

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

CRIMINAL WRIT PETITION NO. 545 OF 2017.

Manoj @ Sonya S/o Ramdas Ghule,
Age : 25 years, Original R/o. Disha Heights,
Flat No. C/302, Tapkirnagar, Dehu Phata,
Alandi, Dist Pune
Presently detained at Central Prison,
Aurangabad.

... Petitioner

VERSUS

1. The Commissioner of Police
Pune City, Dist. Pune.
2. The State of Maharashtra,
Through Addl. Chief Secretary,
Home Department (Special),
Mantralaya, Mumbai - 32.
3. The Superintendent,
Aurangabad Central Prison,
Aurangabad.

... Respondents

.....
Mr U. N. Tripathi, Advocate for the petitioner
Mrs P. V. Diggikar, APP for respondent/State
.....

CORAM : **S. S. SHINDE &
A. M. DHAVALA, JJ.**

RESERVED ON : 11.08.2017.
PRONOUNCED ON : 04.09.2017.

JUDGMENT (Per A. M. Dhavale, J.) :

1. This is a petition filed under Articles 14, 19, 21, 22 and 226
of the Constitution of India and under the provisions 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 (hereinafter referred to as "MPDA Act") for issuance of writ of *habeus corpus* and thereby quashing the order of preventive detention passed against the petitioner by Commissioner of Police, Pune, on 08.02.2017.

2. The Commissioner of Police, Pune, on 08.02.2017, in exercise of powers conferred by section 3(2) of the MPDA Act and delegated to her by the Government, passed the impugned order of detention of the petitioner and on the same day separate order for committal of the petitioner to the Central Prison at Aurangabad was also passed. The grounds of detention dt. 08.02.2017 were annexed and supplied to the petitioner on 11.02.2017. In short, the petitioner was indulging in dangerous activities like terrorizing the people by forming an association of hooligans and using deadly weapons such as pistol, sword, skythe, sattur & knife and robbing persons so that nobody should lodge any complaint or give statement against them. Following is the list of cases registered against the petitioner, out of which five are pending and two chapter cases were initiated against him.

Offences

Sr. No.	Police Station	Cr.No.	Sections of law	Date & time of registration	Date and time of arrest	Status
1	Vishranthwadi	267/2012	U/s 324, 323, 504, 427, 34 of the IPC	On 21/09/2012 at 09.30 hrs.	On 24/09/2012 at 11.30 hrs.	Court Pending
2	Vishranthwadi	115/2013	U/s 324, 506(1), 34 of the IPC	On 25/03/2013 at 21.40 hrs.	On 17/06/2013 at 21.40 hrs.	Court Pending
3	Vishranthwadi	169/2014	U/s 307, 34 of the IPC; r/w sec. 3/25, 4/25 of the Arms Act, 1959	On 25/05/2014 at 23.30 hrs.	On 27/05/2014 at 16.45 hrs.	Court pending.
4	Dighi	196/2016	U/s 143, 144, 147, 148, 149, 337 of the IPC; r/w sec. 3/25 of the Arms Act, 1959.	On 01/12/2016 at 02.00 hrs.	On 1/12/2016 at 08.00 hrs.	Court pending.
5	Dighi	3002/2017	U/s 4/25 of the Arms Act, 1959; r/w sec. 37(1)(3)/135 of the Maharashtra Police Act, 1951.	On 10/01/2017 at 20.00 hrs.	On 10/01/2017 at 19.30 hrs.	Under investigation.

Preventive Actions

Sr. No.	Police Station	Chapter Case No.	Sections of law	Status
1	Vishrantwadi	Chapter case no. 188/2012	U/s 107 of the Cr.P.C.	On 23/11/2012, you had executed a final bond of Rs. 5,000/- with one surety in the like amount for keeping peace for a period of one year with Spl. Executive Magistrate, Khadki Divn., Pune City.
2	Dighi	Chapter case no. 15/2016	U/s 110(e)(g) of the Cr.P.C.	On 30/09/2016, you had executed a final bond of Rs. 10,000/- with one surety in the like amount for good behaviour for a period of two years with Spl. Executive Magistrate, Khadki Divn., Pune City.

3. It is stated that, the petitioner was directed to execute bonds in both the chapter proceedings but, it did not curtail his criminal activities. The Commissioner of Police, being a Detaining Authority, has referred to recent offences committed by the petitioner viz. C.R. No. 196/16 dt. 01.12.2016 and C.R. No. 3002/17 dt.

10.01.2017 in her order dt. 08.02.2017. She has narrated in detail as to how the petitioner and his accomplice were terrorizing the people by firing rounds of pistol at public places and how the people were scared of him. In the incident dt. 10.01.2017, the petitioner was moving brandishing a knife in Kate Colony area and the people fearing the petitioner, had closed their shops. The petitioner was shouting that, if anyone had power, he should come forward, he would kill them one by one. Then, in-camera statements were recorded of two witnesses, which show that on 27.05.2016, the petitioner created similar terror amongst the public at large and accosted one person, abused him in the name of his mother and demanded Hafta and robbed him of Rs. 620/- and also threatened him that, he should pay more amount next time, lest he would be killed and if he would try to lodge police complaint, he would barge into his house and would kill him as well as his family members. Similar incident dt. 25.08.2016 was deposed by witness B wherein he was robbed of Rs. 1570/-. No person was ready to help due to fear of the petitioner. The Commissioner of Police recorded her subjective satisfaction on the following grounds.

- (i) That, the acts of the petitioner were within the four corners of the acts of dangerous person as defined under the MPDA Act and he was creating disturbance of public order.

- (ii) The Assistant Commissioner of Police (in short "ACP") had verified the in-camera statements and verified the truthfulness & genuineness thereof.

4. On going through the statements, the Commissioner of Police noted that she has seen the statements and report of ACP and she was satisfied about the truth of the facts given in the statements as well as the apprehension entertained by witnesses A & B. The Commissioner of Police, Pune, has, in paras 10 to 13 of order dt.08.02.2017, informed the petitioner about his right to make representation to the State Government and the person to whom it was to be addressed and his right to approach the Advisory Board in case the State Government approves the decision.

5. The Detention Order was accompanied by several documents consisting of total 304 pages relating to the various crimes registered against the petitioner such as FIRs, arrest forms, statements of witnesses recorded therein and the orders passed on Bail Applications by the learned Judicial Magistrate First Class in some matters.

6. The say of the Commissioner of Police at Exh. 31 shows that, the detention order was forwarded to the Government of

Maharashtra on 11.02.2017 and the Government accorded approval to the same on 15.02.2017 and confirmed the same by detention order dt. 22.03.2017. The petitioner made representation to respondent No. 1-Additional Chief Secretary (Home), Government of Maharashtra, Home Department (Special), Mumbai, on 03.04.2017 (not in time). The petition is silent on the action taken by the Government and the Advisory Board and further progress in the matter. The learned advocate for the petitioner and learned APP also did not submit anything as to what happened to the detention order and both the parties have not produced copies of approval or detention order passed by the Government. It is axiomatic that the order of detention passed by the Government is not challenged.

7. Shri. U. N. Tripathi, learned counsel for the petitioner challenged the impugned order on following grounds and relied on the rulings shown below each point.

- (i) The detaining authority must ascertain and be satisfied about the truthfulness of the statements made in-camera and should record satisfaction to that effect in the detention order and the same has not been done.

(a) **Smt. Vijay Raju Gupta Vs. R. H. Mendonca & Ors. 2001 ALL M.R. (Cri) 48.** In this case,

there was defence that in-camera statements were false and fabricated. Those were recorded by inferior authority and also verified by inferior authority.

- (b) **Shahjahan w/o. Kalimkhan Samshadkhan Pathan Vs. State of Maharashtra & Anr. 2016 ALL MR (Cri) 4233.**
 - (c) **Gokul Sahabrao Sabale Vs. The Commissioner of Police, Pune & Ors. 2017 ALL MR (Cri) 2051**
 - (d) **Sanjay s/o Ramlal Shahu Versus State of Maharashtra & Anr.** decided by the Division Bench of this Court at Nagpur Bench, on February 01, 2016.
 - (e) **Santosh s/o. Bhimrao Mohokar Vs. The State of Maharashtra & Ors. 2017 ALL MR (Cri) 2007**
- (ii) There was non-application of mind.
- (a) **Mrs. Mrunalini Virendra Lonare Vs Commissioner of Police and Ors** decided by Division Bench (A. S. Oka & A. A. Sayed, JJ.) of this Court on 18th March, 2014. In this case, the statements were vague and with blank spaces.

- (b) **Sau. Chandabai w/o. Dadarao Kale Vs. State of Maharashtra & Ors. 2016 ALL MR (Cri) 4797.** (In this case, there were discrepancies in age of petitioner and place of raid).
- (iii) 'Grounds' means basic material facts, which were not communicated to the petitioner.
 - (a) **Khudiram Das Vs. The State of West Bengal and others reported in (1975) 2 SCC 81.**
 - (b) **Dattatraya Kakade Vs District Magistrate, Solapur, decided on 28.04.2017.**
- (iv) There was no live link between the incident and the date of detention.
 - (a) **Mrs. Mrunalini Lonare's case** (supra) (There was gap of eight months between the order of detention passed and the date of incident).
- (v) Acquittal not considered. Acquittal in case was not placed before the detaining authority.
 - (a) **Deepak S/o Dattu Suryawanshi Vs. The Commissioner of Police, Pune City & Ors. 2017 ALL MR (Cri) 416.**

8. After carefully going through the order of detention and the say filed by respondent No. 2, we find that the Detaining Authority has relied on two recent criminal cases dt. 01.12.2016 and 10.01.2017. Besides, in-camera statements of the witnesses disclose the incidents dt. 27.05.2016 and 25.08.2016. Rest of the cases of 2012, 2013 & 2014 only show the trend of the petitioner as habitual offender. Neither the order of detention nor the affidavit of respondent No. 2 shows that she wanted to rely on the facts of those cases except to show nature of habits of the detainee, still as a matter of caution, she provided copies of FIR, arrest forms and other statements and documents from all these cases. We find no substance in the contention that basic facts and material was not supplied. There are 76 documents running into 304 pages, which were supplied to the detainee. Besides, the Detaining Authority has described in detail the statements of two witnesses recorded in-camera as well as two recent incidents. We find no reason to raise any doubt about the subjective satisfaction of respondent No. 2 that from the record referred by her in the order that the petitioner was a dangerous person, he was disturbing the public order, he was indulging in terrorizing the public, he had taken crime as his profession, he was using weapons and giving threats, he was moving along with several accomplice and robbing people and intimidating

with threats of killing. People from the vicinity were scared. On his arrival, they were running helter and skelter and were closing shops. Nobody was ready to protest him or to help the victim. If this does not amount to disturbance of public order, nothing else can amount to disturbance of public order. In **Hasan Khan Vs R. H. Mendonca 2002(3) SCC 511**, similar activities of the detainee from the said case disclosed were quite mild still it was held that those activities amounted to breach of public order and not breach of law & order. In **Mrs. Harpreet Kaur Harvinder Singh Bedi v. State of Maharashtra and another AIR 1992 SC 979**, use of arms to create fear psychosis is held to be prejudicial to Public Order.

9. A lot of stress was given on the fact that, in-camera statements were not personally verified by the Detaining Authority and her subjective satisfaction has not been recorded. In this regard, we find that in para 9 of the impugned order, the Detaining Authority has recorded her subjective satisfaction in following words.

"The Assistant Commissioner of Police, Khadki Division, Pune has verified the truthfulness and genuineness of the incidents narrated in the 'in-camera' statements of the Witnesses 'A' and 'B' and submitted report to me. In the said report, the Assistant Commissioner of Police, Khadki Division, Pune has mentioned that the facts given in the

written statements and apprehension entertained by the Witnesses 'A' and 'B' therein are true and reasonable. After perusing the said report, I am satisfied that the facts given in the statements and apprehension entertained by the Witnesses 'A' and 'B' are true and reasonable."

10. We have seen the original record. The statements recorded in-camera disclose the endorsement "Seen" and the signature of the Detaining Authority as on 30.01.2017. Most of the rulings relied on by learned advocate for the petitioner disclose that the Detaining Authority should see the in-camera statements for subjective satisfaction about genuineness of the statements as well as unwillingness of the witnesses to make open statement. The ACP has personally verified the truth by visiting the spots and made inquiry with the neighbouring persons and they have also admitted the incidents on the assurance of anonymity. The witnesses have categorically stated that, they were scared of the petitioner and their names should not be disclosed and they should not be called to give evidence. They have even not filed complaints inspite of getting robbed from the petitioner. We, therefore, find that there is no substance in the contention that in-camera statements were not personally seen by the Detaining Authority. These facts are not assailed by the petitioner as untrue. Therefore, the finding of

Detaining Authority that detenu was dangerous person is not vitiated. (reliance on **Smt. Phulwari Jagdambaprasad Pathak Vs. Shri. R. H. Mendonca & Ors.** AIR 2000 SC 2527).

11. So far as the issue of live link is concerned, the incident of 27.05.2016 is quite old. There were three other incidents of August 2016, Dec-16 and Jan-17 which were recent one. There are various crimes registered against the petitioner and the incidents disclose the continuous and consistent link of criminal activities of the petitioner. Three out of four incidents referred by the Detaining Authority are recent one. In **Bhupendra Vs. State of Maharashtra and another** 2008 (17) SCC 165, it is held as under:

“10. 'Public Order' 'law and order' and the 'security of the State' fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State. ”

12. It is necessary here to quote Section 5A of MPDA Act, which reads as under:

5A : GROUNDS OF DETENTION SEVERABLE:

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 and accordingly--

- (a) 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, and it is not, therefore, possible to hold that the State Government or an officer mentioned in sub-section (2) of section 3 making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;**
- (b) the State Government or such officer making the order of detention shall be deemed to have made the order of detention under the said section 3 after being satisfied as provided in that section with reference to the remaining ground or grounds.*

13. In the light of this section, even if it is assumed that the incident dt. 27.05.2016 or the crimes registered against the petitioner in the year 2012, 13 or 14 referred in the detention order though not proximate were considered, still the detaining authority herself has stated and her order discloses that she was not relying on the incidents of 2012, 2013 and 2014 and even if the incident dt.

27.05.2016 is held to be not proximate, still the order of detention is substantiated by other incidents which were sufficient to uphold the findings recorded by the Detaining Authority. We rely on **Priyanka Fulore v. State of Maharashtra (2002) 9 SCC 214**, wherein in para nos. 5 & 7 it is held as under:

“5. The counsel submitted that the materials against the detenu were collected in the month of July 2000 whereas the proposal for detention was initiated in August 2000 and the order of detention was passed in October 2000.

7. On consideration of the facts of the case as appearing from the records and the nature of activities alleged against the detenu, in our view, the findings recorded by the High Court that the detention order in the case was neither vitiated due to the delay nor on the ground of illegality in accepting the in-camera statements as materials for subjective satisfaction of the authority is unexceptionable. The High Court has given cogent reasons in support of its findings. Therefore, the order of detention passed against the detenu does not call for any interference.”

14. We find that the Detaining Authority has not disclosed the period of detention in her order. As per Section 3(3) of the MPDA Act, her order has a life of only 12 days. The order will continue only subject to approval by the State Government. The period of calculation starts from the date of detention. The petitioner has not disclosed the date of detention. Both the parties have not produced the order of approval of the State Government or the separate order of detention passed by the State Government. [Reliance on **State of**

Maharashtra v. Santosh Shankar Acharya AIR 2000 SC 2504].

There is no statement that the State Government placed the detention order before the Advisory Committee within three weeks from the date of detention as required u/s 10 of the MPDA Act. The petitioner has not raised this ground nor has the Government produced any record to that effect. It seems that, the petitioner is in Jail from 08.02.2017 till today.

15. In Mrs. T. Devaki v. Government of Tamil Nadu and others AIR 1990 SC 1086, three Judges Bench of Apex Court held that order of detention not specifying the period of detention does not make the order invalid.

16. Before parting with the final order, we wish to express that when the names of the witnesses are withheld u/s 8(2) of the MPD Act, the Detaining Authority or the person recording the statement of such persons should take utmost care to see that the statements do not give any clue about the identity of witnesses to the detenu, otherwise mere withholding names of witnesses will serve no purpose.

ORDER

(i) The Criminal Writ Petition is dismissed.

[A. M. DHAVALA]
JUDGE

[S. S. SHINDE]
JUDGE