

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.5627 OF 2024

Sanket Sudhakar Pagare

.... Petitioner

versus

The State of Maharashtra & Ors.

.... Respondents

.....

- Ms. Aisha Z. Ansari, Advocate for Petitioner.
- Smt. M. H. Mhatre, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE : 10th JANUARY, 2025

JUDGMENT : (PER : SARANG V. KOTWAL, J.)

1. Heard Ms. Aisha Z. Ansari, learned Counsel for the Petitioner and Smt. M. H. Mhatre, learned APP for the State.

Learned counsel for the Petitioner has tendered compilation of documents. It is taken on record. A copy is already given to the learned APP.

2. The Petitioner has challenged the detention order bearing No.D.O.2024/MPDA/DET-11/CB-282 dated 13/08/2024

passed by the Respondent No.2, i.e. the Commissioner of Police, Nashik City, passed against his friend Vishal Chaphalkar. The Respondent No.2 issued the committal order dated 13/08/2024, whereby the detenu was directed to be detained in Central Prison, Nashik Road, Nashik. The affidavit filed on behalf of the State of Maharashtra by Rajendra Bhalwane, Deputy Secretary, Government of Maharashtra, Home Department, Mantralaya, gives further dates in respect of his detention order. The order passed by the Respondent No.2 was approved by the Government on 22/08/2024. The detenu i.e. Vishal Chaphalkar was detained on 23/08/2024. A reference to the Advisory Board was made on 02/09/2024. The opinion of Advisory Board was received on 07/10/2024. The report was considered and the detention order was confirmed by the Government on 11/10/2024.

3. This Petition is filed by the detenu's friend. In the following discussion a reference is made to the detenu and his alleged activities.

4. The grounds of detention dated 13/08/2024 were served on the detenu. The Respondent No.2 has stated in those grounds of detention that he received the proposal submitted by the Senior Police Inspector, Nashik Road Police Station, Nashik City, through Deputy Commissioner of Police, Zone-2, Nashik City and Assistant Commissioner of Police, Nashik Road Division, Nashik City. The proposal was for the detenu as per section 2 (b-1) 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 Act'). It was mentioned that the detenu was a dangerous person within the meaning of that section.

5. In paragraph No.3, the Respondent No.2 had mentioned that there were other offences registered against the detenu which indicated his past criminal background and that the Respondent No.2 had considered those offences only to understand the criminal background, mentality, nature and method in respect of the detenu. Importantly, the Respondent

No.2 has further added that the said material was only referred and he had not relied on it, but he definitely relied on 3 offences mentioned in paragraph Nos.4(A), 4(A)(i), 4(A)(ii) and 4(A)(iii) and two confidential statements mentioned in paragraph Nos.5(i) and (ii) mentioned in the grounds of detention.

6. Paragraph No.3 mentions six offences as follows :

- (1) C.R.No.531/2020 of Nashik Road Police Station.
- (2) C.R.No.91/2021 of Upnagar Police Station.
- (3) C.R.No.119/2021 of Nashik Road Police Station.
- (4) C.R.No.118/2022 of Upnagar Police Station.
- (5) C.R.No.170/2022 of Nashik Road Police Station.
- (6) C.R.No.421/2023 of Nashik Road Police Station.

7. These offences are under the various sections of IPC viz sections 363, 336, 392, 326 etc. Apart from these registered offences paragraph No.3 mentions three different actions taken, which were preventive in nature viz. actions u/s 110 (e)(g) of Cr.P.C. 1973 and u/s 56(1)(a)(b) of Maharashtra Police Act 1951 and one detention order under MPDA 1981 dated 20/09/2022.

8. The grounds mentioned in paragraph No.4 are important as per the Respondent No.2. They refer to the following three offences.

- (1) C.R.No.131/2024 of Upnagar Police Station registered on 08/04/2024, u/s 307, 143, 144 147, 148, 149, 323, 504, 506, 427r/w 4/25 of Arms Act r/w 135 of Maharashtra Police Act.
- (2) C.R.No.229/2024 of Nashik Road Police Station registered on 20/04/2024, u/s 387, 504, 506, 34 of the Indian Penal Code r/w u/s 135 of Maharashtra Police Act.
- (3) C.R.No.258/2024 of Nashik Road Police Station registered on 01/05/2024 u/s 3/25 of Arms Act r/w 135 of the Maharashtra Police Act.

9. Besides these offences, paragraph No.5 mentions two instances informed by the witness A and witness B, which had taken place in the third week of March 2024 and the first week of June 2024. Those statements show that witnesses were not willing to come forward and therefore their statements were recorded 'in camera'. In both these instances, the witnesses were threatened and extortion money was demanded by the detenu.

10. Learned counsel for the Petitioner submitted that the grounds of detention show non-application of mind on the part of the Respondent No.2. She submitted that he has taken contrary stands in the grounds of detention. On one hand, he has claimed that he had not relied on the past history to form his subjective satisfaction, but the grounds of detention, in particular paragraph No.8 refers to two offences which were part of the particular history. She submitted that out of these offences listed in paragraph No.3 of the grounds of detention; the offences at Sr. No.2 and 5 were the basis on which, the earlier detention order dated 20/09/2022 was passed. She invited our attention to support her contention to the grounds of detention for earlier detention order against the present detenu, which is annexed at Ex.G to this Petition.

11. Learned counsel relied on the judgment of this Court passed on 02/01/2025 in ***Writ Petition (ST) No.22638 of 2024 in the case of Siddhant @ Siddharth Sachin Dhanedar Vs. The State of Maharashtra & Ors.*** She submitted that this Court has

taken a view that the Detaining Authority cannot take contrary stands by stating on one hand that some of the offences were not considered to form basis of passing the detention order and yet the specific averments made further indicate that those offences were actually considered. In such situation, the detention order was liable to be set aside.

12. Learned counsel submitted that there is another instance of non-application of mind in as much as paragraph No.4 (A)(i) mentioned details of C.R.No.131/2024 registered with Upnagar police station. In that connection, paragraph No.4 A(i) mentioned that the Respondent No.2 perused the complaint lodged against the detenu. There is no reference to other statements recorded during the investigation. She submitted that the complaint itself does not even refer to the name of the detenu. Therefore, this is clear non-application of mind on the part of the Respondent No.2 while passing the detention order.

13. Learned APP opposed these submissions. She submitted that though the FIR in C.R.No.131/2024 of Upnagar

Police Station does not name the detenu, however, the supplementary statements specifically not only name the detenu but also ascribe certain role to him.

14. She further submitted that the Respondent No.2 has referred to the earlier offences and earlier preventive actions only to show propensity and continuity of the activities undertaken by the detenu. As mentioned by the Respondent No.2, the order was passed based on three registered offences and two 'in camera' statements mentioned in paragraph Nos.4 and 5 of the grounds of detention. She, therefore, submitted that there is clear application of mind on the part of the Respondent No.2. Neither there is any infirmity in his approach necessitating the setting aside of the detention order.

15. We have considered these submissions. As mentioned earlier, the Respondent No.2 in paragraph No.3 has clearly stated that he had not relied on the past history of detenu's offences and preventive action against the detenu for the purpose of passing the present detention order. He has

specifically stated that he had relied only on the three registered offences and two 'in camera' statements referred to in paragraph Nos.4 and 5 of the grounds of detention. This stand taken in paragraph No.3 of the grounds of detention is directly contrary to his averments in paragraph No.8 of the grounds of detention. The relevant portion from that paragraph No.8 reads thus:

“8) On careful examination of the documents submitted before me, I have reached the conclusion that your criminal activities are adversely affecting public order.

Seeing your previous history it is learnt that, whenever you are released on bail that time you have committed serious offences. As you were externed for 02 years from Nashik City and Nashik Rural on 25/12/2021 under section 55 of Maharashtra Police Act 1951, you illegally trespassed Nashik City and committed an offence registered at Upnagar police station vide CR. No. 118/2022 u/s. 326, 323, 143, 147, 148, 149, 504 of IPC r/w u/s. 142 of MP Act r/w u/s. 4/25 of Arms Act and offence registered at Nashik road police station vide C.R. No.170/2022 u/s. 142 of MP Act. Thereon on 03/09/2023 you committed an offence registered at Nashik road police station vide

C.R.No.421/2023 u/s. 392, 34 of IPC. You were arrested on same day and on 06/09/2023, you were released on bail by Hon'ble Court.

Inspite of being externed, you continued your criminal activities therefore you were detained under MPDA Act on 20/09/2022 and on 19/07/2023, you were released from the jail. As soon as you were released from the jail, on 08/04/2024, you committed an offences mentioned in 4(A). Therefore, you have not been abated by the preventive actions taken against you.”

Thus, it can be seen that the Respondent No.2 has actually relied on this past history and in particular on C.R.No.118 of 2022 of Upnagar police station and C.R.No.170 of 2022 of Nashik Road police station, which were not part of the offences mentioned in paragraph No.4 of the grounds of detention. Similarly, there is a reference to the preventive action in the nature of detention under MPDA. That detention order was passed on 20/09/2022. This shows that the Detaining Authority has taken contrary stands, which shows non-application of mind as well as it has created confusion depriving the detenu to make effective representation against the detention order.

16. Learned counsel for the Petitioner rightly submitted that the offences which were mentioned in paragraph No.3 of grounds of detention were already part of the earlier detention order dated 20/09/2022. The grounds of detention in respect of that detention order referred to C.R.No.119/2021 of Nashik Road police station, C.R.No.91/2021 of Upnagar police station, C.R.No.170/2022 of Nashik Road police station and C.R.No.118/2022 of Upnagar police station. There is also reference to the externment proceedings issued vide the order dated 25/12/2021, which is also mentioned in paragraph No.3 of the grounds of detention. As mentioned earlier, paragraph No.8 of the grounds of detention in respect of the present detention order, specifically refers to C.R.No.118/2022 and C.R.No.170/2022, which were part of and the basis of passing of the earlier detention order dated 20/09/2022.

On that ground also, the detention order is liable to be set aside.

17. The Respondent No.2 in paragraph No.4 A(i) of the grounds of detention has specifically stated that he had perused the complaint lodged against the detenu on 08/04/2024 resulting in the registration of C.R.No.131/2024 of Upnagar police station and based on that complaint, he has described the particulars of the incident in the said paragraph. It is also mentioned in the paragraph that during the incident the complainant's mother, father and sister interfered and saved the complainant from the detenu's clutches. However, the record produced before us in respect of the investigation of the said offence show that in the FIR, the detenu's name is not mentioned at all. Therefore, all these observations are not based on application of mind, though, there is a reference to the detenu's name and role in the other statements. The Respondent No.2 has not stated in paragraph No.4 A(i) that he has perused the other investigation papers apart from the complaint. As is noted, the complaint itself does not name the detenu or any role played by him. That is another instance of non-application of mind. On all these counts, we are satisfied that the detention order is liable to be set aside.

18. Hence, the following order :

ORDER

- (i) Rule is made absolute in terms of prayer clause (a).
- (ii) The detenu be released forthwith, if not required in any other case.
- (iii) The Petition is disposed of.

(S. M. MODAK J.)

(SARANG V. KOTWAL, J.)