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

CRIMINAL WRIT PETITION NO. 626 OF 2022

Alakshit S/o. Rajesh Ambade,
Aged about 25 years, Citizenship: Indian,
Occupation: Welder,
R/o. Lashkaribagh, Near Shitla Mata Mandir,
Nagpur. . . . PETITIONER

// V E R S U S //

1. The State of Maharashtra through
its Principal Secretary,
Ministry of Home Affairs, Mantralaya,
Mumbai-32.

2. The State of Maharashtra through
Commissioner of Police, Nagpur. . . . RESPONDENTS

Shri Vijay Sawal a/w. D. V. Chauhan, Advocate for petitioner.
Shri S. S. Doifode, APP for respondents/State.

CORAM :- SUNIL B. SHUKRE &
M. W. CHANDWANI, JJ.

DATED :- 20.12.2022

ORAL JUDGMENT (PER: SUNIL B. SHUKRE, J.):-

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. By this petition, the petitioner has questioned the legality and correctness or otherwise of the detention order passed by respondent no. 2 on 02.07.2022 under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons engaged in Black Marketing of Essential Commodities Act, 1981 (for short, "the MPDA Act"). The petitioner has further challenged the order dated 26.08.2022 passed by respondent no. 1 under Section 12 of the MPDA Act and thereby confirming his detention order dated 02.07.2022. The petitioner has also challenged the order of delegation of power dated 24.06.2022 passed by the Home Department thereby delegating power of passing detention order upon the District Magistrates and Police Commissioners mentioned therein.

4. We would first consider the arguments of learned counsel for the petitioner and learned APP for respondents/State in respect of the challenge made to the delegation order dated 24.06.2022.

5. Learned counsel for the petitioner submits that the delegation order issued by the State Government in exercise of its power under Section 3(2) of the MPDA Act conferring power upon the Police Commissioners and District Magistrates to pass preventive detention order in terms of Section 3(1) of the MPDA Act is bad in law, as it does

not record the satisfaction as contemplated in law. According to him, the impugned order does not refer to any material and does not record any reasons, on the basis of which it could be said that the circumstances prevailing and which were likely to prevail in the Police Commissionarates, mentioned in the order dated 24.06.2022, necessitated the State Government to exercise its delegation of power under Section 3(2) of the MPDA Act. He also submits that this order, which has been impugned herein, is unjust and it does not satisfy the test of reasonableness and non-arbitrariness as laid down in the case of ***A. K. Kraipak Vs. Union of India [1969 (2) SCC 262]*** (paragraph no. 20).

6. Shri S. S. Doifode, learned APP submits that it is well settled law that it is not necessary for an Administrative Authority, exercising its power of delegation regarding conferring of power upon Subordinate Authority, to mention in the order any particular or some specific material, on the basis of which subjective satisfaction for exercise of power of delegation has been reached by an Administrative Authority. He further submits that material already exists in the present case and therefore, it cannot be said that the power of delegation exercised by the State Government contravenes any of the settled principle of law and fails the test as laid down in the case of ***A. K. Kraipak*** (supra).

7. Upon careful consideration of the impugned delegation order, we find no substance in the submissions of learned counsel for the petitioner and find merit in the argument canvassed by learned APP on behalf of the State, on this point.

8. The impugned order of delegation of power, as we see, records satisfaction about existence of the circumstances which impelled the State Government to exercise its power of delegation under Section 3(2) of the MPID Act. In order that an administrative order clears the test of non-arbitrariness and reasonableness, as laid down in the case of ***A. K. Kraipak*** (supra), it must be based upon objective material, which would enable the Administrative Authority to reach its subjective satisfaction for exercising or not exercising the administrative power conferred upon it. In the present case, the power exercised under Section 3(2) of the MPDA Act is undoubtedly an administrative power and therefore, its validity is required to be seen in the light of the material considered by the Administrative Authority led to reaching of its subjective satisfaction. In the present case, the satisfaction subjectively reached is about conferment of power upon the Commissioners of Police and District Magistrates in terms of Section 3(2) of the MPDA Act. The impugned order does not refer to any particular material nor does it record any specific reasons for reaching subjective satisfaction. But, what is more important is existence or non-existence of material for reaching

the subjective satisfaction in such a case and not making of any reference to particular material that was considered by the Administrative Authority. A useful reference in this regard may be made to the case of ***Pebam Ningol Mikoi Devi Vs. State of Manipur [(2010) 9 SCC 618]*** and ***Abdul Hamidkhan Amirkhan Pathan Vs. Manmohansingh, Commissioner of Police [1982 SCC Online Guj 90]***.

9. The material that was considered by the Administrative Authority has not been placed before us but, at the same time, nothing has been shown to us that there was no material, whatsoever, available with the State Government when it exercised its power under Section 3(2) of the MPDA Act. In fact, the reference made in the impugned order to existence of some material is sufficiently indicative of the fact that the State Government must have considered those circumstances and reached its subjective satisfaction for conferring power upon District Magistrates and Police Commissioners under Section 3(2) of the MPDA Act. Therefore, we do not think that the impugned order dated 24.06.2022 could be found to be in violation of the test laid down in the case of ***A. K. Kraipak*** (supra). Therefore, the argument made about illegality of the impugned order dated 24.06.2022, on behalf of the petitioner, is thus rejected. We find no flaw in the impugned order dated 24.06.2022.

10. Learned counsel for the petitioner further submits that the impugned order is illegal for additional reasons. According to him, the reasons considered by the Detaining Authority were not of such a nature as would have shown that the petitioner was so dangerous a criminal that his criminal activities could not have been controlled without preventively detaining him, bypassing usual procedure of the law. He further submits that these offences constitute a material which has no intimate connection with the object sought to be achieved by passing the detention order against the petitioner. He relies upon the case of ***Vijaya Raju Gupta Vs. R. H. Mendonca [2001 (1) Mh.L.J. 449].*** He further submits that the impugned order does not consider the grounds on which the petitioner was released on bail in all the three offences. Thus, learned counsel for the petitioner submits that the impugned order of preventive detention passed against the petitioner is required to be quashed and set aside.

11. According to the learned APP, the three offences, which are considered by the Authority were not the only material which went behind passing of the impugned order. He has submitted that there was additional material available against the petitioner and that was in the nature of two statements of confidential witnesses, which have been duly verified for their correctness by the superior authority. He further submits that the Detaining Authority has taken an overall view of the

material available against the petitioner and its impact on the prospective witnesses and thus has reached a subjective satisfaction about its necessity of passing the order of preventive detention against the petitioner and therefore, no interference in the impugned order is warranted.

12. We would have, in ordinary course of circumstances accepted the submission made on behalf of the State had it been the case that the Detaining Authority had considered the entire material that was available against the petitioner but, that is not the case here. Although, the Detaining Authority has considered the three crimes registered against the petitioner which were Crime No. 18/2022, registered for the offences punishable under Sections 294, 323, 504, 506-B of the Indian Penal Code (IPC) read with Section 4 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act on 21.03.2022 at Police Station Panchpaoli, Crime No. 498/2022 registered for the offences punishable under Sections 294, 323, 506-B, 384 read with Section 34 of the IPC read with Section 4 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act on 30.05.2022 at Police Station, Panchpaoli and Crime No. 604/2022 registered for the offences punishable under Section 27 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 read with Section 4 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act on 30.05.2022 at Police Station Panchpaoli

and the statements of two confidential witnesses, the Detaining Authority has failed to consider the grounds on which the petitioner was released on bail in all these three crimes registered at Police Station, Panchpaoli.

13. It is well settled law that the grounds on which an accused, and a proposed detenu, is granted bail also form important part of the material available against such a person and therefore, it is the duty of the Detaining Authority to also consider that material. After all, the object of a preventive detention order passed under Section 3(1) of the MPDA Act is to curb criminal activities of the person which are considered prejudicial to the maintenance of public order. Grant of bail is an important factor which goes into making up of the requisite satisfaction of the Authority. When considered appropriately, the grounds of bail do impact the decision of the Authority, one way or the other. We would illustrate the point by giving a few examples. In a given case, a person may be granted bail on a ground, *inter alia,* that he is not likely to tamper with the prosecution's evidence or witnesses. This would be a ground which may strengthen the case of that person and it may possibly restrain the Authority from passing any detention order. In another case, a proposed detenu is granted bail, not on merits of the matter but, upon a default ground under Section 167 of the Code of Criminal Procedure. There may be another case where the person is granted temporary bail

for fulfilling some urgent purpose. In both of these examples, the grounds of bail may not perhaps help the proposed detenu and the Authority may possibly find them to be all the more reason for ordering preventive detention of such a person, provided the other criteria is fulfilled. Such is the importance of the grounds of bail and therefore, they are required to be considered by the Detaining Authority while passing the order of detention. This is the law laid down by the Apex Court in the case of ***Abdul Sathar Ibrahim Manik Vs. Union Of India [1991 AIR 2261]***, which has been followed by this Court in several of its judgments including the judgment delivered in the case of ***Ratnamala Mukund Balkhande Vs. State of Maharashtra [2022 All M.R. (Cri) 3106].***

14. In the present case, as stated earlier, the Detaining Authority has not considered, in any manner, the grounds on which bail was granted to the petitioner in all the three above referred crimes. The petitioner has filed on record the copies of all the three bail orders, one of which is quite reflective of what we have stated in the previous paragraph. This bail order has been passed in Crime No. 604/2022, which is a crime registered against the petitioner for the offences punishable under Section 27 of the NDPS Act read with Sections 4 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act. In this order dated 03.05.2022, the concerned Court of Judicial Magistrate First Class (JMFC), Nagpur has considered the argument of learned APP,

which was about the apprehension of the prosecution that if released on bail, there was a possibility of the petitioner tempering with the evidence and also threatening witnesses and rejected. Learned JMFC held that no purpose would be served by keeping the accused behind the bar. It is pertinent to note that the prosecution has not questioned any of these three bail orders and they have attained finality. The bail orders, reference to which we have just made, express an opinion that no purpose would be served by keeping the petitioner behind the bar. In other words, the judicial opinion leans in favour of the petitioner insofar as it concerns the aspect of necessity of the petitioner being free and at large. If this is the judicial opinion expressed by the Court of concerned JMFC, the Detaining Authority is obliged to pay its deference to it. That has not been done by the Detaining Authority.

15. For the reasons stated above, we are of the view that the impugned order passed by the Detaining Authority is perverse and hence bad in law. In the result, we find this petition deserves to be allowed. Hence, we pass the following order:-

i) The Writ Petition is partly allowed. The impugned orders dated 02.07.2022 and 26.08.2022 are hereby quashed and set aside subject to following conditions:-

a) The petitioner shall not indulge in any criminal activity and if it is found that he is still indulging in it, the concerned Court shall consider it as a breach of condition imposed by this Court in appropriate proceeding relating to grant of bail, if any.

b) The petitioner shall attend Police Station, Panchpaoli, Nagpur on every Sunday between 6.00 pm. to 7.00 p.m., starting from Sunday immediately next to the date of his release, for a period of six months.

ii) The petitioner shall be released forthwith, if not required in any other crime.

16. We record our appreciation for the assistance rendered by learned counsel for the petitioner, who is relatively younger in his practice, and by the learned Additional Public Prosecutor.

(M. W. CHANDWANI, J.) (SUNIL B. SHUKRE, J.)

RR Jaiswal