatmal City. The detaining authority has also considered two in-camera

statements of the confidential witnesses “A” and “B” recorded on 19.6.2023 and 20.6.2023 respectively.

4. The grounds of detention which have been emphasized are as under:

(a) For the commission of second offence i.e., Crime No.418/2023, registered on 22.5.2023, the petitioner was already in the custody of the police authority with respect to the first one i.e. Crime No.231/2023 which was registered on 5.5.2023. Hence his presence at two long distances cannot be established. Thus, it vitiates the nexus between the two offences.

(b) The orders granting bail were not supplied to the petitioner and even not considered while passing the detention order.

(c) The subjective satisfaction is not fulfilled on the ground that it is nowhere recorded that the order of detention was passed after interlinking with the officer who has verified the statements or that the contents were genuine.

(d) There is also an unexplained delay of about three months in passing the detention order since the last crime was registered on 22.5.2023 and the detention order was passed on 24.8.2023.

5. The petitioner is detained on the premise that he is an habitual offender and with his associates have been indulging in criminal activities and committing serious offences such as giving death threats, committing house breaking, causing injuries, theft, abuse and so on. The representation was made by the detenue on 12.2.2024.

6. Learned counsel for the petitioner Mr. Awchat submitted that for both the offences in which the petitioner was detained the First Information Reports do not mentioned the name of the petitioner. He states that both the statements recorded were of witnesses residing in the city of Yavatmal, whereas one of the offences was registered at the Mahagaon, Police Station, Yavatmal.

7. On the contrary, learned A.P.P. submitted that in Crime No.231/2023, in the F.I.R the name of the petitioner is not mentioned as the offence is of house-breaking by night and theft and complainant might not know the detenue. In police investigation, police has seized the stolen property from the petitioner and arrested him on 8.5.2023 in the said offence. He further submitted that the in-camera statements were personally verified by the Sub-Divisional Police Officer, Sub Division, Pandharkawda, Distt. Yavatmal on 30.6.2023. The in-camera witnesses have given their statements on the assurance that they would not appear before anybody or in a Court to testify against the petitioner and their identification will be kept confidential, the privilege of which the detaining authority can exercise as per Article 22(6) of the Constitution of India.

8. While passing the order detaining authority has discussed about the past criminal record of the petitioner but two recent offences are considered out of which first is Crime No.231/2023 registered by Mahagaon Police Station for the

offence punishable under Sections 457 and 380 of Indian Penal Code. The said crime was committed on 5.5.2023. Second offence is Crime No.418/2023 for the offence punishable under Sections 454, 457 and 380 of I.P.C registered by Yavatmal City Police Station. It was committed on 22.5.2023. Both the offences were pending for police investigation at that time.

9. The learned Advocate for the petitioner has stated that the name of this petitioner is not in F.I.R. of both the offences. Both the offences are about house breaking and committing theft at night. In first offence, at night grocery shop was broken and the amount of Rs.5,500/-, mobile phone and other property of Rs.5,000/- was stolen by the petitioner from the shop of Naresh Jaiswal. Name of this petitioner was not in F.I.R. as it was against unknown person. The recovery was from the petitioner. During investigation his involvement was found and he was arrested. The offences which are registered against the petitioner are non-bailable and cognizable offences. Whether the petitioner was arrested in this crime and whether he was released

on bail is not mentioned in the grounds. The chargesheet is filed in this case. On perusal of chargesheet it appears that he was arrested but whether he was released on bail is not mentioned. The bail order is not produced on record and it is not considered while passing the detention order. Therefore, another ground of the petitioner is that during his custody in first offence, it is not possible to commit second crime. Hence detention order cannot be sustained.

10. Second offence is of same nature. The complainant in said crime is Subhashchandra Zabrmal Agrawal. When couple went to Pune the servant in their house informed them that lock of their house is broken and grill was also lifted. Thereafter they came back and then found that the articles like silver plates, diamond chain, ear tops and various silver and gold ornaments and Rs.50,000/- were stolen. Again in F.I.R. his name was not mentioned. In this case the recovery is from the petitioner only. Whether the petitioner was released on bail is not mentioned in the grounds. Therefore as the earlier arrest and the bail order is

not considered the petitioner has stated that he is falsely implicated in second offence though he was in jail and he has not committed the offence and was arrested. During arguments learned A.P.P. has filed on record bail order in second offence. On perusal of said bail order there is condition to attend the police station on every Monday between 10 a.m. to 12 noon until further orders. The petitioner has breached the condition of bail. The police ought to have applied for cancellation of bail but no action was taken.

11. The order was passed on 24.8.2023 the petitioner was arrested on 6.1.2024. In reply the reason is given that the petitioner was absconding after passing the order of detention. As per Section 7 procedure is given if the detenue is absconding after passing the detention order. Learned Advocate for the petitioner has relied on the decision in case of Mohd. Azim S/o Abusalim Khan V/s. R.H. Mendonca and another reported in **2000 (2) Mh.L.J. 539**, particularly para 8 which reads as under:-

“8. With regard to the failure on the part of the Detaining Authority to apply for cancellation of bail this Court, in 1998 All.M.R. (Cri) 928, in para 14 has observed thus:-

“The failure of the detaining authority to apply for cancellation of bail has been frowned upon by the courts and has been construed to mean that the authorities were not serious to serve the detention order on the detenu.”

In the said para, this Court has quoted from the decision of the Supreme Court, P.M. Harikumar v. Union of India and others, wherein in para 13 the Apex Court has held that "if the respondents were really sincere and anxious to serve the order of detention without any delay, it was expected of them, in the fitness of things, to approach the High Court or the Court which granted the bail for its cancellation".

12. The detaining authority has not considered the bail order in earlier offence and in second offence though the order is filed on record the petitioner has jumped the bail but no action has been taken by the authority. In our view the failure on the part of the authority to apply for cancellation of bail also creates a doubt on the genuineness of the subjective satisfaction of the detaining authority to detain the petitioner under the M.P.D.A. Act.

13. From the confidential statements on which the detaining authority has relied, it is seen that statement of witness "A" is recorded on 19.6.2023 who has stated that when he was coming at night at about 2.30 a.m. the petitioner, who was known to him, was concealing himself along with one person and when he asked him what he is doing there, at that time, he took the knife from his waist and asked him to do his own work otherwise he would kill him. As he was scared he has not given any report. The said statement was recorded in presence of Superintendent of Police, Yavatmal. It is not mentioned who has recorded it and it is not verified. It appears that to complete the formality the Commissioner of Police has directly verified it by calling him and has stated that he is satisfied about the truthfulness of the statement. The detaining authority has also verified it. On going through the original statement it is seen that the statement is not verified by the Superintendent of Police or the person who has recorded it but he has only signed it as 'in his presence' and the Sub-Divisional Commissioner has verified it. The proper

procedure is not followed. The mere formality is completed by the detaining authority.

Another statement of witness “B” is recorded on 20.6.2023. It is verified on 30.6.2023 by the Sub-Divisional Commissioner, Pandharkawda and it is recorded in presence of Superintendent of Police but he has not verified it.

14. For the above reasons, both the statements cannot be considered for passing the detention order as it was a mere formality of recording of statements.

15. The petitioner has also relied on the judgment passed by this Court in Writ Petition No.867/2023 (Vaibhav @ Jaharila S/o Ambadas Jambhulkar V/s. The Government of Maharashtra and others) delivered on 15.4.2024 in support of his argument that there is subjective satisfaction about the truthfulness of the statements on which the detaining authority has relied. Petitioner has also relied on the judgment in Writ Petition No.848/2023 (Kishor Shankar Katare V/s. The State of Maharashtra and others)

delivered on 21.3.2204 wherein this Court has observed in paras

7 and 8 as follows:-

“7. In case of Sheikh Hussain @ Shahrukh Shaikh Fatru Vs. State of Maharashtra reported in 2023 DGLS (Bombay) 1318 this Court has held in similar fact and situation, wherein it has observed that the 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 verify such a statement.

8. 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.”

16. In the light of the above discussion in forgoing paragraphs we are of the considered opinion that the writ petition deserves to be allowed. Hence the following order.

17. The impugned order dated 24.8.2023 passed by respondent No.2 and confirmed by respondent No.1 on 1.9.2023 is quashed and set aside.

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

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)