

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO. 1188 OF 2019

Ranjeet s/o Premchand Gothwal
age 20 years, occ. Labourer
r/o Rahul Nagar Lane No. 3.
Vedant Nagar,
Tq. & Dist. Aurangabad
At present in a Central Jail
Aurangabad

Petitioner

Versus

1. The Commissioner of Police
Aurangabad, Dist. Aurangabad
2. The State of Maharashtra
3. The Superintendent
Aurangabad Central Prison
Aurangabad.

Respondents

Mrs. P.J. Bharad, advocate for the petitioner.
Mr. R.D. Sanap, APP for the State.

**CORAM : T.V.NALAWADE &
N.B. SURYAWANSHI, JJ.,
DATE : 02nd December, 2019.**

JUDGMENT : (PER N.B. SURYAWANSHI, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. Heard with the consent of the parties.
3. By this petition, the petitioner challenges his detention order dated 10.06.2019 passed by the Commissioner of Police, Aurangabad, thereby detaining the petitioner under Section 3(2) of

the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers & Persons engaged in Black-marketingn of Essential Commodities Act, 1981 (for short 'the said act'), under Article 226 of the Constitution of India, on the grounds mentioned in the writ petition.

4. Heard learned counsel for the petitioner and learned APP for the State. Learned APP has produced original record, we have perused the same.

5. Learned counsel for the petitioner would urge that though 5 offences of cell phone snatching are registered against the petitioner. It is her contention that these offences are committed against the individuals and there is no question of the petitioner creating danger to the public order. These activities are not prejudicial to the maintenance of the public order. The petitioner can be effectively dealt with in general law and hence, the detenting authority was not justified in taking the drastic action of detention in these facts.

6. She further urged that the petitioner was released on bail in 4 out of 5 matters and though the petitioner was in jail in connection with the fifth offence and as he was not released on bail on the date of passing of the impugned order, there was no occasion for the detaining authority to pass the detention order. Hence, for lack of subjective satisfaction of the detaining authority, the impugned order is vitiated and the same is liable to be quashed and set aside.

7. Learned counsel for the petitioner placed reliance on judgments of the Apex Court in the matter of **Rushikesh Tanaji Bhoite Vs. State of Maharashtra and others** [AIR 2012 SC 890] and **Arun Ghosh Vs. State of West Bengal** [AIR 1970 SC 1228].

8. Learned APP on the other hand supports the impugned order. He placed reliance on the grounds of detention and states that in four offences registered against the petitioner, the cell phones were recovered from the petitioner. There are also statement of two secret witnesses who have disclosed the terror created by the petitioner and his associates in the society. Hence, he argued that no case is made out for interference in the detention order.

9. On perusal of the record, it is revealed that total six offences are registered against the petitioner and his associates. They are as follows :-

Sr. No.	Police Station	C.R. No.	Under Section	Present Status
1	Satara	114/2018	354 IPC, 11,12 POCSO 2012	Pending trial
2	Osmanpura	07/2019	392, 34 IPC	Pending trial
3	Vedantnagar	27/2019	392, 34 IPC	Pending trial
4	Jinsi	109/2019	379 IPC	Pending trial
5	Vedantnagar	105/2019	392, 34 IPC	Pending Investigation
6	Kranti Chowk	169/2019	392, 34 IPC	Pending investigation

10. In connection with C.R. No. 7/2019 registered with Osmanpura Police Station and C.R. No. 27/2019 registered with Vedantnagar Police Station, the stolen property i.e. cell phones were recovered at the instance of petitioner and his associates

whereas in C.R. No. 105/2019 registered with Vedantnagar Police Station, the petitioner was caught red handed while trying to run away after snatching the cell phone. Even in this case, the cell phone was recovered.

11. There are statements of two secret witnesses namely A and B who have specifically stated about the extortion of money by the petitioner and his associates from the shop keepers, builders, businessmen and the residents. They have also stated that if anybody refused to meet the demands of petitioner and his associates, they used to assault and give threats of dire consequences and nobody from the area was ready to come forward to give statement against them.

12. The detaining authority has applied its mind to the case of the petitioner and on the basis of the record available, has rightly come to the conclusion that the petitioner is not gainfully employed and is likely to continue criminal and dangerous activities in future inspite of action taken against him by the police and, the criminal activities of the petitioner are likely to disturb the public order in Vedantnagar and adjoining area of Aurangabad city.

13. We are not impressed by the arguments advanced on behalf of the petitioner that the offences of snatching of cell phone are committed against the individuals, which cannot be said to disturb the public order. The petitioner is continuously indulging in the activities of snatching of cell phones. In our opinion, it is an offence against the society which is prejudicial to the maintenance of public order.

14. We further do not agree with the proposition of learned counsel for the petitioner that as the petitioner was in jail on the date of passing of the impugned order, there was no occasion for the detaining authority to pass such an order. The detaining authority has recorded that the petitioner is likely to be released on bail in C.R. No. 169/2019 and after releasing on bail in that crime, the petitioner is likely to revert to the similar activities which are prejudicial to the maintenance of public order in future and hence, the detaining authority was justified in passing the impugned detention order.

15. It is also to be noted that offences under Section 354 of the Indian Penal Code and Sections 11 and 12 of Protection of Children from Sexual Offences Act are also registered against the petitioner at Satara Police Station against Crime no. 114/2018 and trial of the same is pending.

16. In the case of Arun Ghosh (*supra*) relied on by the petitioner, the Honourable Apex Court has held that the acts of the petitioner therein were directed against the individual and were not subversive of public order. The acts of molestation were directed against a individual and not directed against women in general from the locality. Thus, the Honourable Apex Court held that the preventive detention of the petitioner in that case was not sustainable. However, in the case in hand, the petitioner is continuously indulging in cell phone snatching, which is an offence against the society at large and hence, the facts of the case referred to above are distinguishable from the present case.

17. The next judgment relied upon by the learned counsel for the petitioner in the case of Rushikesh Bhoite (supra) is in respect of non-placing and non-consideration of material as vital as bail order. In that case, no other criminal case except the offence registered on 14.08.2010 was referred as the ground of detention. The Honourable Apex Court therefore held that the subjective satisfaction of the detaining authority in that case was vitiated and hence relief was granted in favour of the petitioner. On the other hand, in the present case, we have already observed that the detaining authority has taken into consideration the fact that petitioner was released on bail in four matters out of five and in the fifth matter, his bail application was under consideration of the learned Chief Judicial Magistrate. Hence, according to us, the facts of the case referred to above are distinguishable from the facts of the case in hand.

18. Taking into consideration the facts and circumstances of the present case and in view of the record available before the detaining authority, we are of the view that the detaining authority was perfectly justified in issuing detention order against the petitioner. We find no substance in the petition and hence the petition stands dismissed.

19. Rule is discharged.

(N. B. SURYAWANSHI)
JUDGE

(T. V. NALAWADE)
JUDGE