

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

CRIMINAL WRIT PETITION NO.6163 OF 2024

Suraj @ Sonya @ Shakti Mahadev Bansode Petitioner

versus

The State of Maharashtra & Ors. Respondents

.....

- Mr. P. C. Mohite i/b. Mr. Sham Chavan and Ms. Vaishali Mane, Advocate for Petitioner.
- Smt. M. M. Deshmukh, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.
DATE : 28th FEBRUARY, 2025**

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

1. Heard Mr. P. C. Mohite, learned Counsel for the Petitioner and Smt. M. M. Deshmukh, learned APP for the State.

2. The Petitioner has challenged the detention order dated 07/03/2024 bearing No.O.W.NO./CRIME PCB/DET/BANSODE/259/2024 passed by the Respondent No.3, i.e. the Commissioner of Police, Pune City, under the Maharashtra

MANUSHREE
NESARIKAR

Digitally signed by
MANUSHREE
NESARIKAR
Date: 2025.03.05
11:25:48 +0530

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').

3. The Petitioner was directed to be detained in Akola Prison. The Petitioner was served with grounds of detention on 07/03/2024. From the record it appears that the detention order, committal order and the grounds of detention could not be served on the Petitioner on 07/03/2024, but they were actually served on 15/03/2024, when he was arrested. Till that time, he was absconding. The detaining authority i.e. the Commissioner of Police, Pune City, who is the Respondent No.3 and the sponsoring authority i.e. the Senior Inspector of Police, Faraskhana Police Station, Pune, have filed their affidavits. The Senior Police Inspector attached to Faraskhana police station in his affidavit has stated about efforts taken by them to serve the copy of detention order and to arrest the detenu and to show that he was absconding.

4. The grounds of detention mentioned various materials against the Petitioner. In paragraph No.3 there is a reference to C.R. No.110/2018 registered at Samarth police station on 15/06/2018 u/s 307, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and u/s 37 (1)(3) r/w 135 of the Maharashtra Police Act, u/s 4(25) of the Arms Act and u/s 7 of the Criminal Law Amendment Act. The other registered offence was C.R.No.148/2023 registered at Faraskhana police station u/s 326, 323, 504 of the Indian Penal Code. It was registered on 13/08/2023. In paragraph Nos.3.2, other preventive actions are mentioned. The first one is Chapter Case No.37/2022 dated 18/08/2022 u/s 110(g) of Cr.P.C. and other action in Chapter Case No.5/2023 u/s 56(1)(a)(b) of the Maharashtra Police Act dated 05/02/2023. The detaining authority, i.e. the Respondent No.3 has specifically stated in paragraph No.3 that it was clarified that detention order was not based on the preventive actions. These preventive actions were mentioned only to highlight the detenu's desperate tendencies to commit violent crimes. In paragraph No.3.1 it was specifically clarified that the past offences were not relied upon while passing the order of

detention, but only were referred to show that he had been habitually committing serious offences. After stating this in clear terms, the detaining authority has described the material on which the detention order was based.

5. In paragraph No.4 he has further reiterated his stand by stating that he had considered two offences mentioned at paragraph Nos.5.1, 5.2 and two in-camera statements mentioned at paragraph Nos.6.1 and 6.2 to issue the detention order. Those two registered offences are C.R.No.10/2024 at Faraskhana police station u/s 324, 323, 352, 504 of the Indian Penal Code and u/s 7 of Criminal Law Amendment Act and C.R.No.24/2024 u/s 4(25) of the Arms Act and u/s 37(1)(135) of the Maharashtra Police Act and u/s 7 of Criminal Law Amendment Act.

6. In C.R. No.10/2024 the allegations are that the detenu was quarreling and fighting with his wife on 16/01/2024. The informant in that offence tried to intervene. At that time, the detenu assaulted him on his head with a vehicle key.

7. In C.R. No.24/2024 there is reference to the incident dated 27/01/2024. In the night at around 01.50 a.m. the Petitioner was seen moving around in Mangalwar Peth area with a sharp weapon. The weapon was having length of 27 cms. The police confronted him and arrested him.
8. There are two in-camera statements of witness 'A' and 'B'. The incidents are dated 11/01/2024 and 20/01/2024 respectively. According to the witness 'A' the detenu had entered his office and had threatened him with a sword. The witness 'B' has referred to the incident when the detenu removed Rs.2,700/- from his pocket in the presence of people who had got frightened.
9. Thus, these two registered offences and two in-camera statements were the basis of passing of the order.
10. Learned counsel for the Petitioner canvassed only one ground before us. He submitted that the detention order is

based only on the C.R.No.10/2024 and C.R.No.24/2024 at Faraskhana police station and two in-camera statement as is clearly mentioned in the order. However, in paragraph No.8 there is clear reference to the earlier offences and preventive action. This is directly contrary to the detaining authority's stand. It has created confusion and has affected right of the detainee to make earliest effective representation. He further submitted that this also shows non-application of mind as the detaining authority was not clear in his mind as to what was the actual material on which the detention order was passed.

11. Learned APP opposed these submissions. According to her, the earlier offence and the preventive action were mentioned only to show his tendency to commit offences. It did not affect subjective satisfaction of the detaining authority.

12. We are unable to accept the submissions of learned APP. The detaining authority in paragraph Nos.3 and 4 has clearly stated that the detention order was not based on the earlier offences mentioned in paragraph Nos.3.1 i.e. C.R. No.110/2018 registered at Samarth police station and C.R.No.148/2023

registered at Faraskhana police station. Further in paragraph No.3.2 he had again clarified that earlier preventive actions i.e. the Chapter Case No.37/2022 and the notice with reference to section 59(1) of Maharashtra Police Act were not the basis on which the detention was order passed. In spite of this; in paragraph No.8, the detaining authority has stated that he had mentioned offence and preventive action taken in paragraph No.3, 3.1 and 3.2 in the ground of detention to show that he was habitually involving in criminal activities. This clearly was the basis for reaching his subjective satisfaction about the Petitioner's habitual nature of committing this offence. The main ingredient of section 2(b-1) of the MPDA Act is about 'habituality' of the proposed detenu. The said section reads thus:

“Section - 2 (b-1) :

“dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences

punishable under Chapter V of the Arms Act, 1959; ”

13. Therefore, if the detaining authority has relied on the material at paragraph No.3, 3.1 and 3.2 of the grounds of detention to reach his subjective satisfaction that the Petitioner was habitual in committing this offence; it is directly contrary to his earlier averment in paragraph Nos.3 and 4 that the detention order was not based on the earlier material. Therefore, the learned counsel for the Petitioner is right in submitting that this contrary stand has created confusion and has affected the detenu's right to make an earliest representation challenging the detention order.

14. In this view of the matter, the impugned order is not sustainable and is liable to be set aside.

15. Hence the following order is passed :

ORDER

- (i) Rule is made absolute in terms of prayer clause (a), which reads thus:

- “(a) This Hon’ble Court may be pleased to quash and set aside Detention Order bearing NO.PCB/DET/FARASKHANA/BANSODE/259/2024 dated:-07th March, 2024 passed by the Respondent no.3 and confirmed by the Respondent no.2 vide its order dated:-08th May, 2024.”
- (ii) The Petitioner be released forthwith, if not required in any other case.
- (iii) The Petition is disposed of.

(S. M. MODAK J.)

(SARANG V. KOTWAL, J.)