

(2020) 02 BOM CK 0100

In the Bombay High Court

Case No : Criminal Writ Petition No. 6064 Of 2019

Salauddin Imamuddin Ansari

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 27-02-2020

Acts Referred:

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 — Section 3(2)
Indian Penal Code, 1860 — Section 34, 323, 324, 341, 353, 354, 354(A)(D), 392, 504, 506, 509
Protection Of Children From Sexual Offences Act, 2012 — Section 8, 12
Bombay Police Act, 1951 — Section 135, 142
Constitution Of India, 1950 — Article 22(5)

Citation : (2020) 02 BOM CK 0100

Hon'ble Judges : S.S. Shinde, J;N.B. Suryawanshi, J

Bench : Division Bench

Advocate : A.M.Z. Ansari, Nasreen Ayubi, M.H. Mhatre

Final Decision : Dismissed

Judgement

N.B. Suryawanshi, J

1] By this Petition, the petitioner impugns the Detention Order of his son namely Javed @ Sajan Salauddin Ansari (for short â??the Detenuâ?) passed

by the Commissioner of Police, Nashik dated 24.06.2019, under Section 3 (2) 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 â??the said Actâ??).

2] Rule. Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final hearing at the admission stage.

3] Heard the learned advocate for the petitioner and learned APP.

Perused the grounds raised in the writ petition and annexures thereto and reply filed by the respondent â?" State.

4] The learned advocate for the petitioner has challenged the impugned detention order on the following grounds:-

â??"(i) The impugned detention order suffers from the non-application of mind and casual and cavalier exercise of power, and the relevant material

consisting 287 pages was placed before the detaining authority on 22.06.2019 and the impugned order is passed on 24.6.2019. Thus, there was no

sufficient time for the detaining authority to apply its mind.

(ii) There was delay of 10 months in passing the detention order from the date of registration of first offence i.e. C.R. No.182/2018 which was

registered on 06.06.2018. Second incident considered by the detaining authority is dated 02.08.2018 and F.I.R was registered on 03.08.2018.

Thereafter, third offence was registered on 05.05.2019 in C.R. No. 193/2019. Thus, if at all the detention order was necessary, it ought to have been

passed promptly and not after lapse of period of 10 months from the date of registration of first offence.

(iii) It is further averred that only with a view to filling the gap between the day when the Detenu was released and the day when impugned detention

order is passed, the sponsoring authority recorded two in-camera statements on 06.06.2019 and 10.06.2019. Thus, the impugned detention order is

passed after lapse of period of 10 months.

iv] The bail application and the bail order were not placed before detaining authority which were vital to arrive at the satisfaction by the detaining

authority.â??"

5] Learned advocate for the petitioner, in support of the above points, vehemently urged that the impugned order is vitiated as there is total non-

application of mind on the part of the detaining authority in passing the detention order. It is the contention that voluminous documents running into 287

pages shown to be considered by the detaining authority within a period of two days, this by itself shows the non-application of mind. It was not

possible for the detaining authority to go through 287 pages document within a period of two days and hence the same vitiates the impugned order. On

the second ground of delay in passing the impugned order, the learned advocate

for the petitioner vehemently submitted that there was inordinate delay in passing the impugned order from the date of registration of the first offence i.e. 6.6.2018. It is further contended that only with a view to fill up the gap, the two in-camera statements were recorded after the detaining authority issued the impugned order of detention. The impugned detention order is thus vitiated on this ground. It is submitted that the bail application and the bail orders were not placed before the detaining authority and on that ground also, the impugned order is vitiated. It is submitted that the petitioner submitted representation to the State Government and the same was not expeditiously forwarded by the Prison Authorities and since the result of the representation was not coming into, impugned detention order is initiated. The learned advocate for the petitioner contends that the impugned detention order is unsustainable and the same is liable to be quashed and set aside and detenu may be released forthwith. The learned advocate for the petitioner placed reliance on the following judgments:-

(a) Umesh Chandra Verma vs. Union of India & Anr. in Criminal Appeal No. 878/1985 decided on 20/12/1985

(b) Smt. Kirti Sujit Satam vs. State of Maharashtra & Ors. 2008 ALL MR (Cri) 774

(c) Smt. Barkat Bibi Shaikh vs. The State of Maharashtra & Ors. in Criminal W.P. No. 1334/2008

(d) Rajesh Vashdev Adnani vs. State of Maharashtra & Ors. 2006 1 SCC (Cri) 61

(e) Ganesh Dattaram Sawant vs. Shri L. Haingliana & Ors. in Criminal W.P. No. 548/1990

(f) Pradeep Nilkanth Paturkar vs. S. Ramamurthi and ors. AIR 1994 SC 656

(g) M. Ahamedkutty vs. Union of India & anr. (1990) 2SCC1

(h) Abdul Sathar Ibrahim Manik vs. Union of India & ors. (1992) 1 SCC 1

(i) Ahamed Nassar vs. The State of Tamil Nadu & ors. JT 1999 (8) SC 252

(j) Shri Irfan Ibrahim Qadri vs. Medha Gadgil & ors. in Criminal W.P. No. 1900/2012

6] Per contra, the learned APP would support the detention order.

She has taken us through the detention order and the grounds of detention and the material placed on record in support of the same, the relevant

paragraphs of the affidavit-in-reply filed by the respective respondents, viz. the Commissioner of Police, Deputy Commissioner of Police, Deputy

Secretary (In-Charge), Government of Maharashtra and Secretary, Advisory Board, and strenuously urged that the detention order is passed after

recording subjective satisfaction by the detaining authority and there is sufficient material on record to justify the detention order. In the reply, learned

A.P.P. vehemently opposed the prayer of the petitioner. By pointing out the affidavit-in-reply filed by the respective respondents, she states that no

ground is made out by the petitioner to allow this petition. She states that it cannot be presumed that 287 documents could not be read in two days. It is

further stated that merely because the first FIR was registered on 6.5.2018 and the detention order was passed on 24.6.2016, that by itself does not

indicate that there was an inordinate delay in passing the impugned order. It is submitted that there was no delay in forwarding the representation nor

in communicating the decision. Hence, the detention order should not be interfered with. She has placed reliance on the following authorities:-

(a) Harish Patil vs. State of Maharashtra & ors. 2016 (4) BCR (Cri.) 499

(b) Nagnarayan Saryu Singh vs. A.N. Roy & ors. 2006 ALL MR (Cri) 2147

(c) K. Varadharaj vs. State of T.N. & anr. (2006) 6 SCC 735

(d) Sunila Jain vs. Union of India (2006) 3 SCC 321

(e) Rubina Nasir Mujawar vs. The State of Maharashtra & ors. in Criminal W.P. No. 3449/2016

(f) Attorney General for India & ors. vs. Amratlal Prajivandas and Ors. (1994) 5 SCC 54

7] On perusal of the record, it is revealed that the proposal for detention was submitted by sponsoring authority on 13.06.2019 to Assistant

Commissioner of Police, Divisional-III Nashik City, who forwarded the same to the Deputy Commissioner of Police on 14.6.2019, who after

verification of in-camera statements endorsed it on the same day. The papers were thereafter forwarded to the detaining authority on 17.06.2019.

Inspector of Police, Central Crime Branch, Union of India scrutinized the proposal and by giving his endorsement on 19.6.2019 forwarded the proposal

to ACP (Crime), who after scrutiny, forwarded it to DCP (Crime). DCP (Crime) put his detail note on 21.06.2019 and forwarded it to the detaining

authority i.e. Commissioner of Police.

8] Much is argued on the statement made in the reply-affidavit of Commissioner of Police, wherein he has stated that "I once again gone through

the entire material and I came to the conclusion that it was a fit case to detain the detenu under the MPDA Act. By emphasizing on the words

“once again”, the learned advocate for the petitioner argued that this reflects the non-application of mind on the part of the detaining authority.

We are unable to accept this submission merely because the word “I once again” are used, that by itself does not in any manner vitiates the

order. Also, it is not possible to accept that since the proposal contained 287 pages, the detaining authority could not have gone through those many

pages in a period of two days. There is no basis for such argument and we do not find any force in the same. It cannot be presumed that 287

documents cannot be perused by the detaining authority within a span of 2 days.

9] The learned advocate for the petitioner relied on the ratio in *Shri Umesh Chandra Verma* (supra) wherein the detention order was running into 234

pages and the documents included the arrest memo prepared at 6 p.m. on the date of detention order i.e. on 13.06.1985. The said document was relied

upon by the detaining authority in support of the detention order. In those facts and circumstances, the Hon’ble Supreme Court held that the

detaining authority could not have possibly applied his mind to the voluminous documentary evidence placed before it.

10] In *Smt. Kirti Sujit Satam* (supra), this Court, considered a case wherein the material placed before the detaining authority contained in 154

documents running into 1712 pages and the detaining authority had passed detention order within 12 hours from the receipt of the proposal. Hence, this

Court quashed the detention order.

11] In *Smt Barak Bibi Shaikh* (supra), the proposal of detenu was forwarded containing 2224 pages on 13.03.2008. Thereafter, further material was

generated on two occasions i.e. pages 2225 to 2417 were generated on 25.4.2008 and pages 2418 to 2473 were generated on 02.05.2008 and pages

2427 to 2499 were generated on 12.05.2008 and the detention order was passed on 20.05.2008. In these facts, this court found that there was non-

application of mind on the part of the detaining authority. Hence, the detention order was quashed.

12] In *Rajesh Vasudev Adnani* (supra), the Hon’ble Supreme Court found that there was in-verbatim reproduction of sponsoring authorities

proposal in the impugned detention order, hence the ground of non-application of

mind on the part of detaining authority was accepted by the Honâ??ble Supreme Court and the detention order was quashed.

In our opinion, the above stated authorities relied upon by the learned advocate for the petitioner are distinguishable on facts and they are not helpful to the case of the petitioner.

13] The ground that bail application and order were not placed before the detaining authority, because of which the detention order is vitiated, in our

considered opinion is baseless. The learned APP in this behalf pointed out from the reply of the detaining authority that the detaining authority was

made aware that the detenu was on bail, in all the cases by placing before him the documents showing that the petitioner was on bail. The bail

application and bail order pertaining to C.R. Nos. 192/2019 and 193/2019 were placed before the detaining authority, which were taken into

consideration by the detaining authority. In M. Ahmedkutty (supra), the Honâ??ble Supreme Court held that the bail application and bail order

constituted vital material and non-consideration of the same by the detaining authority or non-supply of the copies thereon to the detenu would be

violative of Article 22 (5) of the Constitution of India. In that case, the Honâ??ble Supreme Court held that all the documents and materials,

particularly appellantâ??s bail application, bail orders, show cause notice and his reply thereto were not placed before the detaining authority. In that

view, the Honâ??ble Supreme quashed the detention order. That was a case under COFEPOSA Act.

14] In Abdul Sathar Ibrahim Manik (supra), the detenu was a foreigner, was already in jail and his passport was seized. The detention order was on

the ground that detenu was likely to indulge in smuggling. That was a case under COFEPOSA Act. The bail application made by the detenu and order

of detention were not placed before the detaining authority. The Honâ??ble Supreme Court held that it would not amount to suppression of relevant

material, when the detaining authority was aware of actual custody of detenu. The Honâ??ble Supreme Court further held that merely because the

copies of bail application moved by the detenu and order rejecting bail were not supplied, the same would not vitiate the detention, when the bail

application and rejection order were only referred to and not relied on by the detaining authority, while passing the detention order and the detenu was

fully aware of the contents of the documents. It is further held that the detention order can be validly passed even in a case of a prisoner who already is in custody and in such case, it must appear from the grounds that authority was aware that the detenu was already in custody. The Honâ??ble Supreme Court had specifically observed that â??if the detenu has moved for bail then the bail application and the order thereon refusing bail even if not placed before the detaining authority, it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that detenu was in actual custody. It was further held that the grounds of detention do not disclose that the detaining authority had relied upon any of these bail orders. The detaining authority mentioned in the ground that it was aware that the detenu was in custody, but there was every likelihood of his being released on bail. This itself shows that these documents were not before the authority. Therefore, it cannot be said that the documents referred to and relied upon in the grounds were not supplied to the detenu. It is further observed that the non-supply of the copies of the bail application or the order refusing bail to the detenu cannot affect the detenuâ??s right of being afforded a reasonable opportunity guaranteed under Article 22 (5) when it is clear that the authority has not relied or referred to the same.â??When the detaining authority has merely referred to them in the narration of the events and has not relied upon them, failure to supply the bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22 (5). Whether in a given case, the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the Court.

15] In Ahamed Nassar (supra), the Honâ??ble Supreme Court was considering the point/likelihood of the detenu being released on bail, whether there was subjective satisfaction on the part of detaining authority in that regard. It was held in that case that the conclusion of the detaining authority

that, â??there is likelihood of his being released on bailâ? cannot be said to be based on no relevant material. Thus, it was held that though earlier bail

application of the detenu was rejected and no bail application was pending, still the conclusion of the detaining authority that likelihood of his being

released on bail cannot be said to be based on no relevant material. However, on other grounds, the detention order was quashed.

16] In Irfan Ibrahim Qadri (supra), the detention order under COFEPOSA Act was challenged and the ground raised was that the order granting bail

to the detenu therein was vital document and since the detaining authority did not consider the bail order, the same has vitiated the subjective

satisfaction of the detaining authority. In that case, this Court (Coram :- A.S. Oka & Smt. Sadhana S. Jadhav, JJ.) placed reliance in Sunila Jain vs

Union of India (supra) and observed that in Sunila Jainâ??s case, the Honâ??ble Supreme Court has laid down two considerations to decide

whether the bail order is a vital document; one is the nature of application for bail and the other is the nature of restrictions imposed while granting

bail. If there are no restrictions or conditions imposed while granting bail, except for the condition of executing bond and furnishing surety, the order

granting bail may not be a vital document, as it may not affect the subjective satisfaction of the detaining authority. In case of bailable offence, while

granting bail, if a condition is imposed to ensure that the detenu does not flee from justice, such order will certainly become a vital document looking to

the nature of condition. This Court, therefore, held that if drastic conditions are imposed while granting the bail, the order granting bail becomes

relevant and vital document, as the same would have influenced the subjective satisfaction of the detaining authority.

17] On perusal of the reply of the detaining authority, it is clear that the relevant documents of bail were placed before it and the same were taken into

consideration by the detaining authority was clear position before the detaining authority that the detenu was on bail. Learned APP was justified in

relying upon the ratio in K. Varadharaj (supra) to support her contention that it was not mandatory for the detaining authority to take into consideration

the bail application filed by the detenu and any order passed thereon by the Criminal Court, such requirement would depend upon the facts of each

case. In that case, it is held by the Honâ??ble Supreme Court that â??it is clear that placing of the application for bail and the order made thereon

are not always mandatory and such requirement would depend upon the facts of each case. The case of M. Ahamedkutty (supra) was discussed by

the Honâ??ble Supreme Court observing that M. Ahamedkutty does not lay down a mandatory principle in law that in every case the application for

bail and the order made thereon should be placed before the detaining authority. It was further observed that there was no vital material in the bail

application and order, notice of which the detaining authority had to take.

18] If ratio of this authority is applied to the facts of the present case, a perusal of the bail order in Crime No.192/2019 would reveal that the detenu

was released on bail and he was asked to report to the concerned police station on every Monday in between 10.30 am. and 11.30 am till completion

of the investigation. The bail order in Crime No.192/2019 was passed by imposing condition that he shall not tamper the prosecution witnesses and he

shall not leave India without prior permission of the Court.

In C.R. No. 208/2018, the detenu was released after filing of chargesheet and was directed to attend Police Station as and when called by

investigation officer and not to tamper with the prosecution evidence. Similarly in C.R. No. 78/2019, he was similarly released on bail without imposing

any condition. Thus, in these circumstances and taking into consideration the affidavit filed by the detaining authority that the documents were filed

before it showing that the petitioner was on bail, we are not able to accept the ground that non supply of bail application and order passed thereon to

the detenu has vitiated the impugned order. The detaining authority was aware of the fact that the detenu was on bail. He has considered seven

instances / crimes committed by the detenu while passing the detention order. Thus, the detaining authority has not relied upon the bail application, so

also the bail application and the order passed thereon does not contain any vital material. In these circumstances, the non supply of bail application and

order, in the facts of the present case, in our considered opinion would not vitiate the impugned order.

19] The next submission of learned advocate with regard to delay in sending the representation and informing the rejection also does not carry any

substance. The learned APP, by placing reliance on the reply/affidavit filed by the police authorities states the representation of the detenu dated

03.12.2019 was received in Special Branch-3B Desk on 4.12.1990. After calling

the remarks from the detaining authority which were received on 06.12.2019, the file was submitted to the Deputy Secretary (In-charge) on 06.12.2019. The Deputy Secretary (In-charge) endorsed it on the same day and forwarded it to the Additional Chief Secretary (Home), who considered the representation and remarks of the detaining authority and rejected the representation on 07.12.2019 by applying the mind. The rejection order dated 07.12.2019 was expeditiously forwarded to the detenu. The rejection reply was prepared on the same day i.e. 07.12.2019. As on 08.12.2019, it was holiday, the letter was issued on 09.12.2019 which was received by the Nashik Road, Central Prison on 10.12.2019 and on 11.12.2019 it was given to the detenu. Thus, there was no delay in issuing the letter regarding rejection of representation. The government has expeditiously considered the representation of the detenu and the decision on the same was immediately communicated to the detenu.

20] After going through the reply and from the record it is clear that there was no delay in forwarding the representation of the detenu, in taking decision on the same, so also in communicating rejection of the representation.

21] The next point argued was about the delay of 10 months in passing the detention order from the date of registration of first offence. In Ganesh

Dattaram Sawant (supra), this Court considering the delay in issuing the detention order after almost a period of one year from the date of registering

the offence and completion of the investigation, found that there was no explanation on the part of sponsoring authority in initiating the proposal. In

Pradeep Nilkanth Paturkar (supra), the sponsoring authority submitted proposal on 4.4.1991, the same was accepted by the detaining authority on

25.7.1991 and the impugned order of detention was passed on 06.08.1991. Noting the fact that out of 5 criminal cases 3 were of the year 1990 and

remaining two are of the month of January and February 1991, the Honâ??ble Supreme Court held that there was delay of 5 months and 8 days from

the date of registration of the last case and more than 4 months from submission of the proposal. It was observed that the statement of witnesses

were obtained only after the detenu became successful in getting bail in the prohibition case registered against him. The Apex Court held that there

was unexplained delay and detention order could not be sustained.

22] In the present case, the detaining authority has taken into consideration five

recent criminal offences registered against detenue;

i) Sarkarwada Police Station C.R. No. 182/2018, under Section 392, read with Section 34 of the Indian Penal Code registered on 06.06.2018.

ii) Satpur Police Station C.R. No. 208/2018 under Sections 354, 354(A) (D), 341, 504, 506, 509 of the Indian Penal Code and the Protection of

Children from Sexual Offences Act Section 8 and 12 registered on 03.08.2018.

iii) Satpur Police Station C.R. No. 78/2019 under Section 135 and 142 of Mumbai Police Act registered on 03.03.2019.

iv) Satpur Police Station C.R. No. 192/2019 under Section 353 of the Indian Penal Code and under Sections 135, 142 of Mumbai Police Act registered on 05.05.2019.

v) Satpur Police Station C.R. No. 193/2019 under Sections 324, 323, 504, 34 of the Indian Penal Code registered on 05.05.2019.

23] The detaining authority has taken into consideration the fact that after releasing on bail, the detenu has repeatedly committed serious offences and

the said criminal activities of the detenu were prejudicial to the maintenance of the public order. The detaining authority has also considered that the

detenu does not hesitate in launching an assault on the police officers, the detenu has committed serious offences against women, minor girls and he

has created terror in the areas of Shramiknagar, Vastunagar, Satpur MIDC, Ashok Nagar, in the jurisdiction of Satpur Sarkarwada, Gangapur and in

the adjoining area by indulging into activities prejudicial to the maintenance of public order. The detaining authority has also considered that in spite of

externment action initiated against the detenu, it was not sufficient to control the activities of the detenu. Hence, by recording subjective satisfaction

about the material on record, the detaining authority has rightly passed the detention order which is justified on the basis of material relied upon by the

detaining authority and the facts of the present case. We, therefore, see no reason to interfere with the order impugned in the present petition. The

petition is devoid of merit and is liable to be rejected. Hence, the following order:-

Â ORDER

1] Writ petition is dismissed.

2] Rule is discharged.

3] There shall be no order as to costs.