

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

CRIMINAL WRIT PETITION NO.1913 OF 2017

Iqbal Munnaf Sayyed

Age about 44 years, Occu:Labour

Residing at Survey No.110,

Ram Tekadi, Hadapsar, Pune.

... Petitioner

V/s.

1. The Commissioner of Police,
Pune City, Pune.

2. The State of Maharashtra
(Through The Ld. Principal
Secretary, Home Department,
Mumbai.)

3. The Superintendent,
Nashik Road Central Prison,
Nashik.

... Respondents

Mr.Vikas B. Shivarkar for the Petitioner.

Mr.A.A.Kumbhakani, Advocate General with Ms. M.H.Mhatre,
APP for the State/the Respondent.

**CORAM : S.C.DHARMADHIKARI AND
SMT. BHARATI H.DANGRE, JJ.**

Reserved for judgment on: 5th October, 2017.

Judgment pronounced on : 11th October, 2017.

JUDGMENT (PER SMT. BHARTI H.DANGRE, J):-

1. The present Writ Petition is filed by the detenu detained at Nasik Road Central Prison, Nasik in pursuance of an order

of detention dated 4th February, 2017, passed under Section 3(2) of the Maharashtra Prevention of Dangerous Activities Act, 1981 for quashing and setting aside the said order and seeking his temporary release from detention. The Petitioner has also prayed that the definition of “Dangerous weapon” under Section 2(b-1) of the M.P.D.A. Act be declared an unconstitutional being against the object and reasons of the enactment.

2. The Petitioner was detained by the impugned order and the copy of the order of the detention and the grounds of detention came to be served on the Petitioner on 4th February, 2017. The Petitioner contends that he had submitted a representation for revocation of the order of detention and he also appeared before the Advisory Board, which confirmed the order of detention. The grounds on which the order of detention is assailed by the present writ petition are enumerated below in a brief manner:-

- a. The impugned order of detention is bad and illegal since it violates the fundamental rights of

the Petitioner.

b. The Petitioner has not engaged himself in any of the activities, which adversely affects the maintenance of the 'public order' nor his act is likely to cause harm, danger or alarm or a feeling or insecurity amongst the general public.

c. The Petitioner is not habitually indulging into commission of offences under Chapter XVI or Chapter XVII of the Indian Penal Code or Chapter V of the Arms Act, 1959.

d. The Petitioner was not supplied the entire documents thereby making his right to make representation an illusory one.

e. The Detaining Authority could not arrive at a conclusion based on the material before him and the same material, on the basis of which an order of externment was passed against the Petitioner was relied upon while passing the detention order.

g. The statements of the Incamera witnesses

are not trustworthy since they narrate about the date on which the incident took place, which are subsequent to the date of declaration of the demonitization in India and therefore, there is no question of Petitioner snatching the money as alleged.

3. Since the Petitioner had challenged constitutional validity of Section 2(b-1) of the M.P.D.A. Act, notice was issued to the learned Advocate General. Today the learned Advocate General is present before us since the notice was issued to him, however, at the outset the Petitioner submitted that he did not wish to press the challenge to the validity of the definition of 'dangerous person' as prayed by him in his prayer (e). Therefore, we have relieved the learned AG and heard the learned Assistant Public Prosecutor Mrs.Mhatre on merits of the matter. We have heard Shri Vikas Shivarkar , the learned counsel for the Petitioner.

4. The learned counsel for Petitioner would argue before us

that the impugned order passed by the detaining authority does not record subjective satisfaction and the detaining authority has relied upon two C.R.s and two in-camera statements to arrive at a conclusion that the Petitioner was a “dangerous person” as defined under Section 2(b-1) of the Act and had unleashed a reign of terror and had become perpetual danger to the society in the area of Wanawadi Police Station in Pune city. According to the learned counsel for the Petitioner the order of externment was passed on 9th May, 2013, externing him from Pune District for a period of two years. According to him the material which was relied upon while passing the order of externment was used by the detaining authority for passing detention order and the learned counsel would argue that if the order of externment did not serve its purpose, it would have been open for the authorities to pass fresh order of externment to curb the alleged criminal activities of the Petitioner. He would further argue that after expiry of the period of externment one offence is registered against him at Wanawadi Police Station vide Crime No.352 of 2016 punishable under Sections 4/25 of the Arms Act; r/w Sections 3,7 of the Criminal

Law Amendment Act; r/w Section 37(1)/135 of the Maharashtra Police Act, 1951. He further states that on 24th October, 2016 another offence is registered against him with the same police Station vide C.R.No. 523 of 2016 under Sections 323, 452, 504, 506(2) of IPC; r/w Section 4/25 of the Arms Act, 1959; r/w Sections 3,7 of the Criminal Law Amendment Act; r/w Section 37(1)/135 of the Maharashtra Police Act, 1951. The counsel for the Petitioner urged that there was no sufficient material on the basis of which the activities of the Petitioner either individually amounted to act of breach of the public order and he attempts to demonstrate before us that there is distinction of “public order” and “law and order”. He also urged that the statements of the incamera witnesses are not trustworthy being improbable and exaggerated versions.

5. We also heard the learned Assistant Public Prosecutor, who supports the impugned order and relies upon affidavit filed by the detaining authority to demonstrate that the detaining authority had arrived at subjective satisfaction that

the Petitioner is a habitual criminal and the offences in which he had indulged himself adversely affected the public order. According to the learned APP, the entire material and documents which were relied upon by the detaining authority in arriving at the subjective satisfaction were supplied to the detenu so that he avails an opportunity available to him under Article 22(5) of the Constitution of India.

6. The Maharashtra Prevention of Dangerous Activities Act, 1981 was enacted to provide for preventive detention of certain categories of persons including “dangerous persons” for preventing their dangerous activities prejudicial to the maintenance of public order. Object of preventive detention law is not punitive, but only preventive and in case of preventive detention, offences are not required to be proved nor is any charge to be formulated. The basis of such detention is suspicion and rationality. However, while exercising the power of preventive detention the detaining authority must keep in mind that in depriving a person of his life and liberty conferred by Article 21 on the citizen of India, the authority

must strictly comply with the procedural part so that the safeguards guaranteed in Article 22(5) of Constitution of India, are ensured.

7. Section 3 of the Act of 1981 authorizes the State Government to detain a person if it is satisfied with respect to any person that with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order, he needs to be detained. The authority exercising the power must form a subjective satisfaction that it is necessary to detain a person since he is acting in manner prejudicial to the maintenance of the public order and it has to be kept in mind that the action is preventive in nature, thereby deterring the detenu from engaging himself into activities, which are prejudicial to the maintenance of public order in future.

8. The impugned order passed by the detaining authority on 4th February, 2017 is supported by the grounds of detention in pursuance of Section 8 of the Act and which are communicated to the Petitioner. The grounds reveal that the Petitioner is

residing and carrying out his activities in the jurisdiction of the Wanawadi Police Station and the Petitioner alongwith his accomplices move, armed with deadly weapons such as revolver, sword, koyata, kukari and do not hesitate to use the same while committing offences like murder, riot, threat to cause grievous hurt and mischief resulting into damage to the public property etc. The detaining authority has referred to three offences registered against the Petitioner of the year 2003, one being at Hadapsar Police Station and two registered with Wanawadi Police Station to show his antecedents. The first offence registered against the Petitioner vide C.R.No.189 of 2003 is under Sections 452, 506(2), 323, 34 of IPC. The second offence vide C.R.No. 3131 of 2003 is under Sections 506(2), 323, 504, 34 of IPC and the third offence vide C.R.No. 245 of 2003 is registered under Sections 452, 427, 34 of IPC, another offence is registered vide C.R.No.90 of 2010 at Hadapsar Police Station under Sections 307, 142, 147, 148, 149, 324, 323, 504, 506(1) of IPC r/w Section 37(1)/135 of the Maharashtra Police Act, 1951. With a view to curb the criminal activities of the Petitioner, the Petitioner was

externed by the order passed by the D.C.P. Zone-IV, Pune City for period of two years from Pune District vide order dated 9th May, 2013. The impugned order further reveals that the after cessation of the externment order the Petitioner again indulged himself into criminal activities, which resulted into registration of C.R.No. 352 of 2016 on 5th August, 2016 at Wanawadi Police Station under Section 4/25 of the Arms Act, 1959 r/w Section 37(1)/135 of the Maharashtra Police Act, 1951; r/w Sections 3 and 7 of the Criminal Law Amendment Act. In the said offence the Petitioner was arrested on 5th August, 2016 and he was released on bail by the Lashkar Court, Pune on 6th August, 2016. During the period when he was released on bail, on 23rd October, 2016 the Petitioner again indulged himself into an criminal act for which an offence came to be registered against him on 24th October, 2016 at Wanawadi Police Station, Pune, for offences under Sections 323, 452, 504, 506(2) of IPC and thus, it is seen that the Petitioner committed the second offence, while he was released on bail.

9. The detaining authority has relied upon two in-camera statements of witnesses residing in the said area of operation of the Petitioner which make out an act of extortion at the instance of the Petitioner and both the witnesses were threatened of dire consequences if they approach the police station, which is the reason why no offences were registered for the said Act of the Petitioner. The witnesses themselves were threatened by the detenu that they would face dire consequences if they approach the police station and the said residents were taken into confidence and assured that their identity would not be disclosed and their statements were recorded (In-camera) and were properly verified as required by the Assistant Commissioner of police.

10. The statements of two incamera witnesses reveal that they were acquainted with the Petitioner as a habitual criminal, who moved around in the areas of Ram Tekdi, Wanawadi, Sayyed Nagar alongwith his associates and threatened petty businessmen, labourers, vegetables vendors by use of weapons and extracting money from them. Witness

(A) referred to an incident of 13th November, 2016 at Ram Tekdi, Pune, whereas the witness (B) had narrated an incident of 13th November, 2016 at Ram Tekdi, where the detenu had created an atmosphere of terror in the locality by threatening people and extracted money by using force and weapons and also man-handled the residents of the locality.

11. Based on the criminal record of the Petitioner, the detaining authority arrived at the conclusion that he is a habitual and dangerous person involved in serious crimes and his criminal activities are a threat to the lives and public property and that he had unleashed a reign of terror in the area and people residing in the said area are living in the shadow of constant fear whereby day to day activities of the residents of locality are impaired. On scrutiny of the material placed before detaining authority, the detaining authority arrived at a conclusion that the tendency and inclination reflected in the offences committed by the detenu, the authority was satisfied that he was likely to revert to the similar activities which are prejudicial to the maintenance of

the public order and therefore, passed the impugned order on 4th February, 2017 detaining the Petitioner for a period of one year.

12. We are not also able to accept the submission of the learned counsel for the Petitioner that the activities of the detaining authority where the activities against the law and order, but can not be one amounting to be prejudicial to “public order”. The word “Public order” has a larger connotation than the “Law and order” and the former extends to contravention of law to affect public order must affect the community or public at large. The term “Public order” is synonymous with public peace, public safety and tranquility and qualitatively the acts, which affect law and order are not different from the act which affect public order. Every kind of disorder or contravention of law and order affects that orderly tranquility and the distinction between the two being only of degree or extent of its impact on the society. Both have the potentiality to disturb the even tempo of life and community which make it prejudicial to the maintenance of

public order. If the contravention affects only few individuals directly involved as distinguished from the public at large it would raise the problem of law and order but its length, magnitude and intensity disturbs the public at large then it results in disturbance of public order.

13. In case of **K. K. Saravana Babu Vs. State of Tamilnadu and another, reported in (2008) 9 Supreme Court Cases 89**, the Hon'ble Apex court examined the concept of "Law and Order" and Public Order" and observed as below:-

"15. This Court on several occasions examined the concepts of "law and order" and "public Order". Immediately after the Constitution came into force, a Constitution Bench of this Court in Brij Bhushan and Anr. v. The State of Delhi dealt with a case pertaining to public order. The Court observed that "public order" may well be paraphrased in the context as "public tranquility".

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"16. Another celebrated Constitution Bench judgment of this Court is in Romesh Thappar v.

State of Madras. In this case, Romesh Thappar, a printer, publisher and editor of weekly journal in English called Cross Roads, printed and published in Bombay, was detained under the Madras Maintenance of Public Order Act, 1949. The detention order was challenged directly in the Supreme Court of India by filing a writ petition under Article 32 of the Constitution. The allegation was that the detenu circulated documents to disturb the public tranquility and to create disturbance of public order and tranquility.” The court observed: (AIR p 127, para 7)

“7 ...`Public order' is an expression of wide connotation and signifies that state of tranquility which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established. ...it must be taken that `public safety' is used as a part of the wider concept of public order....”

“17. The distinction between "public order" and "law and order" has been carefully defined in a Constitution Bench judgment of this Court in Ram Manohar Lohia (Dr.) v. State of Bihar. In this

judgment, Hidayatullah, J. by giving various illustrations clearly defined the "public order" and "law and order". Relevant portion of the judgment reads thus:(AIR pp.758-59, paras 51-52)

“51. Does the expression "public order" take in every kind of disorder or only some of them? The answer to this serves to distinguish 'public order' from 'law and order' because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be

said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1) (b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

52. It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public

order but not security of the State.”

“23. This Court in another important case *Ashok Kumar v. Delhi Administration* clearly spelled out a distinction between “law and order” and “public order”. In this case, the court observed as under: (SCC pp 409-10, para 13)

“13. The true distinction between the areas of 'public order' and 'law and order' lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of 'law and order' and 'public order' is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance

of public order.”

“24. It has to be seen whether the detenu's activity had any impact on the local community or to put it in the words of Hidayatullah, J., had the act of the detenu disturbed the even tempo of the life of the community of that specified locality?”

14. The conduct of the Petitioner as can be seen from the two C.R.s and the two in-camera statements on the basis of which the detaining authority has reached the subjective satisfaction reflects that his activities prejudicially affected the people of the locality and the public tranquility in the area was seriously disturbed as people had to confine themselves to their houses as his act of hurling, abuses, extracting money had created panic and disturbed the even flow of life in the locality. We therefore, do not agree with the submissions of the counsel for the petitioner that the act of the detenu was breach of law and order only and not public order as per the requirement of the Act of 1981. As already discussed above, the public order has definite connotation and the activities of the Petitioner as could be seen from the two C.R.s registered with Wanawadi

Police Station of the year 2016 and two in-camera statements of the witnesses clearly reveal that they are grossly affecting the public order. The purpose of the act of 1981 is to preventively detain the dangerous persons so as to prevent his dangerous activities prejudicial to the maintenance of the public order and the case of the Petitioner clearly falls within the ambit of the Act and the order of detaining authority cannot be said to be illegal. Since Public order is even tempo of life of the community in a particular locality, in the present case the situation created by the detenu cannot be termed only in breach as law and order, but it is a breach of public order, and it is so assessed by the authority who is supposed to safeguard life and property of the community. The incident highlighted in the grounds of detention are reflective of their impact and substantiate the subjective satisfaction arrived by the detaining authority as to how the activities of detenu are prejudicial to the maintenance of public order.

15. Preventive detention being a precautionary measure, necessarily relies in all cases to some extent on anticipation as

distinct from proof. The object of such type of law is not to punish a man for having done something but, to intercept him before he does it and to prevent him from doing it. The question as to whether a particular person would indulge in such an act, is to be decided by the detaining authority and the action of the detaining authority is based on suspicion or reasonable probability and not on criminal charge. What is to be seen is whether the detaining authority has applied its mind or not to the question whether it was necessary to pass an order of preventive detention and while passing so the detaining authority can rely upon the anticipated behaviour of a person based on his past conduct in the light of surrounding circumstances. No doubt such behaviour has to bear reasonable proximate and a rational nexus to the conclusion that the person needs to be detained. The High Court in exercise of powers under Article 226 does not sit in appeal over the order of detention, but the court is duty bound to see whether the procedural safeguards as enshrined in Article 22(5) of the Constitution have been complied by the detaining authority since the law of preventive detention has draconian effect on the

liberty of a person without the safeguards available a person who is charged and the charge requires to be proved beyond reasonable doubt.

16. The detaining authority has to take into account all the relevant material placed before it and after due consideration thereof is expected to justifiably come to the conclusion that the activities of the detenu are such that he has a tendency to repeat the illegal activities. For this purpose the past conduct or antecedents of the detenu can be appropriately taken into account by the authority while making the order of detention. This Hon'ble Court in exercise of powers under Section 226 cannot inquire into the adequacy of the material if the detaining authority has indicated in the order that the activity of the detenu create a reasonable suspicion in the mind of detaining authority that the detenu would continue to indulge in similar prejudicial activity warranting or necessitating the detention. The past conduct of the detenue having a reasonable prognosis of future behaviour and the live link between the past activities of the detenu can not be

substituted by this Court if the detaining authority has passed the order after proper application of mind to the relevant material placed before it.

17. We are unable to persuade ourselves to accept the submissions rendered on behalf of the counsel for the Petitioner to look into the possibility of commission of the crimes with which the Petitioner was charged. In view of the settled legal position, we cannot scan the material and look into the possibility of sustaining a conviction under the said offences, once the detaining authority has arrived at a subjective satisfaction based on the objective material before him in form of the tendency of the detenu to indulge into activities since he is in a habit of committing the offences which is a reasonable basis for the detaining authority to arrive at a conclusion that he may indulge into such activities in the future. We would not go into the sufficiency or otherwise of the material before the detaining authority. We have also noted that the material on which the detaining authority has arrived at the subjective satisfaction have been supplied to the

Petitioner and there is no lapse on part of the Respondents in that behalf.

18. In the result, we uphold the order passed by the detaining authority and dismiss the present writ Petition.

(SMT. BHARATI H. DANGRE,J.) (S.C.DHARMADHIKARI,J.)

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