

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

CRIMINAL WRIT PETITION NO. 242 OF 2021

Mohammad Imran s/o Mohammad Latif,
Age : 20 years, Occu.: Student,
R/o.: Bari Colony, Galli No.7,
Aurangabad.

... PETITIONER

VERSUS

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

....
Advocate for the Petitioner : Mr. M. A. Latif
APP for the Respondents : Mr. M. M. Neralikar
....

**CORAM: SUNIL P. DESHMUKH &
N. B. SURYAWANSHI, JJ.**

RESERVED ON : 01/09/2021.

PRONOUNCED ON : 14/09/2021.

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

Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final hearing at the admission stage.

2. This petition takes exception to the order dated 23/12/2019 passed by the Commissioner of Police, Aurangabad (respondent no.1) thereby detaining the petitioner under Section 3 of 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 (for short 'MPDA Act').

3. Heard learned advocate for the petitioner and the learned Assistant Public Prosecutor for the State.

4. The tenability of detention order is questioned on the following grounds :

I) There is no period of detention specified in the impugned order, same is unsustainable;

II) The grounds of detention were not communicated to the petitioner in his mother tongue (Urdu), the impugned order is vitiated;

III) There is delay in execution of the detention order;

IV) The petitioner does not fall within the definition of dangerous person and there was no need to invoke provisions of the MPDA Act against him.

V) There is unexplained delay in passing the impugned order.

VI) No subjective satisfaction of the detaining authority is reflected in the impugned order.

5. The learned advocate for the petitioner in support of the above grounds, strenuously urged that since no period of detention is specified in the impugned order, the impugned order is vitiated on that ground alone. The learned advocate for the petitioner by relying upon the school leaving certificate of the petitioner submitted that he has taken education in Urdu language and therefore, the grounds of detention ought to have been explained to the petitioner in Urdu language. He further submitted that since the grounds of detention were not explained to the petitioner in his mother tongue (i.e. in Urdu), the impugned order is vitiated for violation of Article 22(5) of the Constitution of India. He submits, thus, the impugned order is liable to be quashed and set aside. In support of these submissions he relied upon the decisions in ***Mrs. Nafisa Khalifa Ghanem vs. Union of India and others, 1982 (1) SCC 422 and Prem Chand Vs. Union of India and others, reported in AIR 1981 SC 613.*** He further submitted that there is unexplained delay in executing the detention order. The impugned order was served on the

petitioner after a delay of 11 months and 23 days. No steps were taken to search and arrest the petitioner. Further submission is that Section 7 of the MPDA Act authorises the detaining authority to exercise powers of issuance of proclamation under Section 82 of Cr.P.C. in respect of absconding accused. However, these powers were not exercised by the detaining authority. On the contrary, proposal was forwarded to learned Judicial Magistrate First Class, who has issued proclamation under Section 82 of Cr.P.C. On this ground also the impugned order is vitiated.

6. The learned advocate further assailed the in-camera statements. According to him, the verification of in-camera statements was not properly done. No date is mentioned on which the witnesses, whose in-camera statements are recorded, were threatened by the detenu. He submitted that the verification ought to be done by independent agency like CID, Crime Branch or by Tahsildar / Executive Magistrate. By relying upon **Prem Chand** (supra) he submitted that it is not permissible to rely upon in-camera statements. The learned advocate further submitted that there is unexplained delay in passing the impugned order. The last offence is registered against the petitioner in September, 2019 and the detention order is passed in December, 2019. According to him, the proposal of detention

was submitted on 02/12/2019 and the impugned order is passed on 23/12/2019. Thus, there is unexplained delay of 21 days. The learned advocate further submitted that there is no subjective satisfaction of detaining authority while passing the impugned order. He urged that though it is mentioned in the order that the witnesses are not coming forward to depose against the petitioner, till today no trial against the petitioner has commenced. Hence, there is no question of witnesses not coming forward. He further submitted that till date no action under Section 107 of Cr.P.C. is initiated against the petitioner. So also there is no action under the Bombay Police Act. According to him, simultaneously two proceedings are initiated against the petitioner one under Bombay Police Act and another the proceedings in question under MPDA Act. According to the learned advocate this amount to double jeopardy.

7. The learned advocate further submitted that the petitioner cannot be termed as a dangerous person. By referring to the definition of dangerous person in Section 2 (b-1) he submitted that considering the offences registered against the petitioner, he cannot be termed as a dangerous person. By relying upon the decision in ***Vijay Narain Singh vs. State of Bihar and others, AIR 1984 SC 1334***, he submitted that no similar offences are

committed by the petitioner. The offences registered against the petitioner are individual offences and are not against the public at large. The activities of the petitioner have not caused any prejudice to public or they have not caused any public nuisance. In support of his submission (public order and law and order), the learned advocate relied on ***Vinod Ramjiyawan Rajbhar vs. A. N. Roy, Commissioner of Police and others, 2006(2) Mh.L.J. (Cri.) 411.*** By relying upon ***Hemchand Somnath Gupta vs. D. Sivanandhan, Commissioner of Police and others, 2006(1)Mh.L.J.(Cri.)786*** he urged that the petitioner does not fall in the definition of habitual offender and dangerous person. He further submitted that though the impugned order refers to that the “petitioner and his associates” there is whatsoever no action taken against the so called associates of the petitioner. Even their names are not disclosed in the impugned order. He, therefore, submitted that the detaining authority has abused the process of law by passing the impugned order. In support of his submission he relied on ***Nasir Abdul Farid Khan vs. D. N. Jadhav, Commissioner of Police, 2008(2) Bom.C.R. (Cri) 312.***

8. A compilation of following citations was placed on record by the learned counsel for the petitioner :

- 1) AIR 2017 SC 3770;
- 2) 1980 D.G.L.S. S.C. 281;
- 3) ALL M.R. (Cri.) 2014, 4655;
- 4) ALL M.R. (Cri.) 2003, 1450;
- 5) ALL M.R. (Cri.) 2008, 1259;
- 6) ALL M.R. (Cri.) 2000, 1773;
- 7) A.I.R. 1996 S.C. 70;
- 8) A.I.R. 1981 S.C. 613;
- 9) ALL M.R. (Cri.), 2018, 2512;
- 10) ALL M.R. (Cri.), 2000, 773;
- 11) ALL M.R. (Cri.), 2001, 846;
- 12) ALL M.R. (Cri.), 2013, 3870;
- 13) ALL M.R. (Cri.), 2008, 1259;
- 14) ALL M.R. (Cri.), 1997, 1270;
- 15) Criminal Writ Petition No. 193 of 2017;
- 16) A.I.R. 1984 S.C. 1334;
- 17) 2006 (1) Mh.L.J. 786 and
- 18) 2006 (2) Mh.L.J. 411.

9. Per contra the learned APP submitted that the detention proposal was initiated on 02/12/2019. On 13/12/2019 the in-camera statements were verified by the Deputy Commissioner of Police and on 23/12/2019 the impugned order was passed. In

terms of Section 3(3) of MPDA Act forthwith report was submitted and the detention order was approved by the State Government on 30/12/2019. The detention order could not be served on the petitioner earlier as the petitioner was absconding. The efforts to trace him were not successful. It is only when the petitioner was arrested in Neknoor Police Station in C.R. No. 278 of 2020, the order of detention could be served on him, after taking permission of the learned Judicial Magistrate First Class. So the delay cannot be attributed to the detaining authority. The learned APP by relying upon the record made available submitted that the petitioner has given statement before the Superintendent of Jail that he has received the relevant papers on 15/12/2020, that he is educated up to 10th standard at Rajiv Gandhi Urdu High School, Baijipura, Aurangabad and he is well conversant with Urdu, Hindi, Marathi and English languages. He has further stated that documents of detention be given to him in Marathi language and his father Advocate Mohammad Latif be informed about his detention. The learned APP placed reliance on the certificate, counter signed by the Jailer, Aurangabad Central Prison, which is to the effect that the grounds of detention and other relevant documents from page no. 1 to 310 were served on the petitioner and the grounds were explained to the petitioner in Marathi, Hindi and English language and he agreed that he has no

complaint in that behalf. Learned APP further submitted that on 02/12/2019 the proposal was initiated and the detention order was passed on 23/12/2019. It is therefore clear that the order was passed within reasonable time and there is no delay. He further submitted that there is live link between the last offence committed by the petitioner and the detention order. He submitted that the delay in execution of the detention order is because the petitioner was absconding and as such the delay is only ostensible and not real. In spite of taking all the possible efforts to serve and execute the detention order on the petitioner, it could not be served on him because of his abscondence, for the reasons beyond the control of the detaining authority. Learned APP submitted that the verification of in-camera statements is done in terms of the guidelines of verification dated 19th September, 2002. As per the guidelines the Deputy Commissioner of Police is authorized person to record the verification. He further submitted that though externment proceedings were initiated against the petitioner during the pendency of those proceedings the petitioner committed crime, therefore, he can be termed as dangerous person and his detention was necessary. By relying upon the detention order he submitted that the detention order reflects subjective satisfaction of the detaining authority. In support of his submissions the

learned APP relied upon i) ***T. Devaki vs. Government of Tamil Nadu and others, (1990) 2 SCC 456***, ii) ***Abdul Nasar Adam Ismail vs. State of Maharashtra and others, AIR 2013 SC 1376***, iii) ***Subhash Popatlal Dave vs. Union of India and another, (2014) 1 SCC 280*** and iv) ***Vinod K. Chawala vs. Union of India and Others, AIR 2006 SC 2864***.

10. Heard the learned advocate for the petitioner and the learned Assistant Public Prosecutor at length. We have gone through the grounds raised in the petition, the annexures of the petition and the record made available by the learned APP.

11. The impugned order is passed by the Commissioner on 23/12/2019 under Section 3(1) of MPDA Act. After following prescribed procedure and after obtaining opinion of the Advisory Board appointed under the MPDA Act, the State Government on 21st January, 2021 confirmed the detention order by exercising powers conferred by Sub-section 1 of Section 12 of the MPDA Act thereby directing detention of the petitioner for a period of one year from the date of detention. In ***T. Devaki*** (supra) the Hon'ble Supreme Court has held that Section 13 of the MPDA Act prescribes the maximum period of detention shall be 12 months from the date of detention. The Act nowhere requires the

detaining authority to specify the period for which the detainee was required to be detained. It was thus, held that the impugned order of detention was not rendered illegal on account of the detaining authority's failure to specify the period of detention in the order. The Constitutional Bench of Apex Court while considering the detention order made under Section 3 of the Preventive Detention Act, 1950 held that non-specification of any definite period of detention order made under Section 3 of the Act was not a material omission rendering the order invalid. We, therefore find no force in the ground of the petitioner that for non-specification of the period of detention, the impugned order is vitiated.

12. The petitioner has placed on record his leaving certificate (annexure 'C') issued by Rajiv Gandhi Urdu High School, Baijapura, Aurangabad. As per the leaving certificate, the petitioner has taken education up to 10th standard and he failed in Board Exam. In the statement dated 15/12/2020 the petitioner has categorically admitted that during his education he has learnt Urdu, Hindi, Marathi and English languages. He can read and write in those languages and he clearly understands those languages. Admittedly, the petitioner is living in Maharashtra since his birth. The petitioner admittedly signs in English. Merely

because he has taken education in Urdu school, it does not mean that he does not understand Hindi and Marathi languages. The petitioner has further stated in the said statement that information about his detention should be given to his father M. A. Latif. He has further stated that the grounds of detention and other documents be given to him in Marathi language. The detention order is explained to him and he has no complaint in that regard. We are therefore unable to accept the ground raised by the petitioner that since his mother tongue is Urdu and he ought to have been supplied the documents in Urdu language, as the same is not done there is violation of Article 22(5) of the Constitution of India.

13. In ***Mrs. Nafisa Khalif Ghanem*** (supra) the detinue knew Arabic language only and the grounds were explained to him in Hindi, the Hon'ble Apex Court, therefore, held that the detention of the petitioner therein was illegal. In the present case since the petitioner has taken education in Urdu school and as he is well conversant with Urdu, Hindi, Marathi and English languages the said citation would not help the petitioner's case.

14. In ***Abubakar @ Bagla Rais Ansari vs. The Commissioner of Police and others, 2014 ALL MR (Cri)***

4655, Grounds of the detention were served on the detainee therein in English and its Hindi translation was supplied to him, which the detainee could not read. The Apex Court, therefore, held that it resulted in violation of detainee's right under Article 22(5) of the Constitution of India. In the instant case since, the petitioner has admitted to be well conversant with Urdu, Hindi, Marathi and English languages and all the grounds of detention and relevant documents were served on the petitioner on 15/12/2020 and the same were handed over by the petitioner to his father namely Advocate M. A. Latif, we find that there is no violation of Article 22(5) in the present case as claimed by the petitioner.

15. We find no merit in the ground of the petitioner that there is delay in execution of the impugned detention order. The order of detention is passed on 23/12/2019. The said order was sought to be executed by visiting the detainee's house on 26/12/2019. However, the relatives of the detainee obstructed the police staff and helped the detainee to abscond. An offence at CR No. 465 of 2019 under section 225 read with Section 34 of IPC is registered in that behalf against the mother and relatives of the detainee. In spite of possible efforts to locate the detainee he could not be traced. Ultimately, a proclamation order under Section 82 of

Cr.P.C. was issued by the learned Judicial Magistrate First Class on 14/09/2020. Merely because the detaining authority did not exercise its powers of issuing proclamation under Section 7, that itself would not render the proclamation illegal. Fact remains that proclamation under Section 82 was published against the petitioner.

16. The petitioner and his three associates were arrested on 08/12/2020 in a robbery case by police officials of Neknoor Police Station, District Beed in C.R. No. 278 of 2020 for the offences punishable under Sections 394, 341, read with 34 of IPC and under Section 4 and 25 of the Arms Act. During the course of investigation of that crime, it was revealed that two motorcycles which were used in the crime were stolen from Kalaburgi City, Karnataka. Therefore, offence at C.R. No. 89 of 2020 under Section 379 of IPC was registered at Police Station Roja, Kalaburgi City and C.R. No. 157 of 2020 under Section 379 of IPC was registered at Police Station University, Kalaburgi City. Since the petitioner was in judicial custody, grounds of detention and other relevant papers were served on the petitioner on 15/12/2020 after obtaining prior permission of the learned Judicial Magistrate, First Class, Court No.4, Beed. The petitioner was detained in Aurangabad Central Prison and this fact was intimated to his

father Advocate Mr. M. A. Latif on 15/12/2020. The petitioner therefore, cannot take advantage of his own act of absconding and then claiming that there is delay in execution of the detention order and therefore, the detention order is liable to be set aside on that ground.

17. In ***Vilas Siddhu Jadhav vs. M. N. Singh, 2003 ALL MR (Cri) 1450***, there was delay of 21 days in execution of the detention order, which was not satisfactorily explained. Therefore, this Court held that delay was fatal to the detention order. Such are not the facts in the present case.

18. In ***Smt. Farzana Salam Nakhawa vs. Shri R. H. Mendonca and others, 2000 ALL MR(Cri.) 1773***, there was a delay of 2 months and 5 days in execution of the detention order. Though the detenue was present in the court, the detention order was not served on him. Therefore, this court quashed the detention order. In the instant case the grounds of the detention were served on the petitioner when he was arrested by Neknoor police authorities. Therefore, there cannot be said to be any delay in serving the order on the petitioner. In spite of possible efforts, the petitioner could not be found and arrested. Therefore, as the petitioner was available after his arrest in crime of Neknoor Police

Station, the grounds of the detention were served on the petitioner, in that view of the matter there is no delay in execution of the detention order.

19. Similarly, we do not find any substance in the ground raised by the petitioner that there is a delay in passing the impugned order, which is not explained. On 02/12/2019 the proposal of the detention was initiated and the impugned order is passed on 23/12/2019 i.e. within a period of 21 days from initiation of the proposal. After following prescribed procedure provided under Sections 7 to 12, the impugned order is passed and therefore, we do not find any merit in the said submission.

20. Next ground pressed in service by the learned advocate for the petitioner is that the petitioner cannot be termed as dangerous person or habitual offender. By relying on on **Vijay Narain Singh** (supra) it is contended that the offences registered against the petitioner are not similar offences and they are not against the public order or law and order. The offences committed by the petitioner did not cause any public nuisance and all the offences are individual offences and are not offences against public at large. In this behalf reliance is placed on **Vinod Rajbhar** (supra) & **Hemchand Somnath Gupta** (supra).

21. The definition of dangerous person is given in Section 2(a-1), which read thus :

“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 the 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”.

Definition of dangerous person is clear which means a person who either by himself or as a member of a gang habitually commits or attempts to commit or abets the 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. In the instant case, the offences committed by the petitioner are admittedly fall under Chapter XVI and XVII of the Indian Penal Code, the learned advocate for the petitioner has fairly conceded to this position.

22. In **Vijay Narain Singh** (supra) the Hon'ble Apex Court was considering the provisions of Bihar Control of Crimes Act Section 2(d), which defines habitual offender. It held as under :

“In both sub-clauses (i) and (iv) of Section 2(d), the word ‘habitually’ means ‘repeatedly’ or ‘persistently’.

It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions. This appears to be clear from the use of the word 'habitually' separately in sub-clause (I), sub-clause (ii) and sub-clause (iv) of Section 2 (d) and not in sub-clauses (iii) and (v) of section 2 (d). Commission of an act or omission referred to in of the sub-clauses (I), (ii) and (iv) and of another act or omission referred to in any other another of the said sub-clauses would not be sufficient to treat a person as an anti-social element'. A single act or omission falling under sub-clause (I) and a single act or omission falling under sub-clause (iv) of Section 2 (d) cannot, therefore, be characterised as a habitual act or omission referred to in either of them. Because the idea of 'habit' involves an element of persistence and a tendency to repeat the acts or omissions of the same class or kind, if the acts or omissions in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between them they cannot be treated as habitual ones".

23. In the instant case two offences at at C.R. No. 56 of 2018 under Sections 307,397of IPC and C.R. No. 359 of 2018 under Section 307, 294 of IPC and under Section 4 and 25 of the Arms

Act are registered at Jinsi Police Station, Aurangabad on 28/03/2018 and 23/11/2018 respectively. Considering these two offences mentioned in the chart at serial no.1 & 2, it is clear that the petitioner has indulged in repeated acts of similar offences in the year 2018-2019. Therefore, this ruling would not help the petitioner.

24. Serious offences punishable under Section 307, 397, 294 of IPC as well as under Section 435, 326 read with 34 of IPC and under Sections 4 and 25 of the Arms Act are registered against the petitioner. Therefore, it cannot be said that the offences in which the petitioner is accused are individual offences and they are not prejudicial to the public order and they did not cause any public nuisance. There is no substance in the argument that the offences registered against the petitioner are not against public at large.

25. The reliance by the petitioner in **Vinod Ramjiyawan Rajbhar** (supra) is misplaced and misconceived as that judgment is rendered in different facts. A solitary incident of threatening the supervisor at the construction site and the demand of Rs.5,000/- and assault on him with fist and blows was considered and it was held that it did not fall in the category of public order

and the detention order passed against the detenue on the basis of the same was set aside by this court. The facts in the present case are totally different.

26. In ***Hemchand Somnath Gupta*** (supra) this court while was considering the definition of habitual offender or dangerous person in para 5 held :

“Two offences or two incidents on the basis of which two offences were registered, were sufficient to infer that the detenue was “habitual offender” and /or a “dangerous person”. Merely because those two offences occurred in the same month within a span of 15 days does not entitle the detenue to contend that he cannot be labelled or treated as a dangerous person. There is no substance in this ground, it is rejected”.

In the case in hand, in the year, 2018, two offences punishable under Section 307, 397, 294 of IPC and under Section 4 and 25 of the Arms Act are registered against the petitioner in the year, 2018 and in the year, 2019, two offences under Section 143, 435, 323, 504, 506 of IPC and 326, 435, 323, 504 read with 34 of the IPC are registered against the petitioner. Those were, therefore, sufficient to label the petitioner as a dangerous person in view of the above observations of this court.

27. We are unable to agree with the submission that there is no subjective satisfaction reflected in the impugned order. It is specifically mentioned in the impugned order that considering the seriousness of the offences registered against the petitioner a confidential inquiry was conducted and it was disclosed that due to the fear of the petitioner nobody was coming forward to give statement against him. The documents placed before the detaining authority revealed that the activities of the petitioner disturbed the public order. The proceedings initiated against the petitioner taking preventive measures were found to be futile. During the course of the proceedings initiated under Section 56(i) (A)(B), the petitioner indulged into criminal activities, because of which the said proceedings were required to be dropped and the present proceedings were initiated. The in-camera statements of the witnesses reveal that the petitioner had been indulging in extortion in public place which created terror in the locality. In the impugned order in paragraphs 10 and 11 the detaining authority has categorically mentioned that after going through the material placed before it and after considering the activities of the petitioner and its effect from all the angles and the gravity of questionable activities of the petitioner, the authority was subjectively satisfied that the petitioner is a dangerous person and he is acting in a manner prejudicial to the maintenance of the

public order.

28. The detention order was forwarded to the State Government as per Section 3(3) of the Act and the petitioner was informed that he has right to make representation against the said order. The detention order was confirmed by the Home Department on 21/01/2021 under Sub-section (1) of Section 12 of the Act thereby directing detention of the petition for one year. Perusal of the the record indicates that the detaining authority has applied its mind to the record placed before it and it was subjectively satisfied that the detention order is required to be passed against the petitioner. The material available with the detaining authority is sufficient to warrant passing of detention order, which is rightly passed against the petitioner.

29. The learned APP was right in relying on the ratio in ***Magar Pansingh Pimple vs. State of Maharashtra and another 2006(1) Mh.L.J. (Cri.), 28***, wherein this court has held that the scope of writ petition challenging the detention order is limited and the High Court cannot assume the role of appellate court nor can it intervene the detention order lightly. Since we have come to the conclusion that the detention order passed against the petitioner is justified in the facts of the case appearing from the

record and from the nature of activities alleged against the detainee, we find no illegality in the impugned order. All the necessary compliance of Article 22(5) has been done in the present case and the learned advocate for the petitioner was not able to convince us that there is infraction of any fundamental rights of the petitioner while passing the impugned order. We find no merit in the petition. The petition is therefore dismissed.

30. Rule discharged.

(N. B. SURYAWANSHI, J.) (SUNIL P. DESHMUKH, J.)

V.S. Maind/