

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO. 539 OF 2020

Baliram s/o Namdeo Bedke
age 29 years, occ. Agri.
R/o Rajapur, Tq. Georai
Dist. Beed.

Petitioner

Versus

1. The State of Maharashtra
Through its Section Officer
Home Department (Special)
Mantralaya, Mumbai 32.
2. The District Collector,
Beed, Tq. & Dist. Beed.
3. The Superintendent of Jail
Harsool Central Jail
aurangabad.

Respondents

Mr. P.P. More, Advocate for the petitioner.
Mr. S.J. Salgare, Advocate for all respondents.

**CORAM : T.V. Nalawade &
M.G. Sewlikar, JJ.**

RESERVED ON : 16th July, 2020.
PRONOUNCED ON : 3rd August, 2020.

JUDGMENT : (PER M. G. SEWLIKAR, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally with the consent of the parties.

3. This writ petition is preferred by the petitioner under Article 226 and 227 of the Constitution of India challenging the detention of the petitioner (hereinafter referred to as 'the detenu') under 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').

4. Facts giving rise to this petition are as under :-

The District Collector, Beed (Respondent No. 2 herein) by the order dated 10.03.2020 directed detention of the petitioner under the MPDA Act alleging that the detenu is a Sand Smuggler and a dangerous person. The order dated 10.03.2020 states that the detenu has committed offences viz.

- 1) Under Section 379, 511 read with Section 34 of the Indian Penal Code vide C.R.No. 7/2018 registered with Talwada Police Station, Tq. Georai, Dist. Beed,
- 2) Under Section 327, 307, 143, 148 of the Indian Penal Code and Sections 3, 2 of Scheduled Caste and Scheduled Tribes (Prevention of

Atrocities) Act vide C.R. No. 6/2019 registered with Talwada Police Station, Tq. Georai, Dist. Beed.

3) Under Section 379 of the Indian Penal Code and Section 21 of Mines and Minerals (Development and Regulation) Act, 1957 vide C.R. No. 123/2019 registered with Talwada Police Station, Tq. Georai, Dist. Beed.

4) Under Section 142 of Maharashtra Police Act, 1951, vide C.R. No. 216/2019 registered with Talwada Police Station, Tq. Georai, Dist. Beed.

5) Under Section 379 of the Indian Penal Code vide C.R. No. 2/2020 registered with Talwada Police Station, Tq. Georai, Dist. Beed

6) Chapter Case No. 9/2019 under Section 55 of Maharashtra Police Act, 1951, whereby the detenu has been externed.

5. The said order also states that the in-camera statements of the witnesses A and B show that the detenu has created terror in the society and has caused disturbance of public order and, therefore, the respondent No. 2 – Detaining Authority recorded its subjective satisfaction that the detenu, being a dangerous person and a sand smuggler, has caused disturbance to public order. Witnesses are not

coming forward to depose against the detenu and, therefore, the Detaining Authority – respondent No. 2 directed the detenu to be detained in prison. Accordingly, the detention order dated 10.03.2020 was passed, which was served on the detenu on 12.03.2020. The information about his detention and place of detention was given to the mother of the detenu, Kushawarta w/o Namdeo Bedke. On 16.03.2020, papers were sent to the State Government – respondent No. 1, for approval. The approval was received on 18.03.2020 and the detention order was confirmed by the Advisory Board. Accordingly, the detenu has filed this petition challenging the order of his detention.

6. Heard Shri More, learned counsel for the petitioner-detenu and Shri Salgare, learned APP for the State. Learned counsel Shri More argued that there is no time stipulation in the order dated 10.03.2020 passed by respondent No. 2, which is against the provisions of law. He further submitted that the MPDA Act provides for detention for a period of six months however, the impugned order shows that the detenu was detained for a period of twelve months, which is against the law. The crimes registered against the detenu are bogus. The detenu is not a dangerous person so as to attract the provisions of MPDA Act. There

was no subjective satisfaction on the part of the respondent No. 2 and, therefore, the proceedings stand vitiated on this ground alone. He further submitted that the in camera statements of witnesses A and B are similar in nature and the allegations therein are vague. Therefore, on the basis of such allegations, it cannot be said that the detenu has engaged in activities of a sand smuggler or that he is a dangerous person. It was further argued that the respondents could not establish how the public order was disturbed.

7. Learned counsel Shri More further submitted that the definition 'sand smuggler' under the MPDA Act does not cover the offences under Section 379 of the Indian Penal Code. For detaining any person under the MPDA Act, it has to be established that the said person has committed offence under the provisions of Mines and Minerals (Development and Regulation) Act, 1957. In the case at hand, the offences registered against the detenu are under Section 379 of the Indian Penal Code and, Section 379 of the Indian Penal Code is not covered by the definition of 'sand smuggler' and, therefore, the respondent No. 2 has illegally invoked the provisions of the MPDA Act. Therefore, the detention of the detenu is *per se* illegal.

8. Learned APP Shri Salgare submitted that what Court has to see is that the Detaining Authority has recorded its subjective satisfaction that the activities of the detenu disturb the public order. The Detaining Authority has to record subjective satisfaction about the necessity of the detention of the detenu. He argued that in the case at hand, the respondent No. 2 has recorded its subjective satisfaction that the detention of the detenu is necessary. Therefore, the petition deserves to be dismissed.

9. Before embarking upon the enquiry, it would be apposite to consider the provisions of the MPDA Act. Section 2(b-1) and Section 2(e-2) of the Act define 'dangerous person' and 'sand smuggler' which read as under :-

2(b-1) "dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.

(e-2) “sand smuggler” means a person who individually or as at part of a group of persons is engaged in or is preparing to engage in or associated with or abets unauthorized extraction, removal, collection, replacement, picking up or disposal of sand and its transportation, storing and selling or who commits or attempts to commit or abets the commission of offences in respect of sand which are punishable under the Mines and Minerals (Development and Regulation) Act, 1957 or under the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013.

Thus, according to Section 2(b-1), a dangerous person means a person who is in the habit of committing offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code. Chapter XVI of the Indian Penal Code deals with the offences against the human body and Chapter XVII of the Indian Penal Code deals with the offences against the proeprty.

This section i.e. Section 2(e-2) is in two parts. The first part states that the person who individually or as part of a group of persons is engaged in unauthorised extraction, removal, collection, replacement, picking up or disposal of sand and its transportation,

storing and selling will be designated as a sand smuggler. The second part states that any one who commits or attempts to commit or abets commission of offences in respect of sand which are punishable under the Mines and Minerals (Development and Regulation) Act, 1957 or under the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013, will be designated as a sand smuggler.

10. The next important provision is Section 2(a). It deals with the definition of “acting in any manner prejudicial to the maintenance of public order”. It covers the slumlord, bootlegger, drug-offenders, dangerous person, sand smuggler, black-marketing of essential commodities and video pirate. In the case at hand, the activities of the detenu are alleged to be of a dangerous person and of a sand smuggler. Section 2(a)(iv) and 2(a)(iv-a) read as under :-

2 In this Act, unless the context otherwise requires-

(a) “acting in any manner prejudicial to the maintenance of public order” means-

(i) -----

(ii) -----

(iii) ----

(iv) in the case of a dangerous person, when he is engaged, or is making preparations for engaging, in any

of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order];

[(iv-a) in the case of a sand smuggler, when he is engaged, or is making preparation for engaging, in any of his activities as a sand smuggler which affect adversely, or are likely to affect adversely, the maintenance of public order;

Requirement of both these sub-sections is that the activities of the person to be detained must affect public order.

11. Section 3 of the MPDA Act provides thus :-

3(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided

in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed [six months] but the State Government may, if satisfied as aforesaid that it is necessary so to amend such order to extend such period from time to time by any period not exceeding [six months] at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

This Section mandates that if a District Magistrate or a Commissioner of Police is satisfied that a person needs to be detained with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, shall make the order of detention. Sub-Section 3 of Section 3 casts a duty on the Detaining Authority to report the fact of detention to the State Government together with the

grounds on which the order has been made within a period of twelve days from the date of passing of the order.

12. Section 8 of the MPDA Act makes it obligatory for the Detaining Authority to communicate to the detenu the grounds on which the order has been made and this communication is required to be made within five days of the date of detention and also shall afford him an opportunity of making representation against the order of the State Government. Section 10 of the MPDA Act requires the State Government to place before the Advisory Board the grounds on which the order has been made within three weeks from the date of detention of a person. Section 11 states that within seven weeks from the date of detention of the person, the Advisory Board shall submit the report to the State Government. Section 13 states that detention shall not exceed twelve months.

13. In the case at hand, admittedly, detention order was passed on 10.03.2020 by the respondent No. 2. On 12.03.2020, the detention order was served on the detenu. The detenu was detained in the Central Prison, Aurangabad on 13.03.2020. The detention order was

approved by the State Government on 18.03.2020. The Advisory Board constituted under Section 9 of the MPDA Act heard the detenu on 23.04.2020 and confirmed the detention order on 24.04.2020. The chronology of these events clearly indicates that the provisions of the MPDA Act have been duly complied with. Opportunity of making representation has also been given in terms of Section 8 of the MPDA Act.

14. The question that falls for consideration is whether the detenu had engaged himself in the activities as a sand smuggler and that his activities are of a dangerous person and are prejudicial to the maintenance of the public order. The meaning of 'public order' has been explained by the Honourable Supreme Court in the case of *T. Devki Vs. Government of Tamil Nadu and others* reported in (1990) 2 Supreme Court Cases 456. The Honourable Supreme Court in paragraph No. 18 of the order has dealt with this aspect of the matter as under :-

18. Any criminal offence is bound to some extent affect the peace prevailing in the locality and it may also affect law and order problem but the same need not affect maintenance of public order. There is basic

difference between 'law and order' and 'public order', this aspect has been considered by this Court in a number of decisions, see: *Dr. Ram Manohar Lohia v. State of Bihar*, *Pushkar Mukherjee v. State of West Bengal* and *Shymal Chakraborty v. Commissioner of Police, Calcutta*. In these cases it is emphasised that an act disturbing public order is directed against individuals which does not disturb the society to the extent of causing a general disturbance of public peace and tranquility. It is the degree of disturbance and its effect upon the life of the community in the locality which determines the nature and character of breach of public order. In *Arun Ghosh v. State of West Bengal*, the court held that the question whether a man has only committed a breach of law and order, or has acted in a manner likely to cause disturbance of the public order, is a question of degree and the extent of the reach of the act upon the society. This view was reiterated in *Nagendra Nath Mondal v. State of West Bengal*, *Sudhir Kumar Saha v. Commissioner of Police, Calcutta*, *S.K. Kedar v. State of West Bengal*, *Kanu Biswas v. State of West Bengal*, *Kishori Mohan Bera v. State of West Bengal* and *Amiya Kumar Karmakar v. State of West Bengal*.

15. Thus, the Honourable Supreme Court has held that there is a fundamental difference between 'law and order' and 'public order'.

According to the Honourable Supreme Court, it is the degree of disturbance and its effect upon the life of community in the locality which determines the nature and character of breach of public order. The act of disturbing public order is directed against the individual which does not disturb the society to the extent of causing general disturbance of public peace and tranquility. It is further held that whether there was a breach of law and order or there was disturbance of the public order is a question of degree and the extent of the reach of the act upon the society.

16. Keeping this aspect in mind, it will have to be examined whether there was sufficient material before respondent No. 2 – Detaining Authority to form an opinion that the detention of the detenu was necessary for preventing disturbance of public order. In other words, whether the Detaining Authority had material before it to detain the detenu with a view to prevent him from acting in any manner prejudicial to the maintenance of the public peace.

17. We have gone through the record placed before the Detaining Authority – respondent No. 2. It shows that the Detaining

Authority considered

- 1) C.R. No. 7/2018 under Section 379, 511 of the Indian Penal Code,
- 2) C.R. No. 6/2019 under Section 327, 307, 143, 148 of the Indian Penal Code and Section 3, 2 of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 2015,
- 3) C.R. No. 123/2019 under Section 379 of the Indian Penal Code,
- 4) C.R. No. 216/2019 under Section 142 of the Mumbai Police Act,
- 5) C.R. No. 2/2020 under Section 379 of the Indian Penal Code and,
- 6) in camera statements of witnesses A and B.

Along with the proposal, charge sheets in C.R. no. 7/2018, 6/2019 and 216/2019 were produced. Similarly, First Information Reports in C.R. No. 123/2019 and 2/2020 were also produced before the Detaining Authority on the basis of which the Detaining Authority has recorded subjective satisfaction to the effect that the detenu is a sand smuggler and is a dangerous person.

18. Charge-sheet of C.R. No. 7/2018 shows that the First Information Report was registered on the complaint of PSI Gadwe of

Talwada Police Station, Tq. Georai, Dist. Beed. The First Information Report further shows that some persons were extracting sand from river Godawari at Rajapur. When the police party raided that spot on 14.01.2018, the driver of poclain ran away. During investigation the names of the accused were disclosed. The detenu was remanded to the police custody along with other two accused. While remanding the detenu to police custody, the learned Magistrate observed that the detenu was concerned with the vehicle found at the spot of the incident.

19. Charge sheet of C.R. No. 6/2019 has been placed on record. It indicates that the detenu has been charged for having committed offence under Sections 143, 147, 327 and 307 of the Indian Penal Code and under Sections 3, 2 of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 2015. The First Information Report states that the informant was assaulted by the detenu and others by means of an iron rod. The detenu was alleged to have delivered two blows of iron road on his head and had robbed him of Rs. 2,00,000/-. Injury certificate of the informant has also been produced which shows that he had contused lacerated wound over scalp and contusion over

left hand. He was advised C.T. Scan and the First Information was recorded during his hospitalisation. The charge sheet further states that two iron rods have been recovered from the detenu.

20. C.R. No. 123/2019 shows that it was lodged by the Circle Inspector Rajendra Mane, Tahsil Office, Georai. The First Information Report shows that on 24.04.2019, the informant, along with Talathi, Awwal Karkoon, Kotwal, Tahsildar, Naib Tahsildar, found unauthorised storage of sand in the land of the detenu and the lands of the others. The total sand stored in the fields of detenu and otehrs was 4122 brass.

21. C.R. No. 2/2020 shows that the First Information Report was lodged by PSI Mane of Talwada Police Station, Tq. Georai, Dist. Beed. The contents of the First Information Report show that the informant was patrolling on Rajapur-Gangawadi road on 06.01.2020 at 6 pm. He noticed sand of 6 brass was stored by the roadside. On enquiry, it was revealed that the said storage was of the detenu. Accordingly, panchanama was drawn. Total value of the sand was Rs.12,582/-. The First Information Report was lodged on 07.01.2020.

22. The in camera statements of witnesses A and B are perused. The statement of witness A shows that on 25.11.2019 at 8 pm, witness A had requested the detenu to desist from the activities of unauthorised extraction of sand. He also requested the detenu that because of extraction, the water level might go down and ultimately, it would have adverse affect the farmers. Thereupon, the detenu assaulted him and abused him in filthy language. Witness A further states that the detenu is a dangerous person. Nobody dares to depose against him and nobody dares to complain against him.

23. The statement of witness B shows that the detenu was suspecting witness B to be the informer of the police and that witness B was passing on the information to the police about the sand storage of the detenu. On 31.12.2019 at 11 am, the detenu abused him on account of this suspicion and beat him with kicks and fist blows. He fished out a knife from his waist and placed it at the throat of witness B and threatened him of finishing him. He shouted loudly and on hearing his shouts, people around him ran away. Because of the criminal activities of the detenu, no one is ready to come forward to depose or complain against him. Both these statements bear the endorsement of

Deputy Superintendent of Police, Georai, to the effect that he had visited the spot of the incident, had made confidential enquiry and had examined the witnesses A and B and their statements were found to be in accordance with the statement recorded by the sponsoring authority and the incident is true and genuine.

24. Thus, this shows that three offences have been registered against the detenu under Section 379 of the Indian Penal Code and one offence is registered against him under Sections 324, 143, 147, 148, 149 of the Indian Penal Code. The definition of sand smuggler shows that any one, who extracts the sand unauthorisedly, is a sand smuggler. The offences under Section 379 of the Indian Penal Code narrated above clearly indicate that the detenu is a sand smuggler. It is worth noting that the activities of the detenu also fall within the scope of definition of 'a dangerous person'. He has committed offence against human body and also against property under Section 379 of the Indian Penal Code. These activities indicate that the detenu is a sand smuggler and also a dangerous person. The Detaining Authority has considered the offences registered against the detenu and also considered the in-camera statements of witnesses A and B. The Detaining Authority has

observed that people in the locality are not ready to come forward to give evidence against the detenu. This shows that the Detaining Authority has recorded subjective satisfaction for ordering detention of the detenu. Therefore, no fault can be found with the order passed by the Detaining Authority.

25. Learned Counsel Shri More placed reliance on the case of *State of Maharashtra and others Vs. Balu Waman Patole*, reported in **2020 All.M.R.(Cri) 475** for the proposition that the detention of the detenu cannot be ordered beyond six months. This submission cannot be accepted since the Hon'ble Supreme Court has reversed this decision in the case of *State of Maharashtra & another Vs. Balu Waman Patole*, reported in **2020 ALL MR (Cri.) 475**, and held that as per Section 13 of the MPDA Act, the maximum period, for which a person can be detained, is twelve months.

26. Now the question is whether the activities of the detenu have disturbed public order. In the case of *Harish Patil Vs. State of Maharashtra & others*, reported in **(2016) 3 AIR Bom R (Cri) 715**, this Court has held as under:

37 Public Order is synonymous with peace, safety and tranquility. It means there is absence of order involving breaches of local significance. Sand is a mineral which is openly available on the river banks or in the river, which is required to be preserved in the interest of local public. It is noticed that there are grave repercussions of excavation and rampant theft of sand from the river banks which affect the locals as the water table and water level goes down. This affects the public in general and more particularly farmers. It is noticed that sand smugglers on the basis of muscle and money power create terror in the vicinity and they are a menace to the public order. Thus, such new trend of offence has emerged leading to direct threat to the public order. The detenu is a sand smuggler. The 4 CRs in which the detenu is involved pertain to theft of sand. On account of sand smuggling, the water available is reduced. The ecological balance is disturbed. On account of reduction in water, there is great scarcity of water for drinking purposes and for irrigation. There is monetary loss to the farmers and other citizens in the area. People in the area know about the activities of the detenu and are living in a state of fear. All this amounts to disturbance of public order. Hence to protect the interest of the public in such cases, the legislation has

amended the definition and incorporated 'Sand Smuggler' in Section 2 of the Act. The Detaining Authority has rightly considered the situation, the nature of offences and the nature of the effect on public order and has passed the order.

27. This decision of this Court rendered in Harish Patil (cited *supra*) is a complete answer to the submissions of the learned Counsel for the detenu that for declaring a person to be sand smuggler, offences have to be registered under the Mines and Minerals (Development and Regulation) Act, 1957 or under Minor and under the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013. In the case of Harish Patil (*supra*), offences under Section 379 of the Indian Penal Code were registered against the detenu. The Division Bench of this Court has held that the registration of offences under Section 379 of the Indian Penal Code amounts to sand smuggling. It is also clear from this authority that excavation of sand from river has grave repercussions. It affects the public as the water table and water level goes down which adversely affects the public in general and farmers in particular. Because of sand smuggling water level is reduced and ecological balance is disturbed. Because of the activities of the

detenu, in the present case, people are not coming forward to depose against him or to complain against him. Witness “B” has stated that the detenu suspected him to be the informer of the police and, therefore, assaulted and abused him in filthy language. Statement of Witness “A” shows that he had tried to convince the detenu not to excavate unauthorisedly and not to commit theft of sand, but the detenu assaulted and abused him in filthy language. This clearly shows that the detenu has created a terror amongst the locals because of which the locals are not coming forward to make complaints against the detenu. Therefore, there was enough material before the Detaining Authority to order detention of the detenu. The Detaining Authority has considered all this material and has ordered detention upon its subjective satisfaction. Therefore, no fault can be found in the detention order.

28. In view of above, Criminal Writ Petition is devoid of any substance and stands dismissed accordingly. Rule is discharged.

(M. G. SEWLIKAR)
Judge

(T.V. NALAWADE)
Judge