

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 66 OF 2024**

Gopal Suresh Malik
Aged 27 years,
Add: Sanjay Gandhi Nagar,
Near Sai Baba Mandir,
Near Ulhasnagar Railway Station,
Ulhasnagar – 3, District Thane
v/s. Petitioner

- 1) The State of Maharashtra
(Through the Secretary to the Govt. of
Maharashtra (Preventive Detention),
Home Department (Special),
Mantralaya, Mumbai – 400 032.
- 2) The Commissioner of Police, Thane
Having address at Near Kalawa Bridge,
Kharkar Alley, Thane (west),
Maharashtra – 400601.
- 3) The Superintendent,
Nashik Road Central Prison,
Nashik Respondents

Mr. Amit Karva a/w. Mr. Monty L. Teckchandani for the Petitioner.
Mr. J.P. Yagnik, APP for the State.

**CORAM : A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 05th APRIL, 2024.
PRONOUNCED ON : 16th APRIL, 2024.**

JUDGMENT : [PER : SHYAM C. CHANDAK, J.] :-

- 1) By this Petition under Article 226 of the Constitution of India,
Petitioner has questioned the legality of the Order dated 24th August 2023,
passed 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 'the MPDA Act'), issued by the Respondent No.2-The Commissioner of Police, Thane thereby directing detention of the Petitioner. By the even dated Committal Order issued by the Respondent No.2, the Petitioner has been detained in Nashik Road Central Prison, Nashik.

2) Heard Mr. Amit Karva, learned Advocate for the Petitioner and Mr. Yagnik, learned A.P.P. for the State. Perused the Petition and the Affidavits-in-reply dated 09th February 2024, 24th January 2024 and 18th February 2024, filed by the Respondent Nos.1 to 3 respectively.

3) Even though the Petitioner has challenged the Detention Order on various grounds, as specifically raised in para 6 of the Petition, the learned Advocate for the Petitioner restricted his submissions to ground 'F' therein. In view of said ground, the learned Advocate submitted that, the relevant C.R.No.344/2023 registered against the Petitioner, as detailed hereinafter, would at the most amount to prejudicial to law and order problem and not public order, because the said offence is against an individual and not affecting the society. As a result, the Detention Order is illegal and liable to be quashed on this count alone.

3.1) To buttress his submissions, the learned Advocate for the Petitioner placed reliance on a recent judgment of the Hon'ble Supreme

Court in the case of *Pesala Nookaraju v/s. Government of Andhra Pradesh and Others* reported in *2023 SCC OnLine SC 1003*, wherein in paragraph 65, it is held that :-

“ 65. ... that there is a very thin line between the question of law and order situation and a public order situation, and some times, the acts of a person relating to law and order situation can turn into a question of public order situation. What is decisive for determining the connection of ground of detention with the maintenance of public order, the object of detention, is not an intrinsic quality of the act but rather its latent potentiality. Therefore, for determining whether the ground of detention is relevant for the purposes of public order or not, merely an objective test based on the intrinsic quality of an act would not be a safe guide. The potentiality of the act has to be examined in the light of the surrounding circumstances, posterior and anterior for the offences under the Prohibition Act.”

4) As against this, Mr. Yagnik, learned APP vehemently submitted that, from the said C.R.No.344/2023 and the in-camera statements, it is evident that, the criminal activities of the Petitioner not only affects the individuals but it has also affected the public at large in the concerned locality, because the said activities are committed by the Petitioner along with his associates and it created terror in the mind of the small vendors/businessmen of said locality due to threats of ‘*hafta*’ i.e. demand of money. As a result, the victims do not come forward to file a complaint with police. Therefore, the Detention Order was very essential.

5) Record indicates that, in the past the Petitioner had committed

three crimes, registered with Central Police Station, Ulhasnagar. To control the Petitioner's criminal activities as a preventive measure, the Senior Inspector of Central Police Station, Ulhasnagar, District Thane had also initiated Chapter proceedings under Section 110 of Cr.P.C. The Petitioner was externed from Thane District for a period of 02 years vide Externment proposal No.5/22 under Sections 56(1)(a)(b) of The Maharashtra Police Act, 1951 dated 29th January, 2022. During this period, the Petitioner committed one serious crime. Hence, this Order was cancelled on 17th July, 2023 to take more effective action against him.

6) The material relied upon by the Respondent No.2 to pass the Detention Order is, C.R.No.344/2023 registered with Central Police Station, Ulhasnagar, District Thane for the offences punishable under Sections 387, 427, 504, 506 (2) of the Indian Penal Code and under Sections 37(1), 135, 142 of The Maharashtra Police Act. Additionally, the Respondent No.2 also considered in-camera statement of two witnesses.

7) Considering the enunciation of the Hon'ble Supreme Court in the case of *Pesala Nookaraju* (supra), it is the potentiality of the Act that has to be examined in the light of the circumstances posterior and anterior for the offences under the Prohibition Act. Having viewed the case in hand from this angle, what we could get is that, in the incident of C.R.No.344/2023, when the informant therein was engaged in his work of parking vehicles near Ulhasnagar Railway Station, the Petitioner came

there and damaged 06 motorcycles. Damages were of Rs.24,000/- approximately. When said informant objected, the Petitioner showed him a knife and threatened as “मैं यहां का भाई हूं, अगर पार्किंग चलाना है तो तुम्हारे शेट को बोलो मुझे हर महीने का बीस हजार रुपया देने का नहीं तो मैं पार्किंग चलने नहीं दूंगा ”. At this juncture, people present there and the passersby ran away being feared from the Petitioner and no one came forward to help the informant. From the above facts and circumstances it is evident that, the said act was not confined to an individual but it also impacted on the people present there, which is undoubtedly a public place and thus, it gave rise to a problem of peace, tranquility and public order, and not merely a law and order.

7.1) Taking into consideration the seriousness of the aforesaid offence, the Senior Inspector of Police, Central Police Station, Ulhasnagar held a secret inquiry about the criminal background of the Petitioner. It revealed that, the Petitioner has terrorized small vendors/businessmen in the concerned area of Ulhasnagar-3, for the sake of ‘hafta’ and to passersby, to pay him money to drink liquor. Therefore, no one come forward to complain against the Petitioner. However, on assurance by police of keeping their identity concealed, two witnesses came forward. Statement of Witness-A pertains to an incident occurred in the 2nd week of May 2023, at about 07:00 p.m., in Ulhasnagar-3 area when the Petitioner threatened said Witness-A and demanded money from him for partying. However, on

refusal, the Petitioner gave a slap to said witness, Petitioner's associates held him and the Petitioner robbed him of Rs.2,500/- at the point of knife.

7.2) Statement of Witness-B pertains to an incident occurred in the 1st week of May 2023, at about 09:30 p.m., in Ulhasnagar-3 area when the Petitioner along with his two associates demanded *hafta* Rs.5,000/- from the witness. However, when the witness showed his inability to pay, the Petitioner and his associates manhandled and robbed him of Rs.3,000/- at the point of knife.

7.3) During both the aforesaid incidents, people gathered there ran away being feared by the terror of the Petitioner. No one helped the said witnesses. The truthfulness of the in-camera statements has been verified by the concerned Assistant Commissioner of Police.

8) The offence in C.R.No. 344/2023 of threatening the informant in order to extort money is identical to the act of extortion/robbery committed against the Witnesses 'A' and 'B'. All the three incidents occurred in the concerned Ulhasnagar-3 area. The in-camera statements clearly indicate that, the Petitioner has committed similar act with other small vendors/businessmen and passersby in Ulhasnagar-3 locality. Thus, it is apparent that, the criminal activities of the Petitioner have not only affected the individuals but it has also potentially disturbed the even tempo of life of the community in the concerned Ulhasnagar-3 locality and therefore, no one dares to come forward to file a report with the police

against the Petitioner. This all led the Detaining Authority to conclude that, the Petitioner is indulging and/or acting in a manner prejudicial to the maintenance of public order and to record its subjective satisfaction that, the Petitioner is a 'Dangerous Person' as contemplated under Section 2 (b-1) of the MPDA Act. Thus, it left the said Authority with no choice except to pass the Detention Order.

9) Conspectus of the aforesaid discussion is that, the subjective satisfaction recorded by the Detaining Authority to pass the Detention Order with a view to prevent the Petitioner from acting in any manner prejudicial to the maintenance of 'public order', is well within the four corners of law and does not require any interference by this Court under Article 226 of the Constitution of India.

9.1) In view thereof, the Petition is liable to be dismissed and is accordingly dismissed.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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