

State of Maharashtra and Anr. ... Respondents

Ms. M.H. Mhatre, APP, for the State.

DATE : 21ST FEBRUARY 2025.

3. This is a petition challenging the detention order dated 27th August 2024 bearing No. OW. NO/CRIME PCB/DET/SWARGATE/SHAIKH/691/2024 issued under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act (for short, 'MPDA' Act), 1981 by the Respondent No. 2, Commissioner of Police, Pune City. By a separate committal order of the same date i.e. 27th

August 2024, the petitioner was directed to be detained in Amravati Central Prison, Amravati. Along with both these orders, the detenu was served with grounds of detention dated 27th August 2024.

4. The grounds of detention contained different paragraphs.

5. In paragraph No. 3.1, two offences registered at Swargate Police Station are mentioned. They are,

a) C.R No. 122 of 2024 under sections 324, 341, 142, 143, 146, 147, 148, 149, 504, 506(2) of the Indian Penal Code, under Section 4(25) of the Arms Act and under Section 7 of the Criminal Law Amendment Act. It was registered on 7th April 2024. He was arrested on 9th April 2024.

b) The second offence was C.R. No. 164 of 2024 under sections 4(25) of the Arms Act, under Sections 37 (1) (3)/135 of the Maharashtra Police Act and Section 7 of the Criminal Law Amendment Act. It was registered on 5th May 2024 and he was arrested on 5th May 2024.

6. There is a reference to Chapter Case No. 238 of 2023 dated 13th December 2023, initiated by Swargate Police Station under Section 107 of the Code of Criminal Procedure, 1973. The remarks in Paragraph No. 3.2 show that on 10th July 2024, the case was withdrawn under Section 118 of Cr.PC by the Special Executive Magistrate, Swargate Division, Pune City.

7. However, Paragraph No.4 mentions that the detaining

authority i.e. respondent no. 2, the Commissioner of Police, Pune City had considered the two registered offences mentioned in Paragraph nos. 5.1 and 5.2 as well as two in-camera statements mentioned in Paragraph nos.6.1 and 6.2 to issue the said detention order. Those two offences are again registered at the same Swargate Police Station. These are as follows:

- i. C.R. No. 163 of 2024 punishable under Sections 392, 452, 427, 504, 506(2) r/w 34 of the Indian Penal Code, under Section 4(25) of the Arms Act, under Section 37(1) (3)/135 of the Maharashtra Police Act and under Section 7 of the Criminal Law Amendment Act. It was registered on 4th May 2024. He was arrested on 6th May 2024.
- ii. CR No. 284 of 2024 punishable under sections 309(4), 115(2), 351(2), 352, 3(5) of the Bharatiya Nyaya Sanhita (BNS), Section 4(25) of the Arms Act and section 7 of the Criminal Law Amendment Act.

8. As far as C.R. No. 163 of 2024 is concerned, it pertains to an incident dated 4th May 2024. The detainee and his associate had entered into the house of informant and had forcibly removed Rs.4,800/-. He had damaged housewares and utensils. He had shown Koyta and similar weapons. The detainee was arrested on 6th May 2024. He was granted bail on 20th May 2024 and was released accordingly.

9. As far as C. R No. 284 of 2024 is concerned, it was in respect of an incident dated 12th July 2024. During that incident, the

detenue had forcibly taken Rs.14,500/- from the informant's pocket. The informant's mobile phone was damaged. He had threatened the other persons who had tried to help the informant. In that case he was arrested on 21st July 2024 and was remanded to initial police custody and then to judicial custody.

10. It was further mentioned in Paragraph No. 8 that, in future, he could be granted bail under the ordinary law as the said offence was not compulsorily punishable with death sentence. Thus, the detaining authority has shown awareness that detenue was in custody in connection with C.R. No 284 of 2024 but according to the detaining authority he was satisfied and the detenue could be granted bail under the ordinary law since the offence was not compulsorily punishable with death sentence.

11. Apart from these two registered offences, there are two in-camera statement of witnesses i.e witness 'A' and witness 'B'. Those are in connection with the incidents dated 15th July 2024 and 17th July 2024, respectively. On both these occasions, the detenue and his associates had forcibly taken Rs. 1250/- and Rs.1700/- respectively from those witnesses by showing weapons.

The detention order was based on these two registered offences and these two in-camera statements.

12. Learned counsel for the petitioner made submissions on two grounds, challenging the order of detention. Her first submission was that the detaining authority had taken up contrary stand in his detention order. In paragraph 4, he had clearly stated that he was

passing the order on the basis of the two registered offences mentioned in paragraph nos. 5.1 and 5.2 and the two in-camera statements mentioned in paragraph no. 6.1 and 6.2, to issue the said order.

Inspite of this clear statement; in paragraph no. 8, he has stated that he had mentioned the offences and preventive action as referred to in paragraph nos. 3, 3.1 and 3.2 of the grounds of detention to show that the detainee was a habitual criminal involved in continuous criminal activities. The learned counsel for the petitioner, therefore, submitted that quite clearly the subjective satisfaction of the detaining authority was based also on the material mentioned in Paragraph Nos. 3, 3.1 and 3.2. This shows non application of mind on his part and also has created confusion depriving the detainee from making an earliest effective representation.

13. The second submission of the learned counsel for the petitioner was that, though the detaining authority had shown awareness that the detainee was in custody in connection with C.R No. 284 of 2024 of Swargate Police Station, he had not given any cogent reason as to why he was subjectively satisfied that the detainee was likely to be released on bail and therefore, on that ground his subjective satisfaction was vitiated.

14. The learned counsel for the petitioner has relied upon the judgment of the Division Bench of this Court in the case of *Aman Yusuf Pathan @ Khan Vs Commissioner of Police and Ors.*)¹

15. The learned APP opposed these submissions. According to

¹ Criminal W.P. No. 1722 of 2024 dated 6th August 2024

her, the detaining authority had not stated anywhere in the detention order that he was not relying on the material mentioned in Paragraph Nos. 3, 3.1 and 3.2 of the grounds of detention and therefore he had referred to those materials in Paragraph No. 8. Hence, his subjective satisfaction is not vitiated. She submitted that the material in respect of paragraph Nos. 3, 3.1 and 3.2 was given by the detaining authority to the detainee along with grounds of detention which would indicate that the detaining authority had no intention to ignore that material to reach his subjective satisfaction.

16. Learned APP further submitted that the second submission of the learned counsel for the detainee is not correct because the detaining authority has discussed the entire material regarding C.R. No. 284 of 2024 and has observed that the detainee was likely to be released on bail. This shows his application of mind which is based on cogent material.

17. In support of her contention, the learned APP has relied upon the judgment of the Hon'ble Supreme Court in the case of *'(Union of India and Anr. Vs. Dimple Happy Dhakat)'*²

18. We have considered these submissions. The detaining authority in Paragraph No. 4 of the ground has stated thus:

"I have considered following two offences mentioned below at Para No. 5.1 & 5.2 and two in-camera statements mentioned at Para No. 6.1 and 6.2 to issue this detention order"

² (2019) vol 20 SCC 609

This clearly mentions that the only basis for passing of the detention order was the material in Paragraph Nos. 5 and 6 which pertains to C.R No. 163 of 2024, C.R. No. 284 of 2024 and the two in-camera statements of the witnesses 'A' and 'B'. This would also clearly mean that he did not base his subjective satisfaction on the material mentioned in Paragraph Nos. 3.1 and 3.2 which referred to C.R. No. 122 of 2024 and C.R. No. 164 of 2024 and Chapter Case No. 238 of 2023. In that case, his stand taken in Paragraph No. 8 is directly contrary because that paragraph starts with the following statements.

*“I have mentioned the offences and preventive action taken in Para 3, 3.1 and 3.2 of the grounds of detention to show that you are habitual criminal involved in continuous criminal activities. Accordingly I had relied upon the material mentioned in Para 5.1 & 5.2 and 6.1 & 6.2 on the grounds of detention to arrive at my subjective satisfaction that you are a **Dangerous Person** as defined in Para 2(b-1) of the M.P.D.A. act and your criminal activities are prejudicial to maintenance of public order”.*

19. The main ingredient of Section 2 (b-1) of MPDA, Act is that the proposed detainee should be habitually indulging in that activity. To reach his subjective satisfaction about habitual commission of those offences the detaining authority has reverted back to the material mentioned in Paragraph 3, 3.1 and 3.2 of the grounds of detention. Whereas, paragraph 4 of the grounds of detention restricts his passing of the detention order and subjective satisfaction only with the

material in Paragraph nos. 5 and 6. This is quite clearly a contrary stand and has necessarily created confusion affecting the detainee's right to make effective representation at the earliest. It also shows non application of mind on the part of the detaining authority.

20. As far as the other submissions about the awareness of the detainee being in custody is concerned, the detaining authority has shown awareness that the detainee was in custody. He has further mentioned that the detainee was likely to be released on bail in future but importantly the detaining authority has given reason as to why the detainee was likely to be released on bail. He has further stated that the detainee is likely to be granted bail as the said offence (C.R. No. 284 of 2024) was not compulsorily punishable with death sentence.

21. The judgment cited by the learned APP in the case of *'Union of India and Anr. Vs. Dimple Happy Dhakat (supra)* case refers to this aspect as the Hon'ble Supreme Court has held that it was necessary for the detaining authority to show awareness that the detainee was in custody and he had to record the reason to believe that the detainee was likely to be released on bail and if so released on bail, he was likely to continue to indulge in the prejudicial activities.

22. In Paragraph No. 38, the Hon'ble Supreme Court has further observed that in the detention order though the detaining authority has not specifically recorded that the detainee was likely to be released, it cannot be said that the detaining authority has not applied its mind merely on the ground that in the detention order, it is not expressly stated as to the 'detenu's likelihood of being released on bail.

23. In the present case, however, the detaining authority has not only shown the awareness but has given reasons as to why he was of the opinion that the detainee was likely to be released on bail. According to the detaining authority the detainee was likely to be released on bail because the offences were not compulsorily punishable with death sentence.

24. Thus, his satisfaction is not based on any cogent material but is based only on his belief that the bail order would follow if the offence was not punishable with death sentence. Punishment not being death sentence, cannot be the only criteria for grant or denial of bail.

25. This particular aspect is also considered by a Division Bench of this Court in the case of *'Aman Yusuf Pathan @ Khan'* (supra). In paragraph 7, the Division Bench had observed that, *'merely by saying that the offence is not compulsorily punishable with death sentence and therefore the detainee is likely to be released on bail in future is not sufficient'*.

26. In the present case also the situation is not different and therefore, observations of the said Division Bench in the case of *'Aman Yusuf Pathan @ Khan'* (supra) is directly applicable to the present case.

27. Thus, based on the above discussions, in our opinion the detention order is not sustainable and is liable to be set aside. Hence, the following order:

ORDER

- i) The order dated 27th August 2024 bearing No. OW. NO./CRIME PCB/DET/SWARGATE/SHAIKH/691/2024 issued under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act (for short, 'MPDA' Act), 1981 by the Respondent No. 2, Commissioner of Police, Pune City is set aside.
- ii) Petitioner shall be released forthwith if not required in any other case.
- iii) The rule is made absolute in the above terms.

(S.M. MODAK, J)

(SARANG V. KOTWAL, J)