

**(2002) 01 BOM CK 0037**

**In the Bombay High Court**

**Case No : Criminal Writ Petition No. 381 of 2001**

Manish

APPELLANT

Vs

State of Maharashtra.

RESPONDENT

**Date of Decision : 25-01-2002**

**Acts Referred:**

Constitution of India, 1950 — Article 22(5), 226  
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3  
Penal Code, 1860 (IPC) — Section 147, 148, 302

**Citation : (2002) CriLJ 2735**

**Hon'ble Judges : P.S. Brahme, J;J.N. Patel, J**

**Bench : Division Bench**

**Advocate : S.A. Jaiswal, for the Appellant; Kothari, Assistant Public Prosecutor, for the Respondent**

## Judgement

P.S. Brahme, J.—Through this writ petition preferred under Article 226 of the Constitution of India, the petitioner-detenu has impugned detention order dated 11th September, 2001 passed by the second respondent- the Commissioner of Police, Nagpur, under sub-section 1 of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (Amendment of 1996) (Maharashtra Act No. LV of 1981).

2. The detention order along with the grounds of detention dated 11th September, 2001, was served on the detenu on 9/10/2001 and their true copies are annexed as Annexures I and II respectively to this writ petition.

3. We have heard the learned counsel for the parties. Mr. Jaiswal, the learned counsel for the petitioner though raised several grounds running from (A) to (T) in the petition, he pressed in service only one ground mentioned in para (I) of the petition.

4. Ground I- The petitioner submits that the petitioner has been released on bail and order of bail passed with certain conditions, further order of P.C.R. and MCR.

Though these are vital and material documents, the same are not filed (bail application, say of public prosecutor and bail order). Hence on this count alone the proceedings are vitiated and order is liable to be set aside.

5. The respondent no.2 filed his return and this ground no. I is replied as under:

"The documents related to P.C.R. and M.C.R. have been supplied to the detenu which are listed in index "B" on page Nos. 69, 70, 79 and 80. The necessary documents related to bail are issued in index "B" from page nos. 122 to 140, which have already been supplied to the petitioner. The detention order being legal should be maintained."

6. The learned A.P.P. submits that the relevant documents have been supplied as stated by respondent no.2 in his return.

7. It is common ground that when the second respondent passed impugned order against the detenu, the detenu was on bail in a case u/s 302, 147, 148 of the Indian Penal Code. It is pertinent to note that it was this case against the petitioner which was the basis of the detention of the petitioner under the impugned order and the copy of the bail application of the detenu and the bail order were neither before the Detaining Authority nor the copies were supplied to the detenu. If that is so, then the order of detention is rendered bad as it basically affects the subjective satisfaction of the Detaining Authority for want of relevant documents namely the bail application and the order thereon.

8. The apex Court in Abdul Sathar Ibrahim Manik Vs. Union of India and others, has observed that in case when detenu is released on bail and is at liberty, at the time of passing of detention order, then Detaining Authority has to necessarily rely upon them as that would be a vital ground for ordering Detention Order. In such a case, the bail application and the order granting bail should necessarily be placed before the Authorities and the copies should be supplied to the detenu.

9. This Court in catena of decisions has held that even the copy of the bail application of the detenu and the bail order are neither placed before the Detaining Authority nor supplied to the detenu by the sponsoring authority, in view of the ratio laid down by the apex Court in the case of Abdul Sathar Manik (cited supra), the detenus right to make effective representation, is impaired and that vitiates the order of detention.

10. This Court in a recent decision in Criminal Writ Petition No. 133 of 2001, in Pramila w/o Narayanrao Mohite -vs- Shri B.N. Mishra, Commissioner of Police, Nagpur and another, has taken a consistent view placing reliance on the decision of the Apex Court in Abdul Sathar Ibrahim Manik (cited supra), and held that the order of detention is rendered bad as the Detaining Authority had no opportunity to consider the relevant documents such as bail application and the order of the bail, to arrive at substantive satisfaction before passing the order of detention of the detenu.

11. It is needless to say that the order of detention is rendered bad when the

Detaining Authority issues an order of detention without having relevant documents before him for consideration. When the detenu is released on bail and is at liberty at the time of passing the order of detention, then the Detaining Authority has to necessarily rely upon them as they would be vital ground for ordering detention. This is so obvious because the Detaining Authority thinks it proper and appropriate also to issue detention order as there is apprehension that the detenu is likely to indulge in criminal activities as he has been already released on bail. In such case, the bail application and the order granting bail should necessarily be placed before the Detaining Authority. It is needless to say that it is only on the basis of the documents that the Detaining Authority should have his substantive satisfaction justifying detention of the detenu.

12. In the case before hand, on account of failure on the part of the sponsoring authority to place before the Detaining Authority the copy of bail application and the bail order, the substantive satisfaction of the Detaining Authority i.e. the respondent no.2 to detain the petitioner suffers from the vice of non-application of mind and, therefore, the order impugned stands vitiated. Since the detenu was not furnished with the copies of the aforesaid vital documents, his right to make an effective representation under Article 22(5) of the Constitution of India, is impaired. Therefore, the order of detention cannot sustain.

13. The impugned order of detention issued by the respondent no.2 is quashed and set aside. The detenu be released forthwith if not required in any other case. Rule is made absolute in the aforesaid term.

14. The learned counsel for the petitioner informs the Court that the petitioner is presently lodged at District Prison, Akola. Writ in the matter be forwarded to the District Prison, Akola for necessary compliance.