

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

CRIMINAL WRIT PETITION NO.372 OF 2018

Akshay @ Balu Suresh Gaikwad, Age 24 years,
R/o.At Gaikwad Pada no.2, Rukmini Niwas,
Ambernath (East), Dist.Thane,
presently under detention at Taloja Jail.

Petitioner

versus

1. The Commissioner of Police, Thane.
2. The State of Maharashtra.
3. The Senior Inspector of Police, Shivaji Nagar
Police Station, Ambernath (East).
4. The Secretary, Hon'ble Advisory Board,
Home Department (Special), Mumbai-32.

Respondents

Mr.Sandeep Maurya and Ms.Kavita Vishwakarma for petitioner.
Ms.M.H.Mhatre, APP, for State.

**CORAM : S.C.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 14th March 2018

ORAL JUDGMENT - (Per : Prakash D. Naik, J.) :-

1. The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India challenging the order of detention dated 27th September 2017 passed by respondent no.1 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 ('MPDA Act' for brevity).

2. The petitioner has been detained in pursuance to the execution of the aforesaid order of detention. The impugned order has been issued with a view to prevent the petitioner-detenu from acting in any manner prejudicial to the maintenance of public order. Along with the order of detention, the petitioner was also served upon grounds of detention formulated by the detaining authority in support of the order of detention.

3. The detention order is based on the grounds mentioned in paragraphs 4(a), 4(b), 5(a) and 5(b) of grounds of detention. The detaining authority has referred to the offences registered against the detenu vide CR No.I-149 of 2017 registered under Sections 387, 323, 504 and 506 of Indian Penal Code ('IPC') and CR No.I-168 of 2017 registered under Sections 394 and 504 of IPC. The detaining authority has also referred to the statements of two witnesses recorded in-camera, who are referred to as witness-A and witness-B, whose identity and particulars are not furnished in the public interest. After referring to the aforesaid cases registered against the detenu and the statements of the witnesses, which were recorded in-camera, the detaining authority has arrived at the subjective satisfaction which is reflected in paragraph 7 of the grounds of detention. It is stated that on going through the material placed before the detaining authority, he is subjectively satisfied that the detenu is acting in a manner prejudicial to the maintenance of public order and it is necessary to detain him under the provisions of MPDA Act, to prevent him from acting in similar prejudicial manner in future. The grounds of detention also mention that the detenu is habitually involved in criminal activities which adversely affect and

also likely to affect adversely the maintenance of public order of the said locality and as such the detenu is a dangerous person as defined in Section 2(b-1) of MPDA Act.

4. The petitioner has raised several grounds in the petition, however, following submissions were advanced to assail the detention order :

(a) It is submitted that vital and important documents were not placed before the detaining authority which could have affected the subjective satisfaction of the detaining authority. On account of non placing of the said documents, the subjective satisfaction vitiates;

(b) The incidents relied upon by the detaining authority while passing the order of detention, which is in the nature of two cases registered against the petitioner-detenu and the in-camera statements, can at the most affect the law and order situation and would not fall within the purview of public order;

(c) There is no proper verification of statements of the witnesses which were recorded in-camera and, therefore, such statements ought not to have been relied upon by the detaining authority while issuing the impugned order of detention.

5. Coming to the first submission advanced by learned counsel for petitioner, it is apparent that the grievance of the petitioner is that certain documents which were to the knowledge of sponsoring authority, were not placed before the detaining authority. It is

submitted that the detenu had preferred an application for anticipatory bail in connection with CR No.I-149 of 2017 before the competent Court. The said application was rejected by order dated 18th July 2017. The contents of the said application reflect that the detenu has been falsely implicated in the case and, therefore, both the documents ought to have been placed before the detaining authority. It is submitted that on perusal of the documents which were before the detaining authority and the grounds of detention, it is apparent that the detaining authority has not referred to the said documents. It is also submitted that a non-cognizable complaint was registered against the complainant Nitin Wayle for assaulting Barat Yelinje on 29th May 2017. Therefore, even the said document is vital and important document which could have influenced the subjective satisfaction of the detaining authority. It is also submitted that one of the witness Ashok Bhoir had filed an affidavit before the concerned Court on 5th August 2017 denying his presence at the scene of the offence, which also ought to have been placed before the detaining authority. It is submitted that Bharat Arun Yelinje referred to in connection with CR No.I-149 of 2017, preferred an application dated 23rd May 2016 under the provisions of RTI before Ulhasnagar Municipal Corporation, seeking information regarding illegal construction made by complainant Nitesh Wayle. He had received reply that the illegal construction was earlier removed by Municipal authorities. The letter dated 16th June 2016 sent by Corporation, according to the petitioner, is a vital document which should have been placed before detaining authority. It is submitted that various residents of the vicinity filed complaints against Nitin Wayle regarding illegal construction. The said complaints were also not before the detaining authority.

6. It is further contended that the instances referred to by the detaining authority in the grounds of detention, are between the specified individuals and arising out of dispute between the parties involved therein. The incident has no effect on the public at large and both the incidents had occurred between two specified groups, which cannot disrupt even the tempo of society and assuming the allegations in the said incidents are true, the same would not fall within the purview of public order and at the most the said incidents can be a question of law and order situation. The subjective satisfaction of the detaining authority, therefore, suffers from non-application of mind because order of detention can be issued only in the event the detenu is indulging into the activities which are prejudicial to the maintenance of public order or is likely to commit such activities.

7. Other submission advanced by the advocate for the petitioner is that reliance is placed on the statements of two witnesses which were purportedly recorded in-camera. The said witnesses are referred to as witness-A and witness-B. It is submitted that the versions of the said witnesses is concocted and statements were created with a view to pass order of detention against the petitioner. It is submitted that since the particulars of the witnesses are not stated for the reasons mentioned in the order of detention, it was incumbent upon the authorities to verify the truthfulness of the contents of the statements of the said witnesses and ascertain that the statements were genuine and there was no such verification conducted by the authorities and the detaining authority has mechanically relied upon the said statements. The name of officer

who has verified the statements is not shown. The detaining authority has not recorded his satisfaction to the effect that authority has considered the in-camera statements as per requirement of law. In the light of aforesaid circumstances the order of detention is bad in law and, therefore, the same should be set aside.

8. Learned counsel for petitioner relied upon following decisions :

(i)	Chandrashekhar Vs. The State of Maharashtra and others ¹ ;
(ii)	Kanu Biswas Vs. State of West Bengal ² ;
(iii)	Ashok Kumar Vs. Delhi Administration and others ³ .

9. Learned APP Ms.Mhatre submitted that the grounds agitated by the petitioner challenging the order of detention are devoid of merits. She relied upon the affidavit-in-reply filed by the detaining authority denying the contentions of the petitioner and the explanation tendered controverting the grounds of challenge. It is submitted that the documents which according to the petitioner were not placed before the detaining authority, were not vital and important and the same could not have influenced the mind of detaining authority. It is submitted that the subjective satisfaction of the detaining authority is based on the grounds reflected in grounds 4(a), 4(b), 5(a) and 5(b) of the grounds of detention. The detaining authority has relied upon two cases registered against the petitioner as well as in-camera statements, reference of which is made in the

1 Criminal Writ Petition No.145 of 2006, decided on 3rd May 2006

2 (1972)3-SCC-831

3 (1982)2-SCC-403

grounds of detention. The said material was sufficient to arrive at the subjective satisfaction that the petitioner-detenu is a dangerous person within the meaning of “Dangerous Person” as embodied under the provisions of MPDA Act and on being satisfied on the basis of the material, the detaining authority has arrived at the subjective satisfaction that it is necessary to detain the detenu with a view to prevent him from indulging in the activities which are prejudicial to the maintenance of public order. She further submitted that the anticipatory bail application, which according to the petitioner ought to have been placed before the detaining authority, was not to the knowledge of the sponsoring authority, as the copy of the said application was not served on the concerned police station. She further submitted that purported complaints made to the Corporation by some residents, as contended by the petitioner-detenu, were also not to the knowledge of the sponsoring authority, as the said complaints were made to the Corporation and not to police. Apart from that, it is submitted that the said documents were not vital and important documents and even if the same would have been placed before the detaining authority, the subjective satisfaction of the authority would not have been swayed with one way or the other as there is sufficient material to issue impugned order of detention. She further submitted that non-cognizable complaint which is referred to by the detenu is reflected in the grounds of detention as the statement of the complainant was recorded as a supplementary statement wherein a reference to the counter complaint is mentioned by him. It is also submitted that there was proper verification of the statements of the witnesses which were recorded in-camera by the Assistant Commissioner of Police. For our perusal she placed on record the original documents including the in-

camera statements reflecting the verification conducted by police official, other than investigating officer, wherein it is reflected that the contents of the statements and its genuineness was verified and even verification of the identity of the person whose statement was recorded, is done by said officer. She further submitted that the incidents referred to and relied upon by the detaining authority while issuing the order of detention order depicts the fact that the incidents amount to the situation which is covered by public order and not law and order. The incidents referred to which are subject matter of two cases registered against the detenu, would certainly have an impact on the society at large. Considering the nature of acts committed by the detenu and the cases registered against the petitioner as well as incidents covered by two in-camera statements, are sufficient to conclude that the said activities are prejudicial to the maintenance of public order. She relied upon the decision of this Court in the case of **Smt.Zebunnisa Abdul Majid Vs. M.N.Singh and others**⁴.

10. We have gone through the documents on record. On perusal of the grounds of detention and the documents in support referred to by the detaining authority, it is apparent that while passing the impugned order, the detaining authority has relied upon two cases registered against the petitioner vide CR No.I-149 of 2017 and CR No.I-168 of 2017 as well as statements of two witnesses recorded in-camera. On the basis of said material the detaining authority has arrived at subjective satisfaction which is reflected in paragraph 7 of the grounds of detention and on the basis of the said material the impugned order of detention was issued against the petitioner. As far as first submission of the petitioner that certain documents were

4 2001-CRI.L.J.-2759

not placed before the detaining authority, we have perused the said documents which are annexed to the petition and also considered the counter filed by the detaining authority. As far as application for anticipatory bail which according to the petitioner has not been placed before the detaining authority, in the affidavit-in-reply it is stated that the record indicates that the application for anticipatory bail which was in the nature of interim application, was not served upon the concerned police station and the reliefs were sought ex-parte. It is, therefore, apparent that the application was not before the sponsoring authority and the question of placing the same before the detaining authority does not arise. Apart from that, we do not find that the said document and the order rejecting the said application is vital which could have affected the subjective satisfaction of the detaining authority in one way or the other. The application for anticipatory bail was ultimately rejected by the competent Court and the detenu was arrested. We find that the material relied upon by the detaining authority was sufficient to issue the order of detention against the detenu. Other documents about which the grievance is made by the petitioner-detenu is in the nature of complaints made to the Municipal Corporation against the alleged unauthorized construction carried out by the complainant therein and the reply received to RTI application. According to the petitioner, the sponsoring authority ought to have knowledge about the said documents. The copies of said documents are annexed to the petition. The complaints were purportedly made to the Municipal Corporation and apparently the concerned police station had no knowledge about the said documents. Apart from that, on perusal of the said documents, we do not find that the said documents were vital in nature and could have affected the

subjective satisfaction of the detaining authority in any manner. As far as non-cognizable complaint regarding assault on Bharat Yelinje is concerned, the grounds of detention refer to supplementary statement of complainant which refers to the incident of assault by complainant and others upon Bharat Yelinje. All these documents are referred to in connection with CR No.I-149 of 2017. The order is also based on other material before detaining authority. As far as affidavit dated 5th August 2017 filed before learned Magistrate in CR No.I-149 of 2017 by Ashok Bhoir is concerned, the order thereon passed by the Court was placed before the detaining authority, which shows that the affidavit along with remand application has been perused by Court and it was observed that by filing such affidavit the accused was trying to tamper evidence and the accused was remanded to police custody. As far as verification of the statements of the witnesses recorded in-camera, we have perused the original documents wherein we have noticed that the statements were verified by Assistant Commissioner of Police and there was sufficient compliance with regards to verification of the said documents. The detaining authority has thus relied upon the statements of the said witnesses which were recorded in-camera. Although the reply of the detaining authority is not happily worded with regards to the said contention, on perusal of the verification conducted by the concerned police official, we are satisfied that there is no merit in the submission advanced by the petitioner that the verification is defective and there is non-application of mind on the part of detaining authority. The said submission is therefore devoid of merit.

11. The learned APP had relied upon the decision of this Court in case of Smt.Zebunnisa Abdul Majid (*supra*) wherein it has been

observed that the detaining authority need not record in the grounds that it is subjectively satisfied about the truthfulness of the in-camera statements. The truthfulness of the in-camera statements verified by the Assistant Police Commissioner is sufficient and the subjective satisfaction of the detaining authority is based on such truthfulness, no infirmity can be noticed in such subjective satisfaction. In the facts and circumstances of present case, we do not find that there was any infirmity in the verification recorded by Assistant Commissioner of Police on which the detaining authority has relied upon while passing the impugned order.

12. The other submission advanced by the petitioner is with regards to the fact that the incidents referred to by the detaining authority is a matter of law and order situation and not public order. We have perused the grounds of detention and the cases registered against the petitioner. The first case referred to by the detaining authority arises out of CR No.I-149 of 2017 registered u/s 387, 323, 504 and 506 of IPC. The complainant therein has lodged the complaint on 2nd June 2017. The detenu had threatened him and also assaulted him and demanded an amount of Rs.10,000/- from him for carrying out the purported unauthorized construction. It is also mentioned that due to the terror created by the detenu, the hawkers ran away from that area and shop keepers closed their shops and the complainant had escaped from the place of incident and thereafter lodged the complaint. The other incident which is subject matter of CR No.I-168 of 2017 is in relation to the incident dated 15th June 2017 wherein the offence was registered u/s 394 and 504 of IPC. The victim was intercepted by the detenu in the midnight and he was assaulted and robbed of his gold chain. The

persons accompanying the complainant and the people who were present at the scene of offence ran away and the act of the detenu created fear or terror in the vicinity as it was night time. The detaining authority has thereafter relied upon the statements of the witnesses which were recorded on 3rd August 2017 and 6th August 2017 who are referred to as witness-A and witness-B. The said witnesses have also referred to the incidents of extortion and threats issued by the detenu and his associates, which according to the detaining authority, has created the terror and fear in the minds of the citizens. On perusal of the said incidents referred to by the witnesses in their in-camera statements, we are of the opinion that the manner in which the detenu has committed the said acts, would certainly have an impact on the society and even tempo of the life of the society at large would be disturbed. It is, therefore, clear that the incidents would fall within the purview of public order and not law and order situation.

13. The subjective satisfaction of the detaining authority is based on the incidents which are discussed hereinabove and we do not find any infirmity in the conclusion arrived at by the detaining authority that the incidents had affected the maintenance of the public order. Whether the incidents would fall under the situation of public order or law and order, depends upon the facts and circumstances of each case. The circumstances in which the incidents had occurred, the magnitude of the offence committed by the detenu and the impact of such incident on the society at large, are the factors which would determine whether the incident could fall within the magnitude of public order.

14. In the case of Chandrashekhar (supra), the detenu therein was arrested and produced before the Court. At that time he made a grievance before the Court by preferring an application that he was falsely implicated and the said aspect should be investigated into. The Court passed an order directing DCP to investigate into the said allegation made by the detenu and to file report. The said application and order were not placed before the detaining authority and considering the nature of document and order, the Court observed that the detaining authority has not taken into consideration vital document. Considering the documents referred to by petitioner in this case, the ratio of the said decision is not applicable in this case. In the decision in the case of Kanu Biswas (supra), the Supreme Court in paragraph 7 observed as follows :

“7. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order, according to the dictum laid down in the above case, is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call “order publique” and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is : Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?”

15. In Ashok Kumar (supra), in paragraphs 12 and 13, it was stated as under :

“12. The most crucial question on which the decision must turn is whether the activities of the detenu fall within the domain of ‘public order’ or ‘law and order’.

The contention is that the grounds of detention served on the detenu are not connected with 'maintenance of public order' but they relate to 'maintenance of law and order' and therefore the impugned order of detention purported to have been passed by the detaining authority in exercise of his powers under sub-section (2) of Section 3 of the Act is liable to be struck down. It is urged that the facts alleged in the grounds of detention tend to show that he is engaged in criminal activities and it is an apparent nullification of the judicial process if, in every case where there is a failure of the prosecution to proceed with a trial or where the case ends with an order of discharge or acquittal, the Executive could fall back on its power of detention because the verdict of the Court goes against it. Put differently, the contention is that resort cannot be had to the Act to direct preventive detention of a person under sub-section (2) of Section 3 of the Act for the Act is not a law for the preventive detention of gangsters and notorious bad characters. The detention here, it is said, is not so much for the "maintenance of public order" but as a measure for the past criminal activities of the detenu. It is further urged that the grounds of detention have no rational connection with the object mentioned in the Act for which a person may be detained. Further, that there is no sufficient nexus between the preventive action and the past activities of the detenu which are not proximate in point of time but are too remote. There is no substance in any of these contentions advanced.

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. That test is clearly fulfilled in the facts and circumstances of the present case.”

16. In the light of observations of the Supreme Court and considering the reasons stated hereinabove, we are of the opinion that the incidents would certainly disturb the public order. The petition is thus devoid of merits and deserves to be dismissed. Hence, following order :

ORDER

- (a) Writ Petition No.372 of 2018 is dismissed;
- (b) Rule is discharged.

(PRAKASH D. NAIK, J.)

(S.C.DHARMADHIKARI, J.)

MST