

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3522 OF 2016

Nagesh Laxman Takmoge	]
Age 44 years, residing at C-7	]
Vishwakaran Park, Jule	]
Solapur 413004, Solapur	]
District Solapur	].. Petitioner

Vs.

1. The State of Maharashtra	]
Through Home Department, having	]
Office at Mantralaya, Mumbai	]
	]
2. The Commissioner of Police,	]
Solapur City, having office at	]
Solapur	].. Respondents

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Mr. A.P. Mundargi Senior Advocate along with Mr. B.D. Joshi i/b
Mr. Sarang S. Aradhye, Advocate for the Petitioner

Mr. J.P.Yagnik A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
MRS. MRIDULA BHATKAR, JJ.**

RESERVED ON : OCTOBER 18, 2016

PRONOUNCED ON : OCTOBER 27, 2016

JUDGMENT [PER SMT. V.K.TAHILRAMANI, J.] :

1 This a petition preferred by the petitioner / detenu -

Nagesh Laxman Takmoge challenging the order of detention passed against him by the Commissioner of Police, Solapur City. The said order of detention has been passed under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the "MPDA Act"). In view of the fact that the detenu is a dangerous person and his activities are prejudicial to the maintenance of public order, hence, to prevent the detenu from acting in any manner prejudicial to the maintenance of public order, the order of detention has been issued. The order of detention has not yet been executed and hence, this is a petition at the pre execution stage i.e. at a stage prior to the service of the order of detention on the detenu.

2 The original files relating to the detention order and grounds of detention as well as documents accompanying the same have been produced for our perusal by the learned APP. The grounds of detention set out the activities of the detenu as a dangerous person within a meaning of clause (b-1) of Section

2 of the MPDA Act. In the grounds of detention, there is a reference to recent incidents in which the detenu was involved based on which, the order of detention has been issued.

3 The learned A.P.P. has raised a preliminary objection that this petition at the pre-execution stage is wholly misconceived and is untenable since it does not fall under any of the five exceptions carved out by the Apex Court in the case of ***Additional Secretary to the Government of India and others Vs. Smt. Alka Subhash Gadia and Another***¹. In the decision in the case of ***Alka Gadia***, the Supreme Court has observed that it is not correct to say that the Courts have no power to entertain the grievances against any detention order prior to its execution. The Courts have the necessary power and they have used it in proper cases although such cases have been few and the grounds on which the Courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number viz. where the Courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii)

1 1992 Supp (1) S.C.C. 496

that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so.

4 Relying on the decision in the case of **Alka Gadia**, the learned A.P.P. contended that this is not a case where either (i) the impugned order is not passed under the MPDA Act, under which is purported to have been passed; or (ii) the order is sought to be executed against a wrong person; (iii) the order of detention has been passed for a wrong purpose, or (iv) the order is passed on vague, extraneous and irrelevant grounds or (v) the authority which passed the order had no authority to pass the order. In the facts and circumstances before us it is urged that, none out of the five exceptions carved out by the Apex Court in **Alka Gadia's** case can be pressed into service to justify entertaining this petition at the pre-detention stage.

5 In reply to the preliminary objection, Shri. Mundargi, the learned senior counsel appearing for the detenu urged that this case squarely falls under either the 3rd or 4th exception mentioned above viz. that the order is passed for a wrong

purpose [exception (iii)] or that it is passed on vague, extraneous or irrelevant grounds [exception (iv)] carved out by the Apex Court. Mr. Mundargi submitted that on 27.6.2016 there was an incident of hot exchange of words between the petitioner and the police of Vijapur Naka Police Station, Solapur. The petitioner was arrested and was kept in police custody. While in custody, on 28.6.2016 the police asked the petitioner to remove his clothes and thereafter video shooting of the petitioner was done by the local police and the video clipping thereof was made viral. In view of this, it was submitted that the order of detention was issued for a wrong purpose i.e. not to secure the public order but to humiliate the petitioner.

6 We have perused the detention order and the grounds of detention for the limited purpose of considering the contention that the order has been passed for a wrong purpose. The activities of the detenu as mentioned in the grounds of detention clearly show that he is a dangerous person and his activities are prejudicial to the maintenance of public order, hence, it is necessary to detain him. It may be

stated here that whatever is alleged by the petitioner, is alleged against the local police of Vijapur Police Station. There is no allegation that the detaining authority was in any way concerned with the incident which took place on 28.6.2016. This alleged incident has taken place at the police station and not in the office of Commissioner of Police i.e. the detaining authority. The detaining authority is the highest ranking officer in the city, he is a highly responsible person and we find that there was sufficient material before him to be subjectively satisfied that it was necessary to issue the order of detention. Thus it cannot be said that the detention order is issued for a wrong purpose.

7 The second ground which is raised is that the order of detention has been passed on extraneous grounds. We have perused the detention order and the grounds of detention. The grounds of detention set out the recent activities of the detenu which clearly show that the petitioner is a dangerous person and that his activities are prejudicial to the maintenance of public order. Suffice it to say that the grounds of detention categorically record the subjective satisfaction of the detaining

authority that the petitioner is a dangerous person and is indulging in activities prejudicial to the maintenance of public order and hence, it is necessary to detain the detenu. It is in the light of the incidents mentioned in the grounds of detention that the detaining authority has recorded its subjective satisfaction that the detenu is a dangerous person, hence, to prevent the detenu from indulging in activities which are prejudicial to the maintenance of public order, it is necessary to detain the detenu. The detention order is passed on not one but three incidents. We must also bear in mind that section 5-A of the MPDA Act clearly provides that where a person has been detained in pursuance of an order of detention under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds. It is further provided in sub-section (a) of section 5-A that such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are - (i) vague, (ii) non-existent, (iii) not relevant, (iv) not connected or not proximately connected with such person, or (v) invalid for any other reason whatsoever. Even assuming for some far-fetched reason that

one of the grounds is extraneous, after perusing the grounds of detention, we are of the opinion that there is sufficient material to come to the conclusion that the detenu is a dangerous person and he is acting in a manner prejudicial to the maintenance of public order. We must make it clear that since a specific contention has been raised, we are expressing this view for the limited purpose of holding that the detenu's case does not fall under either exception (iii) or (iv) carved out by the Apex Court in *Alka Gadia's* case.

8 While considering the preliminary objection, we must bear in mind the distinction between the existence of power under Article 226 in the High Court and its exercise. In *Alka Gadia's* case, the Apex Court, was dealing with the appeal filed by the Additional Secretary to the Govt. of India against the order passed by this Court at a pre-detention / pre-execution stage. The Apex Court dealt with the self imposed restrictions and limitations on the powers of the High Court under Article 226 and of the Apex Court under Article 32 of the Constitution, in such cases. In para 12 of the judgment in the case of ***Alka Gadia***, the Apex Court discussed the law on the subject and

then concluded in para 30 observing that there was a difference between the existence of the powers and its exercise. The powers under Article 226 and 32 are wide and untrammelled by any extraneous restrictions and can reach any executive order resulting in civil or criminal consequence. However, the courts have, over the years, evolved certain self restraints for exercising these powers. This has been done in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. This jurisdiction, by its very nature, has to be used sparingly. To permit a detenu to challenge the order of detention in a given case even before it is executed would, perhaps, frustrate the very purpose of the order and of the law under which it is made. Though the courts have powers to entertain a grievance against the order of detention prior to its execution, the Apex Court has clearly spelt out the limited categories of cases where such exercise was permissible. In this view of the matter, the appeal filed by the Additional Secretary to the Govt. of India was allowed and the order passed by this Court was set aside.

9 This Court in Criminal Writ Petition No. 648 of 1996 decided on 2nd July, 1996 in the case of ***Gauri Shankar Jakhalia Vs. The Jt. Secretary, Department of Revenue, Ministry of Finance, Govt. of India, New Delhi and others***² relying upon the ratio of the decision in ***Alka Gadia's case (supra)***, refused to entertain the writ petition at the pre-execution stage. Against the order passed by this Court, S.L.P. No. 1825 of 1996 preferred by Gauri Shankar Jakhalia has been dismissed by the Apex Court on 30th July, 1996.

10 In view of the above, it cannot be said that the order has been passed on vague, extraneous or irrelevant grounds. It also cannot be said that the order has been passed for a wrong purpose. In the circumstances, the challenge to the order of preventive detention cannot be upheld at pre-execution stage. Hence, petition must fail.

11 However, we may observe that the findings which we have recorded in this judgment are in the context of examining the challenge to the order of detention at pre-execution stage. After the execution of the order, it is obvious that the

² Cri.W.P.No. 648 of 1996 dated 2.7.1996

prospective detenu will be entitled to challenge the said order on all permissible grounds and all contentions in that behalf are expressly kept open.

12 Subject to what is observed above, we pass the following order.

13 The Petition is rejected. Rule is discharged.

[MRS. MRIDULA BHATKAR, J.]

[SMT. V.K.TAHILRAMANI,J.]

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