



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

CRIMINAL WRIT PETITION NO.926 OF 2024

Shaikh Salman S/o Shaikh Aatik, **Petitioner**
Aged 27 years,
R/o Yasmin Nagar, Amravati.
(Presently at Central Prison, Nagpur)

-Versus-

1. State of Maharashtra, **Respondents**
Through its Secretary, Home
Department, Mantralaya,
Mumbai-440 032
2. Commissioner of Police, Amravati City,
Amravati.
3. Superintendent, Central Prison,
Nagpur.

Adv. Rajendra M. Daga, counsel for the Petitioner.
Adv. Nitin Autkar, A.P.P. for R-1 to 3 for Respondents.

CORAM : NITIN W. SAMBRE AND
MRS. VRUSHALI V. JOSHI, JJ.
DATE : 05/02/2025.

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

Heard.

2. **Rule.** Rule made returnable forthwith. The Criminal Writ
Petition is heard finally with the consent of the learned counsel
appearing for the parties.

3. By this petition, the petitioner has questioned the legality and correctness of the detention order passed by respondent no.2 on 14.06.2024 under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Person Engaged in Black Marketing of Essential Commodities Act, 1981, (for short, “the MPDA Act”). The petitioner has further challenged the order dated 07.08.2024 passed by respondent no.1 under Section 12 of the MPDA Act thereby confirming his detention order dated 14.06.2024.

4. Three offences were registered against the petitioner as under:

(i) C.R. no. 584/2023 at city Kotwali Police Station, under Sections 387, 294, 323 read with Section 34 of the Indian Penal Code on 15.12.2023.

(ii) C.R. no. 1508/2023 at Gadgenagar Police Station, under Sections 294, 506(2), 34 of the Indian Penal Code read with Section 7 of the Code of Criminal Procedure (Amendment) Act, 2013 on 30.12.2023.

(iii) C.R. no. 140/2023 at Nagpuri Gate, Police Station, city

Amravati, under Sections 324, 323, 352, 504, 506, 34 of the Indian Penal Code read with Section 142 of the Maharashtra Police Act registered on 14.04.2024.

5. The proposal for detention was forwarded on 24.05.2024 to the respondent no.2. The offences considered for passing the detention order and perusal of the in-camera statements of witnesses “A” and “B”, reveal that, the incident reported in the F.I.R(s) and other respective incidents shows the tendencies and inclination of the petitioner to continue activities prejudicial to the maintenance of public order in future. The in-camera statements are verified by Senior Police Inspector, Police Station, Frezarpura, Amravati. They were further verified by A.C.P. Gadgenagar, Amravati.

6. The learned counsel for the petitioner, firstly, contended that, anticipatory bail was granted to the petitioner in two crimes and in C.R. no. 1508/2023, he was released on bail on same day of his arrest as the offence was bailable. This aspect was overlooked by the detaining authority. The verification about the genuineness of

the allegations in statements of witnesses “A” and “B” was done on 12.06.2024, i.e., after the proposal was already sent to the respondent no.2 along with two in-camera statements on 24.05.2024.

7. Adv. Daga, learned counsel for the petitioner, further submitted that, there is no mention in the grounds of detention that the respondent no.2 had any dialogue with A.C.P Gadgenagar, Amravati, about the truthfulness of the in-camera statements.

8. He further submitted that no subjective satisfaction was recorded about unwillingness of witnesses to come forward and give statement against the petitioner.

9. On the other hand, Mr. Nitin Autkar, learned APP vehemently opposed the submissions of the petitioner stating that the question of subjective satisfaction is arrived at on the basis of perusal of the relevant material placed before the concerned authority and it can be recorded on the day of passing of detention

order. It is sufficient from the material on record that the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the maintenance of the public order. Therefore, the ground raised by the petitioner are baseless and therefore the writ petition deserves to be dismissed.

10. Three crimes and two statements are considered for passing the detention order. In both the offences the petitioner was on anticipatory bail. The observations were made by the Trial Court in Crime No.584 of 2023 that it is not the case of prosecution that due to any act of the applicant, the informant was put in fear of death or of grievous hurt. Though the detaining authority has mentioned in the detention order that the detenu was on anticipatory bail, he has not considered the observations made by the Trial Court while granting the bail. In Crime No.1508 of 2023 here also the trial Court has observed that there is no material on record to show that the applicant will use his liberty to tamper with the evidence. In both the cases, the trial Court has not feel it necessary to arrest the detenu in the said crimes and same offences

are considered for passing the detention order.

11. In Crime No. 140/2024 the offences were under Section 224,323 of the Indian Penal Code. In the said offence, the petitioner was arrested and released on bail on the same day as the offences were bailable. Due to which all the three offences were bailable. Therefore, all the three offences cannot be considered for passing the detention order. Said bail orders were not even challenged by the State. The two statements on which the petitioner has relied creates a doubt in mind as the proposal was sent on 24.05.2024 along with the confidential statements and the detaining authority has mentioned that the statements of confidential witnesses A and B were verified by visiting the spot and the incident narrated therein is true and correct.

12. On perusal of the original statements filed on record, by the learned AGP, it appears that the statements were verified on 12.06.2024 i.e. after the date of proposal, which creates a doubt about the verification. It clearly shows that the verification found on the statement of witnesses 'A' and 'B' dated 12.06.2024 is mechanical verification and contrary to the record and therefore,

the same cannot be relied for passing the order of detention.

13. In view of the above said observations, the impugned order passed by the detaining authority is hereby quashed and set aside. Hence, we pass the following order.

14. The Writ Petition is allowed in terms of its prayer clause (a) and (b). The petitioner be set at liberty forthwith, if not required in any other crime.

15. Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J) (NITIN W. SAMBRE, J)